Tenth meeting of the Task Force on Access to Justice under the auspices of the Aarhus Convention
Geneva, 27-28 February 2017

Legal Aspect of Combating Corruption in the Field of Environmental Protection
- Republic of Serbia -

Gordana Petkovic
LINKAGES BETWEEN CORRUPTION AND ENVIRONMENT

- Significant impact of corruption on development, security, peace and environment

- Link with two categories of law: positive and natural law, which includes moral categories too

- Different causes of corruption:
  - lack of a democratic society
  - non-functioning of the system (political, economic, judicial system, etc.)
  - lack of transparency, accountability, verifiability, competition, laws and regulations, institutions and their non-functioning, personal integrity and professional ethics
  - poverty, economic factors (low wages)
  - cultural factors.
Key International Instruments

**HUMAN RIGHTS, ENVIRONMENT AND CORRUPTION**

**PRINCIPLES**
- Sustainability
- Human rights
- Equality
- Healthy environment
- Poverty reduction
- Good governance
- Transparency
- Anti-corruption
- Justice

**Charter of the United Nations**, 1945

**Universal Declaration on Human Rights**, 1948

**Declaration on Human Environment**, 1972

**Declaration on Environment and Development, Agenda 21**, 1992

**ILO Declaration on Fundamental Principles and Rights at Work**, 1998

**Millenium Development Goals**, 2000

**United Nations Global Compact principles**, 2004

**Sustainable Development Goals**, 2015
INTERNATIONAL AGREEMENTS

Key agreements


- Law on Ratification on Criminal Law on Corruption ("Official Gazette of FRY-International Treaties", No. 2/02 and Official Gazette of SM, No 18/05)

- Law on Ratification on Civil Law Convention on Corruption ("Official Gazette of RS- International Treaties", No. 102/07)

Key agreements


- Law on Ratification Aarhus Convention ("Official Gazette of RS- International Treaties", No. 38/09)
ENVIRONMENT AND CORRUPTION

- Natural resources
- Competent authority
- Trade
- Justice
- Inspection
- Permits
- Police
- Customs
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<th>No.</th>
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<td>Constitution</td>
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No. 79/13 |
| 3   | Law on Whistle-Blowers Protection                                          | No. 128/14                 |
| 4   | Rulebook on the internal whistle-blowing procedure, the manner of appointment of an authorised person working with/for the employer | No. 49/15                 |
| 5   | Rules on the program for acquisition of specific knowledge related to the protection of whistleblowers | No. 4/15                  |
| 6   | Law on Civil Servants                                                     | No. 79/05, 81/05, 83/05, 64/07, 67/07, 116/08, 104/09 |
| 7   | Law on Anti-Corruption Agency                                             | No. 97/08, 53/10, 66/11, 67/13, 112/13 |
| 8   | Law on Data Secrecy                                                       | No. 104/09                 |
| 9   | Law on Protection of Personal Data                                        | No. 97/08, 104/09, 68/12   |
| 10  | Law on Free Access to Information of Public Importance                     | No.120/04, 54/07, 104/09, 36/10 |
## STRATEGIC AND LEGISLATIVE FRAMEWORK

<table>
<thead>
<tr>
<th>No.</th>
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<td>10</td>
<td>Law on Prevention of Harassment at Work</td>
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### BASIC ENVIRONMENTAL LEGISLATION

- Law on Ratification of ESPOO Convention
- Law on Ratification of Basel Convention
- Law on Confirmation of CITES Convention
- Law on Confirmation of POPs Convention
- Law on Confirmation of Rotterdam Convention
- Law on ratification of Montreal Protocol on Substances that deplete the Ozone Layer
- Law on Environmental Protection
- Law on Environmental Impact Assessment
- Law on Waste Management
- Law on Nature Protection
- Law on Chemicals
- Law on Biocidal Products
- Law on Air Protection

### Published “Official Gazette”

- No. 102/07
- No. 2/99
- No. 11/01
- No. 135/04, 36/09
- No. 42/09
- No. 38/09
- No. 16/90

- No. 135/04, 36/09, 88/10, 14/16

- No. 36/09, 88/10, 14/16
- No. 36/09, 88/10, 91/10, 14/16
- No. 36/09, 88/10, 92/11, 93/12, 25/15
- No. 36/09, 88/10, 92/11, 25/15
- No. 36/09, 10/13
¢ Ministry of Justice
¢ Ministry of Agriculture and Environmental Protection
¢ Anti Corruption Agency
¢ Anti-Corruption Council
¢ Commissioner for Access to Public Information and Personal Data Protection
¢ Ombudsman
¢ Judicial Academy
¢ Bureau for Social Research
¢ Transparency Serbia - operates an Advocacy and Legal Advice Centre
¢ Pistaljka
WHISTLE BLOWERS PROTECTION

WHISTLE-BLOWER

Empoyer

WHISTLE-BLOWING

Competent Authority

ADVERSE ACTION

STOP

INTERNAL whistle-blowing

disclosing information to an employer

EXTERNAL whistle-blowing

disclosing information to a designated authority

ALARMING THE PUBLIC

disclosing information using mass media, the Internet, at public gatherings or in other way
MOTION FOR ISSUANCE OF A PRELIMINARY INJECTION

Prior to the Initiation of Court Proceedings

- prior to the initiation of the court proceedings,
- during the court proceedings or
- after the conclusion of the court proceedings, until the enforcement has been completed

HIGHER COURT

- delay the legal effect of an act
- prohibit adverse action from being taken
- order for the consequences of the adverse action to be eliminated.

Whistle-blower/Associated Parties
HIGHER COURT
Workers returning to work
(delay of legal effects of termination of employment)
Workers returning to the old position
(delay a transfer to another job)

WORKER PROTECTION

Claim in relation to whistle-blowing

SPECIAL PROCEEDINGS
Revoke the legality of an employer’s individual written act
An adverse action to employer
An adverse action to state servant

Merits of the argument that individual act by an employer had been an adverse action in relation to whistle-blowing

BASIC COURT
Appeal

ADMINISTRATIVE COURT
Extraordinary Remedy

SUPREME CASSATION COURT

Burden of proof is on defendant (to an employer) that there had not been a causal link between the whistle-blowing and the adverse action
Before adoption of the Law
- The Anti-Corruption Agency received:
  - 10 requests in 2011, four of which were granted
  - 31 requests in 2012, eleven of which were granted
  - 103 requests in 2013 for whistleblower status, 78 of which were granted.

- Whistleblower testimony, Association Eutopia, financed by UNDP, November 2013, https://pistaljka.rs

- Total number: 299 cases initiated
- Total number: 213 cases finished
- There is no case in the field of environmental protection
CHALLENGES - ENVIRONMENTAL SECTOR

Possible types of corruption

- All levels of decision-making and
- All stages of conducting administrative actions
- Before issuance and after issuance of a permit
- During inspection control
- Work of police and customs officers

when there is an intention of committing a crime of illegal act

Preventing and fighting corruption

- exploitation of natural resources (issuing permits, consents-EIA etc.)
- illegal traffic and trade in waste and endangered species of wild flora and fauna and other environmental goods

Coordinated measures:

- competent authorities
- business sector
- public participation in decision-making
- adequate sanctioning in public and private sectors.
CHALLENGES OF COMBATING CORRUPTION

- Credible investigations of all reported corruption cases and publishing of findings
- Proactive work of public prosecutor
- Changes of Criminal Code and Whistleblower Law to ensure protection from reprisal
- Informing citizens about possibilities to report corruption
- Conducting systemic changes on the basis of investigated cases
CONCLUSIONS

- Serbia has a **policy** on combating the corruption

- Serbia has established **legal and institutional framework** on the protection of whistle-blowing

- **Preventing corruption** in the field of environment requires the following measures:
  - appropriate **legislative framework** which prevents criminal activities in the field of environment, with precisely **defined responsibilities of enforcements bodies and their capacity building** (the competent authorities for licensing, inspection, police, customs)
  - **close coordination and cooperation** of all stakeholders
  - **respect the Code of Conduct**
  - **adequate penalty policy** in the Criminal Code and environmental legislation
  - **trained respective structures** of state authorities (competent authorities, prosecutors and judges) both in the field of corruption and environment.
THANK YOU

Ministry of Agriculture and Environmental Protection of the Republic of Serbia

Gordana Petkovic, L.L.M

gordana.petkovic@eko.minpolj.gov.rs