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ENVIRONMENTAL PROTECTION THROUGH CIVIL LAW INSTRUMENTS IN THE LEGISLATION OF THE REPUBLIC OF SERBIA

Abstract

This paper provides an analysis of the environmental protection by the civil law using the instruments of law of property and obligations. The subjective rights recognized by the Law on Environmental Protection, the Law on the Basics of Property Law Relations and the Law on Obligations are regularly realized spontaneously, peacefully, by removing sources of harmful emissions, undertaking protective measures, stopping harmful actions and compensating for the resulting damage, by the bearer of legal duties on his own initiative or at the request of the rights holder. In cases where the duty holder does not fulfill the stated legal duties, an illegal situation arises due to the impossibility of realizing the subjective rights of the holder, who, using his constitutional right to legal protection, can exercise his subjective right in the proceedings before the court, with instruments of civil environmental protection.

The authors review property-law and obligation-law protection of the environment by means of an actio negatoria, as well as legal protection of obligations, with a special emphasis on actio popularis, analyzing their scope and scope in the field of environmental protection. Also, this paper proposes the possibility of introducing new instruments of civil environmental protection through the simultaneous action of state authorities to initiate civil procedures for environmental protection ex officio, as well as the introduction of instruments of a special civil procedure in which the object of protection would be the general interest in protection environment.

Key words: *environmental protetction, civil law protection, harmful emissions, actio negatoria, actio popularis.*

JEL classification: *K32, Q58, P14, P48*

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ЗАШТИТА ЖИВОТНЕ СРЕДИНЕ ИНСТРУМЕНТИМА ГРАЂАНСКОГ ПРАВА У ЗАКОНОДАВСТВУ РЕПУБЛИКЕ СРБИЈЕ

Апстракт

У овом раду дата је анализа грађанскоправне заштите животне средине инструментима стварног и облигационог права. Субјективна права призната Законом о заштити животне средине, Законом о основама својинскоправних односа и Законом о облигационим односима редовно се остварују спонтано, мирним путем, уклањањем извора штетних имисија, предузимањем мера заштите, обустављањем штетних радњи и накнадом настале штете, од стране носиоца правних дужности самоиницијативно или на захтев титулара права. У случајевима да носилац дужности не испуни наведене законске дужности, настаје противправна ситуација услед немогућности остварења субјективних права титулара, који користећи своје уставно право на правну заштиту, може своје субјективно право да остварује у поступку пред судом, инструментима грађанскоправне заштите животне средине.

Аутори дају приказ стварноправне заштите животне средине путем негаторне тужбе, као и облигационоправне заштите, са посебним акцентом на ацтио популарис, анализирајући њихов обим и домашај у области еколошке заштите. Такође, у овом раду предлаже се могућност увођења нових инструмената грађанскоправне заштите животне средине истовременим деловањем државних органа да покрећу грађанске поступке за заштиту животне средине ех оффицио, као и увођење инструмената посебног парничног поступка у коме би се у својству објекта заштите налазио општи интерес за заштиту животне средине.

Кључне речи: *заштита животне средине, грађанскоправна заштита, штетне имисије, негаторна тужба, популарна тужба.*

Introduction

As a result of accelerated technological development, as well as the development of civilization itself, it has been possible to improve the living conditions of millions of people, but at the same time it represents a serious threat to the further development and survival of humanity. Uncontrolled, unplanned exploitation of natural resources, together with accelerated industrialization, leads to unfathomable consequences for the survival of the living world on the planet, and therefore for humans as well. Industrial and economic development cause environmental damage. We are witnessing major ecological disasters, which have incalculable consequences for the environment due to the serious devastation of the living world on the planet. In order to achieve the concept of sustainable development of the environment, which is an essential prerequisite and ultimate goal of the efficient organization of numerous human activities on Earth, and in order to preserve the environment for future generations, it is necessary to establish effective mechanisms for its protection and improvement (Milošević et al., 2015).

The lack of awareness that environmental problems can be successfully dealt with, exclusively on the international level and through coordinated action on a global level, was present until a few decades ago. Efforts to solve environmental issues at the national level, with the absence of a systematic approach to environmental protection, yielded poor results (Milošević, Madžgalj, 2015). The previous activities of the states, which were implemented at the national level, showed a tendency to react to events or incidents depending on the available evidence, instead of predicting general or individual environmental threats and establishing a preventive framework (Milošević et al., 2017). Efforts to legally regulate environmental protection followed, both in international law through international organizations and in national legislations. Humanity has united in adopting international legal rules in the field of ecology and insists on their mandatory application, establishing associations and other types of organizations with the aim of protecting nature, while nature responds to man's bad actions with earthquakes, floods, acid rain, climate change, polluted waters and similarly, showing man that nature "can be a good servant, but also an evil master" (Lazić et al., 2021).

Environmental protection in the law of the Republic of Serbia is achieved through constitutional, administrative and criminal law protection, while this paper will analyze the civil law environmental protection by applying the method of description, as well as the comparative method.

Civil Law Instruments for the Protection of Environmental Rights

In the positive legislation of the Republic of Serbia, the protection of property rights is enforced in civil proceedings before the court. Property rights, which represent a constitutional category, are protected by the regulations of substantive law of a real and obligational character, and the procedure itself is regulated by adjective law. This protection is carried out by traditional instruments of protection of property rights and obligations, considering that the civil law regulations do not explicitly prescribe property protection of the environment (Drenovak-Ivanović et al., 2015).

The right to a healthy environment is one of the basic human rights that have the rank of constitutional principles and are guaranteed by the Constitution of the Republic of Serbia ("Official Gazette of the RS", No. 98/2006 and 115/2021), where Article 74 establishes that everyone has the right to a healthy environment and timely notification of its condition. The responsibility of all persons, especially the Republic of Serbia and the autonomous provinces, is prescribed for environmental protection, as well as for the duty to protect and improve the environment. Article 87 of the Constitution establishes the provisions related to natural resources, defining that natural resources are goods of public interest and assets used by the bodies of the Republic of Serbia are state assets. Natural resources are used under conditions and in a manner regulated by law. According to Article 97, paragraph 1, point 9 of the Constitution of the Republic of Serbia, it regulates and ensures sustainable development, a system of environmental protection and improvement, protection and improvement of flora and fauna, production, trade and transportation of toxic, flammable, explosive, radioactive and other dangerous substances.

Within civil law protection of the environment, we can distinguish between two types of protection - preventive and repressive. Preventive protection refers to the prevention of environmental damage and is achieved through three different lawsuits, namely: 1.

lawsuit due to emissions, 2. lawsuit due to disturbance of possesion and 3. environmental lawsuit, while repressive protection is achieved by submitting a request for compensation for the damage caused by environmental pollution (Šago, 2013). Our jurisprudence does not recognize non-material damage for mental pain suffered due to the negative impact of industrial and neighboring buildings, despite the fact that the right to a healthy environment is one of the basic constitutional rights, unlike comparative law (Lilić, 2011). The principle of prevention defines that it is considered unacceptable to wait for environmental damage to occur, because the general social interest dictates that measures be taken to anticipate the possibility of its occurrence and, if possible, act preventively, that is, if this is not possible, to limit it to the smallest possible scope and prevent the spread of its consequences. The principle of prevention and the principle of precaution are mutually correlated, because the principle of prevention starts from known risks and the causes of the occurrence of specific damage in the environment, and the principle of precaution extends the preventive action of policy and environmental law to cases where there is no complete scientific certainty about the possibility of realizing the risk, but the suspicion is strong enough to justify taking measures to prevent it (Pajtić, 2015).

It is extremely important to note that the civil law protection of life property in the Republic of Serbia is aligned with the internationally recognized ecological principles of judicial protection, which include the principles of restitution, compensation, as well as repression, if there are elements of a criminal offense in the act of the polluter (Mirčetić, 2010).

The provisions of the Environmental Protection Act ("Official Gazette of the RS", No. 135/2004, 36/2009, 36/2009 - other law, 72/2009 - other law, 43/2011 - Constitutional Court decision, 14/2016, 76/2018, 95/2018 - other law and 95/2018 - other law) regulate civil liability for environmental pollution. Article 104 stipulates that a polluter who causes environmental pollution through his actions or inactions is obliged to, without delay, take the measures determined by the accident protection plan and the rehabilitation plan, i.e. to take the necessary measures to reduce environmental damage or remove further risks, hazards or remediation of damage in the environment. If the damage caused to the environment cannot be remedied by appropriate measures, the person who caused the damage is responsible for compensation equal to the value of the destroyed property. Responsibility for damage is based on the principle of objective responsibility, in accordance with the provisions of Article 103, and the damage is compensated up to the value of the destroyed goods. The right to compensation is granted to any person who suffers damage, and in case there are no such persons, the Republic of Serbia reserves the right to compensation, in accordance with the provisions of Article 107. The procedure for compensation is an urgent procedure.

In addition to the principles of precaution, prevention, and remediation of environmental damage at its source, the legal system of the Republic of Serbia has introduced the "polluter pays" principle. This principle is adopted from European Union legislation and has also been embraced by non-member states (Directive 2004/35/CE of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30.4.2004). The "polluter pays" principle is regulated by Article 9, paragraph 1, item 9 of the Environmental Protection Act ("Official Gazette of the RS", No. 135/2004, 36/2009, 36/2009 - other law, 72/2009 - other law, 43/2011 - Constitutional Court decision, 14/2016, 76/2018, 95/2018 - other law and 95/2018 - other law), stipulating that the polluter is obliged to pay compensation for environmental pollution

when their activities cause or may cause environmental burden, or if they produce, use, or market raw materials, semi-products, or products that contain harmful substances to the environment. Additionally, the polluter, in accordance with regulations, bears the total costs of measures for preventing and reducing pollution, which include the costs of environmental risk and the costs of remedying the damage caused to the environment.

For the prevention of environmental pollution and elimination of harmful consequences caused by pollution, some classical instruments of civil law protection are used, established by the provisions of real and obligation law, which have the character of subsidiary sources of law for environmental protection. Bearing in mind that the litigation procedure is a universal tool for the protection of civil law disputes, it is also applied to the settlement of environmental disputes. Litigation proceedings achieve both the immediate protection of the environment as a collective good and the protection of individual goods, thereby indirectly protecting the environment itself. Environmental litigation should be considered to be those procedures that have as their subject the protection of the right to a healthy, suitable, adequate environment and environment, as well as the protection of property rights in this area (Drenovak-Ivanović et al., 2015).

Actio Negatoria

The protection of neighbor's rights against harmful emissions can also be applied to the protection against ecological danger, if it is seen as a harmful influence. The very concept of harmful emissions is closely related to the concept of neighboring rights, which regulate the relations of owners of neighboring immovable properties. Everyone has the right to demand from their neighbors not to use their immovable property in a way that causes harmful emissions. These harmful effects (immissions) coming from the neighboring immovable property in the form of smoke, dust, unpleasant odors, heat, soot, noise, earthquakes, waste water, etc. Article 5 of the Law on the Basics of Ownership Relations ("Official Gazette of the SFRY", No. 6/80 and 36/90, "Official Gazette of the FRY", No. 29/96 and "Official Gazette of the RS", No. 115/ 2005 - other law - hereinafter: LBOR), it was established that the owner of the immovable property is obliged to refrain from actions when using the immovable property and to remove the causes originating from his immovable property, which hinder the use of other immovable properties beyond the measure that is usual considering the nature and purpose of the immovable property and the local conditions, or which cause more significant damage. Harmful emissions must be tolerated to a certain extent, that is, up to the so-called limits of tolerance, because it is simply a necessity. Exceeding the tolerance limit results in a certain responsibility of the emitter (polluter). A person exposed to excessive immissions has the right to request the application of certain technical means that reduce the immissions to a tolerable level, and if this is not possible, they can request a ban on the activity from which the immissions originate (Stanković, Orlić, 2019). The limit of tolerance is determined using a legal standard defining that it is a limit "which is usual considering the nature and purpose of the immovable property and the local conditions", which means that this standard is interpreted according to the circumstances of the case. Also, the legislator did not specify the criteria on the basis of which it would be possible to determine what kind of damage is considered "significant damage", which

represents another legal standard, but the court, looking at the circumstances of each specific case, concludes whether it is a significant damage, guided by the type and the extent of damage (Tošić & Ognjanović, 2012).

The application of legal standards has various functions. They help judges to interpret the rule to apply in a particular dispute in light of the specific facts of each case, but allow for flexibility as they take into account variations in individual cases. In this way, legal standards allow the legal system to adapt to social, technological and economic changes, without changing the text of the regulations that are applied. The standards of permissible behavior differ in different environments, and whether it has been exceeded is determined by the court. Considering that these legal standards are very vague, as well as that the criteria of "tolerability and attention of the average person" can be misused and differ between people, it is proposed to introduce the possibility of measuring immissions in accordance with the quantitative standards of natural, technical and medical sciences regarding their effect on human health. If this proposal were to be accepted, during the evaluation of the excessiveness of harmful effects in the judicial proceedings, the court would rely more on the expert opinion of people in the appropriate profession, and less on the mentioned legal standard, except in situations where these harmful effects are immeasurable, such as in the case of spreading stench, when it would be necessary to apply the standards of the average person (Lepetić, 1995). In this way, the judicial proceedings would become more precise and objective, relying on scientifically based criteria where possible, while subjective criteria would be used only in exceptional cases. Introducing precise and objective standards where possible can improve the fairness and efficiency of the legal system. However, subjective standards will still be necessary in situations where specific circumstances cannot be determined quantitatively, thus allowing the adaptation of the legal system to different social and individual contexts.

The damaged party can file a lawsuit against the tortfeasor for impediment or disturbance – *actio negatoria*. The name of this lawsuit is explained by denying the existence of the right of the defendant (Medić, 2021). With this lawsuit, the owner or holder seeks protection against disturbance (impediment) that does not consist of confiscation of things, with the request that the disturbance cease, as prescribed in Article 42, paragraph 1 of the LBOR. Harassment should have a permanent character, which means that: 1. the defendant's action is based on a permanent condition or 2. that the harassment procedure is repeated or 3. that according to the circumstances it can reasonably be expected that the harassment will be repeated. Actio negatoria "protects the owner from something that lasts or can be repeated, and does not protect him from something that was, then passed" (Rajačić, 1956) and its goal is to re-establish the previously peaceful state. This protection does not apply to protection against immissions that are of a one-time nature, that did not last long and where there is no fear of their repetition. Also, actions that have the property of bothering and disturbing must originate from human action. It is not required that the person causing the impediment or disturbance is guilty.

Actio negatoria, as a special property lawsuit, provides protection to the holder of property rights from disturbances by third parties, dating back to Roman law, specifically the Law of the Twelve Tables. This lawsuit in Roman law long protected not only the owner but also anyone holding the item for various reasons, such as a guardian, tenant, usufructuary, etc. The goal of this lawsuit was to stop the disturbance and to compensate the owner for the damage suffered.

In this lawsuit, the active legitimacy belongs to the owner or the presumed owner of the item, while the passive legitimacy belongs to the person causing the disturbance and/or the person who ordered the disturbance and/or the person for whose benefit the disturbance was caused without their order but later approved it. It is also considered that both singular and universal successors of the owner or presumed owner have the right to protection from disturbance, provided that the disturbance of property began while their predecessor was the owner and is still ongoing (Vučković, 2015). The lawsuit request pertains to the restoration to the previous state (in cases where the disturbance has created a new material situation), the cessation of the behavior causing the disturbance, as well as the prohibition of further disturbance. Additionally, the owner/holder of the item can request the implementation of appropriate technical measures to reduce emissions to a tolerable level, i.e., the court will, at the request of the interested party, order the implementation of appropriate measures to prevent damage or disturbance or to eliminate the source of danger, at the expense of the holder of the source of danger, if they do not do it themselves, in accordance with the provision of Article 156, Paragraph 2 of the Law on Obligations ("Official Gazette of the SFRY", Nos. 29/78, 39/85, 45/89 - USJ decision, and 57/89, "Official Gazette of the FRY", No. 31/93, "Official Gazette of SCG", No. 1/2003 - Constitutional Charter, and "Official Gazette of RS", No. 18/2020 – hereinafter: LO). The lawsuit in question, therefore, demands that the person causing the disturbance refrain from certain actions (omission, toleration, restraint), but it can also require action, i.e., undertaking measures to reduce emissions so that they do not exceed the limits of tolerance (Aćimović, 2015). To succeed in the lawsuit, it is necessary to prove the existence of a causal link between the defendant's activities and the disturbance, i.e., that the defendant's specific actions or omissions led to pollution or other harmful occurrences.

The cost of restoring the previous state always falls on the defendant, regardless of their fault. If, after the lawsuit request is granted, the disturbance by the defendant is repeated, i.e., the same actions are taken on the same item, the court will impose a penalty on the defendant in the enforcement proceedings based on the already rendered judgment. If the disturbance continues even after that, the court will impose a monetary fine in an increased amount.

The verdict on actio negatoria is condemnatory and it must clearly define the content and scope of legal protection. It has effect only against the defendant, but not against third parties. As with other property lawsuits, the right to file an action for removal does not expire, which is a civilized and legal standard.

Actio negatoria for the protection of the environment is a legal instrument for safeguarding the environment from harmful impacts, which can be filed by individuals, groups of citizens, organizations and government bodies in situations where someone with their behavior or activities damages the environment and thereby endangers the health, property or rights of other persons. It is based on the right of every individual to a clean and healthy environment, encompassing protection from pollution, noise, chemical emissions, waste, and other forms of environmental degradation. The primary objectives of the actio negatoria are to cease harmful activities, restore the disrupted state, prevent future damages, and raise public awareness about the importance of environmental protection and the legal instruments available for this purpose.

Additionally, real-property protection can be achieved through a lawsuit for disturbance of possesion as defined in Article 77 of the Law on Basic Property Relations (LBOR), which outlines the possessory (possession) lawsuit. Judicial protection from

disturbance or dispossession can be sought within a subjective period of 30 days from the day of learning about the disturbance and the perpetrator, while the objective period is no later than one year from the occurrence of the disturbance. Article 78 of LBOR stipulates that the court provides protection according to the last state of possession and the occurred disturbance, regardless of the right to possession, the legal basis of possession, or the conscientiousness of the possessor. Even a possessor who acquired possession by force, secretly, or through abuse of trust has the right to protection, except against the person from whom possession was obtained in such a manner, if the subjective and objective periods from Article 77 of LBOR have not elapsed since the disturbance. This protection is very effective because the procedure is urgent, and the burden of proving ownership or presumed ownership is not on the plaintiff; instead, the plaintiff must prove that they were the last peaceful possessor and that the defendant is disturbing their peaceful possession.

There are two forms of actio negatoria. In cases where the plaintiff proves ownership of the item, it is a vindicatory actio negatoria. It is sufficient to prove presumed ownership, in which case it is actio Publiciana. To succeed in their lawsuit, the plaintiff must prove that there is a disturbance, but they are not required to prove ownership or acquisitive possession, as there is a legal presumption for this, which greatly facilitates and speeds up this process compared to other property lawsuits in our legal system—such as the property lawsuit for the return of an item (Latin: *rei vindicatio*) and the lawsuit based on presumed ownership (Latin: *actio Publiciana*). Also, one of the advantages for the plaintiff in this dispute is that the plaintiff is not required to prove that the defendant does not have the right to undertake actions that cause the disturbance. Instead, the defendant, if they wish to succeed, must prove that they have the right to undertake the actions that the plaintiff claims are disturbances. The defendant may raise an objection that they hold a narrower real or obligatory right, or that the plaintiff is legally obliged to tolerate the disturbance, e.g., due to neighborly relations. The essence of this solution is based on the presumption of the inviolability of property rights.

Actio negatoria does not provide the possibility of removing sources of ecological emissions caused by industrial polluters operating with the approval of state, primarily administrative authorities. In such cases, only the implementation of measures, such as the installation of filters and possibly compensation for damages, can be requested. For this reason, many authors consider actio negatoria less suitable for ecological protection compared to the lawsuit provided for in Article 156 of the Law on Obligations (LO), which precisely offers such a possibility since it protects the interest of an indeterminate number of persons, i.e., the general interest. Therefore, there is no obligation for the plaintiff to prove their individual interest (Marčetić, 2010). Another disadvantage of actio negatoria when applied for real-property ecological protection stems from the very nature of the civil procedure, which respects the principle of party autonomy, binding the court to the lawsuit request and preventing it from acting ex officio. This means that a person suffering from excessive ecological emissions may decide not to file a lawsuit to stop the disturbance. Furthermore, during the court proceedings, they may withdraw or renounce their claim, which can result in significant and irreparable damage to the environment. One of the greatest challenges of actio negatoria is proving the direct link between the defendant's activities and the resulting damage, often requiring complex scientific research and various analyses. This frequently significantly increases the

financial costs of conducting this dispute, due to the engagement of experts, evidence collection, and analysis. Additionally, the lengthy duration of court proceedings can further exacerbate the environmental condition while awaiting a final court decision.

Due to the aforementioned reasons, it is necessary to establish mechanisms for environmental protection even in the absence of a private legal claim for protection. That is, the emphasized public interest in preserving the environment justifies providing protection to the environment itself by the competent authorities, even in the absence of a violation of someone's subjective right (Cvetić, 2014).

Some authors believe that the fastest and most efficient real-property protection against emissions can be achieved through the application of the institute of temporary measures in possessory disputes under Article 451 of the Civil Procedure Act ("Official Gazette of RS", Nos. 72/2011, 49/2013 - US decision, 74/2013 - US decision, 55/2014, 87/2018, and 18/2020 - hereinafter: CPA), which stipulates that the court may, during the procedure, ex officio and without hearing the opposing party, determine temporary measures in accordance with Article 460 of the Enforcement and Security Act ("Official Gazette of RS", Nos. 106/2015, 106/2016 - authentic interpretation, 113/2017 - authentic interpretation, and 54/2019) to eliminate an urgent danger of unlawful damage, prevent violence, or eliminate irreparable harm. At the request of a party, the court decides on the determination of a temporary measure within eight days from the date of submission of the proposal, and a special appeal against the decision to determine the temporary measure is not allowed. This ensures urgent and provisional protection of limited duration. Temporary measures in possessory disputes represent an instrument of urgent legal intervention by the court to temporarily regulate the situation until the final resolution of the dispute, where a quick reaction is crucial to prevent irreparable damage or serious infringement of the parties' rights in the procedure. The drawback is that the court must carefully balance the interests of both parties in the procedure for the temporary measures to be effective and fair without prejudging the final decision. This approach allows for a final decision based on complete facts without pressure or changes in conditions.

Actio Popularis

The provision of Article 156, paragraph 1, of the Law on Obligations (LO) stipulates that anyone can request from another to remove a source of danger that threatens significant harm to them or an indeterminate number of people, and to refrain from activities that cause disturbance or danger of damage if such disturbance or damage cannot be prevented by appropriate measures. Thus, this lawsuit has the nature of an environmental lawsuit, even though this is not explicitly stated in the LO.

This means that any interested person can file a lawsuit requesting the removal of a source of danger that poses significant harm to them or an indeterminate number of people, thereby granting procedural legitimacy to any person. In this way, a popular lawsuit (Latin: actio popularis) defines a condemnatory claim in the interest of the person filing the lawsuit or in the interest of an indeterminate number of people threatened by the source of danger (Babović, 2015). In legal doctrine, the prevailing view is that an environmental lawsuit can also be filed by a person who is not directly threatened by the danger of damage (Rakić-Vodinelić, 1989). In a preventive environmental lawsuit, it is necessary to prove the existence

of facts indicating the occurrence of a threatening danger, considering that the danger of damage must be certain and concrete, i.e., it cannot be conditioned by a future uncertain circumstance (Crnjanski, 2021). The primary goal of an environmental lawsuit is to act preventively against activities harmful to the environment. An environmental lawsuit can prevent the initiation of activities that could harm the environment before the damage occurs (Lilić, 2011), i.e., not only in the case of violation but also in the case of endangerment (Gajinov, T., 2015).

As already mentioned, any physical or legal person can act as a plaintiff by applying the procedural institute of ius standi in iudicio, based on which the civil court exceptionally grants the status of a party in the proceedings to those forms of association that do not have party capacity in accordance with the provision of Article 74, paragraph 3, of the Civil Procedure Act (CPA), provided that this exception has legal effect in the specific lawsuit. There have been many such examples in the jurisprudence of courts in the Republic of Serbia (Decision of the Commercial Appellate Court, Pž 43/2021 of 10.2.2021; Decision of the Commercial Appellate Court, Pž 7335/2016(2) of 17.11.2016). Passively legitimized is any person, whether physical or legal, performing an activity that represents a source of danger (Crnjanski, 2021). In the capacity of an intervenor on the plaintiff's side, certain legal entities and competent authorities can also appear as joint co-litigants if they can independently initiate an environmental lawsuit in preventive environmental litigation, while other physical and legal entities whose interests are protected by the lawsuit for the protection of collective interests and rights can appear as ordinary intervenors (Crnjanski, 2021).

The most significant advantage of this lawsuit, rooted in Roman law, is that anyone can demand from another person to refrain from disturbance without needing to prove their own interest. It represents a procedural form of the democratic right to seek the protection of public interest, which was of exceptional importance before the enactment of the Environmental Protection Act ("Official Gazette of RS", Nos. 135/2004, 36/2009, 36/2009 - other law, 72/2009 - other law, 43/2011 - US decision, 14/2016, 76/2018, 95/2018 - other law, and 95/2018 - other law). This lawsuit can be filed by all interested parties, even those not directly threatened by danger, while other private lawsuits can be actively legitimized only by parties claiming that some of their subjective rights or legally protected interests have been violated. In the case of a preventive lawsuit to remove the source of danger, this lawsuit protects not only the private interest of the plaintiff but all citizens, as environmental protection is in the public interest (Pajtić, 2015).

This legal institute is regulated differently in comparative law, so besides the Republic of Serbia, actio popularis is regulated in Croatia, the Netherlands, and Portugal. In other countries, it is represented by the institute of class action, where one or more representatives of a group file a lawsuit on behalf of others, such as in England, Finland, and Sweden, or through organizational lawsuits filed by associations to protect collective rights and interests, e.g., France.

There are opinions that the popular lawsuit is a relic of the past, rarely encountered in comparative law, considered outdated, and that its role in legal legislation is insufficiently significant (Danilović, 1968). Moreover, since 1978, when this lawsuit was legally regulated, it has never been filed as a popular lawsuit in judicial practice, but exclusively for the protection of the plaintiff's personal interest. The reason for this may be, as some authors state, that citizens do not have a developed awareness of the need to protect interests, are not interested in protecting public interest by filing a lawsuit, lack sufficient financial resources

to initiate and conduct such proceedings, and that there is a "possibility of achieving the goal of this institute in administrative proceedings" (Babović, 2015). Due to all of the above, it can be expected that this legal institute will be used more by associations engaged in environmental protection than by citizens (Radonjić & Stjelja, 2018). There is also an evident need to regulate a special civil procedure for the protection of collective interests, given that the procedure for the protection of collective interests and rights of citizens under Article 495 of the CPA could not be applied if a popular lawsuit was initiated (Rakić-Vodinelić, 2011), and the Constitutional Court declared all provisions of Chapter XXXVI of the CPA (Articles 494-505), which relate to the procedure for the protection of collective rights and interests, unconstitutional (Decision of the Constitutional Court, IUz 51/2012 of 23.5.2013, "Official Gazette of RS", No. 49/2013). The same shortcoming exists in comparative legislation, for example, in the Civil Procedure Act of the Federation of Bosnia and Herzegovina ("Official Gazette of FBiH", Nos. 53/03, 73/05, 19/06, and 98/15), because the provisions of this law regulating the lawsuit for the protection of collective interests do not have an independent nature and require, as one of the conditions for the admissibility of the lawsuit, that the special regulation envisages authorization for filing such a lawsuit, which currently does not exist (Radončić, 2021). It is noteworthy that the institute of popular lawsuit, as defined in Article 156 of the LO, is retained in Article 111 of the second book of the draft Civil Code of the Republic of Serbia, indicating a clear tendency to maintain this provision in our legislation in the future.

Conclusion

Civil law protection of the environment can be achieved through instruments of real and obligatory rights. Analyzing the positions of legal science and jurisprudence in the field of environmental protection, it can be concluded that the legal basis for environmental protection is defined by the provision of Article 5 of the Environmental Protection Act (LBOR), which represents *lex specialis* in relation to the provision of Article 156 of the LO. Environmental lawsuits provide protection not only to individual interests but also to the general interest of all people to exercise their right to a healthy environment. An environmental lawsuit can prevent the initiation of activities that could harm the environment before the damage occurs, highlighting its preventive effect.

Given the limited scope of real and obligatory law instruments for environmental protection, and with the aim of further perspectives on civil law protection of the environment, it is suggested to consider the possibility of simultaneous public law protection by authorizing state authorities to initiate civil proceedings for environmental protection ex officio. Leaving the protection of subjective rights to the owner can lead to unforeseeable consequences for the environment due to the principle of autonomy of will, based on which the owner can decide not to seek protection or to withdraw the lawsuit during the initiated dispute. Given the presence of public interest in environmental protection, it is neither efficient nor purposeful to leave its protection to private initiative, i.e., to allow the realization of protection to depend on private legal claims for protection. Continuous work on environmental awareness at all levels, from the state to the individual, is necessary for the full observance of environmental regulations.

Additionally, another development direction could be the introduction of instruments of special civil procedure where the general interest of environmental protection is the

protective object. For more complete and effective environmental protection, it is necessary to combine real, obligatory, administrative, and criminal law instruments. Moreover, to achieve more effective environmental protection, simultaneous coordinated legislative intervention in the domain of material and adjective law in this area is essential.

An alternative course of action, if there is no possibility or will to adopt the proposed measures, could be to function within the existing legal framework, i.e., the efficient implementation of existing rules defined by positive legislation.

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