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LEGAL REGULATION OF PROTECTED AREAS ACCORDING TO THE LAW ON PROTECTION OF NATURE

Abstract

With passing the Law on Protection of Nature Serbia has got a comprehensive and important legal act which protects the nature, its heritage, assures the process of strengthening sustainable usage of renewable resources and regulates the manner and mechanisms of managing its values in accordance with European tendencies. The Law defines and classifies protected areas as natural goods, regulates the procedure of their declaration for protected, and at the same time contributes to the preservation, promotion and protection of these areas. The aim of the authors with this paper is to acquaint the wider public with these issues.

Key words: *Law on Protection of Nature, protected areas, procedure of declaration for protected areas, protection of natural goods.*

INTRODUCTION

Endangering natural environment, degradation of its beauties and values, gradually affected the formation of consciousness and awareness on necessity of urgent and radical actions related to its protection. In the 21st century, it became our obligation to contribute to the preservation of our natural environment. One of the fields of science which could provide significant support for this aim is legal science. In the last few decades, international environmental law and standards have developed significantly.

Taking into account the complexity of the issue of legal protection of natural environment, as authors of this work, we would like to contribute to the popularization of new legal solutions in this field of science through the interpretation of the most important provisions of the new Serbian Law on Protection of Nature. Through the analysis of provisions related to the procedure of registration, declaration and pro-

tection of areas as protected natural goods, we want to point out the importance of enacting this Law, to present its new solutions and concepts in the light of the process of harmonization and approximation of Serbian legislation with European Union legislation and principles in this field of law.

SOURCES OF LAW

The legal ground for the regulation of this subject-matter in Serbia is provided by the Constitution. Thus, its article 97 (9) provides that it is the duty of the Republic to assure and regulate sustainable development, the system of protection and hierarchy of environment, the protection and preservation of flora and fauna. Preservation of nature, as well as regulation of protection of its regional and biological diversity were for many years regulated only in general, by the Law on Protection of Environment (published in the Official Gazette of the Republic of Serbia (hereinafter: OGRS), no. 66/91, 83/92, 53/93, 67/93, 48/94, 53/95 and 135/04). Its provisions have not been amended from the time of its enactment, except those related to penalties. The Law on Protection of Environment has foreseen the necessity to enact a special law that regulates the system of protection of nature; however, this has not been done for a long period of time. Instead, in accordance with this Law, for protected natural goods as well as for protected areas, certain special legal acts were applied, among which the most important are the Law on National Parks (OGRS, no. 39/93, 44/93, 53/93, 67/93, 48/94 and 101/2005), Rules on the Register of Protected Goods (OGRS, no. 30/92), Rules on Categorization of Natural Goods (OGRS, no. 30/92) as well as Rules on the Manner of Marking of Protected Natural Goods (OGRS, no. 30/92, 24/94 and 17/96). However, the enactment of the Law on Protection of Nature and related acts (which still have to be enacted) repeal these acts and their provisions. Particularly, provisions of the Law on Protection of Environment that concern the protection of nature and of the Law on National Parks (except provisions contained in its articles 6 and 7) are repealed. The Law on Protection of Nature obliges the Government and the Minister to enact within a year from the date of entering into force of the Law on Protection of Nature all necessary legislation related to this Law. Until this, legal acts which were enacted based on the Law on Protection of Environment remain in force. Thus, there is a very complex legal situation in the field of regulation of protected areas. Notwithstanding, we finally got a separate and complex legal act in this field of law, which provides for the protection of nature, its beauties and values, assures the system of strengthening of sustainable usage of renewable natural resources and regulates the management of natural values in accordance with European tendencies.

The Law on Protection of Nature obliges the National Assembly to pass the Strategy on the protection of nature and natural values for the period of ten years. At the same time, the Government, the competent organs of autonomous provinces and the units of local self-governments have to pass programs of protection of nature for the same period. With the enactment of the Law on Protection of Nature Serbia has fulfilled several international obligations contained in ratified international conventions such as Convention on Biological Diversity, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention Concerning the Pro-

tection of the World Cultural and Natural Heritage, Convention on Wetlands, Convention on Migratory Species, and Carpathian Convention; as well as made a long step towards harmonization of our legislation with the legislation of the European Union, above all with Council Directive 79/409/EEC on the conservation of wild birds, Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, as well as Council Directive 1999/22/EC relating to the keeping of wild animals in ZOOs. Serbia, together with EU member- and non-member states, as well as with some of African countries, wants to establish a coherent European ecological network of special areas of nature called "Natura 2000", which has been defined by the Directive of the Council on conservation of wild birds and the one on the conservation of natural habitats and of wild fauna and flora. For Serbia and other EU member and candidate states, especially for those which possess lot of preserved forests, natural regions, natural habitats and species of European importance, it is a challenge to fulfill high expectations related to the formation of this network. Besides, these countries are working on the building up of a so-called "Emerald network" formed of areas and habitats that are of special national and international importance from the aspect of protecting biological diversity.

NOTION, CLASSIFICATION OF PROTECTED AREAS AND THE SYSTEM OF THEIR PROTECTION

The new Law on Protection of Nature reckons among protected natural goods, besides protected species and movable protected natural documents, also protected areas. According to article 28 of the Law, any territory can be declared protected area of public interest which has geological, biological, eco-systemical or/and regional diversity, based on a special act of the minister competent for the protection of environment, and opinions of ministries competent for agriculture, water and forestry and the one that is responsible for the protection of cultural goods. At the same time, during this procedure, universally recognized international principles have to be respected. It is also an important provision of the Law that protected areas may be connected with protected areas of other neighboring states.

According to the Law on Protection of Nature, protected areas include *strict and special reserves of nature, national parks, monuments of nature, protected habitats, regions of exceptional natural characteristics and parks of nature*. Similar classification was also applied by the Law on Protection of Environment in its provisions related to the protection of nature; however, it did not contain the notion of protected area, but categorized all the above types of protected areas as "natural goods".

According to the Law on Protection of Nature, *strict reserves of nature* are areas with unchanged natural distinctiveness and representative eco-systems. This kind of protected area is aimed at preservation of original nature, genetic fund and ecological balance. All kinds of economic activities are strictly forbidden in these reserves.

Special reserve of nature is an area of unchanged or insignificantly changed nature of importance due to its uniqueness, representativeness, rarity, on which area habitats of endangered flora and fauna can be found. On the territories of special re-

erves of nature can exist only exceptionally settlements in which humans live in harmony with the nature, taking care to preserve all its idiosyncrasy, beauties and values, without disturbing existing ecological balance at the same time. Both in national and special reserves of nature are forbidden all activities that would disturb and endanger those characteristics and qualities of these reserves for which they were declared protected areas. Tracking of phenomena and conducting scientific research in these reserves can be done only based on the permit of the competent Ministry. Educational visits to these areas can be done with the permit of, or in the presence of the manager of the reserve. Measures of protection of these areas are regulated in detail in each case by the legal act that declares the specific area for protected.

National park is an area with a variety of different natural eco-systems of national importance, special regional characteristics and cultural inheritance in which humans live in harmony with the nature, making efforts to preserve its resources and values, as well as its regional, geological and biological diversity. In national parks only those activities are allowed which do not disturb the originality of nature. Thus, its area can be used for educational, scientific, recreational and touristic purposes only in accordance with the Law and Management plan and if such use does not endanger the survival of species, natural eco-systems and regions. Such activities can be limited with the aim of preserving the originality of nature in the national park. The Law foresees the enactment of a special law that would regulate the protection and management of national parks.

Monument of nature is a smaller, unchanged or partially changed natural, or spatial unit, object or physically clearly (distinct) separated (occurrence) phenomena, recognizable and unique because of its geo-morphological, geological, hydrographical, speleological and other characteristics. It can be also a botanical value that has a scientific, esthetical, cultural or educational significance. In the area of a monument of nature all activities are forbidden that would endanger its characters and values. Measures of protection of these areas and the terms of its usage are regulated with the legal act that declares it for protected area.

Protected habitat contains of one or more types of natural habitats that are of importance for the preservation of one or more populations of wild species and their communities. The aims of providing protection for habitats can be different, thus, the legal act that declares them for protected habitats regulates in detail their importance, purpose, and measures for their preservation. In the area of protected habitats all activities are forbidden that would endanger their special characteristics and values (because of which they were declared protected).

Region of exceptional natural characteristics is an area recognizable based on its natural, esthetical, biological, eco-systematical, and cultural-historical values, which were developing during the time as the result of interaction of the nature and potentials of the area, as well as the result of traditional way of living of the local population without disturbing natural eco-systems in this area. The Law makes distinction between two types of regions of exceptional natural characteristics - natural and cultural regions of exceptional natural characteristics. The legal act that declares the area for region of exceptional natural characteristics provides in detail for protection measures, ways of pursuing economic and traditional activities, as well as for the usage of natural and created values in this area. However, all activities that could endanger such areas are forbidden by the Law.

Park of nature is an area of well-preserved natural values with prevailingly pre-

erved natural eco-systems and picturesque landscapes that are aimed at preserving geological, regional, and biological diversity. National parks can be used for cultural, educational, health, recreational, and scientific purposes only in line with the principles of sustainable development and traditional life-style. Measures of protection of these areas are regulated in detail in each case by the legal act that declares the specific area for protected.

Article 35 of the Law on Protection of Nature provides that protected area can be separated into "zones". In these zones different regimes of protection are enforced ("I a", "I b", "II" and "III" grades, i.e., zones). These zones are proposed by the Serbian Institute for the Protection of Nature (hereinafter: Institute) in a study on protected areas. "I a" grade of protection is carried out on that part of protected area which has original, unchanged or only slightly changed eco-system of exceptional scientific and practical importance. In this zone every kind of activity is forbidden, except scientific research and educational activities under control. Another exception is activity in case of emergency (i.e., accident), with the consent of the ministry. Similarly to grade "I a" grade "I b" means strict regime of protection, meaning that besides activities allowed in zone "I a" activities related to the preservation and furtherance of the existing eco-system are allowed. Grade "II" regime is enforced on the part of a protected area of exceptional scientific and practical importance where the eco-system is only partially altered. In this zone all kinds of interventions are allowed which aim to further, revitalize or restore the natural good, at the same time preserving all the qualities and values of its natural habitats as well as controlled traditional activities. Grade "III" protection is enforced on the part of protected area with partially altered or altered eco-systems of scientific and practical importance where it is possible to use selectively and restrictively natural resources, pursue activities aimed at furthering and restoring natural goods, sustainable usage and development of rural households, maintaining buildings of cultural, historical and architectural heritage, as well as adequate infrastructural investments for touristic purposes accommodated to the natural surroundings.

LEGAL REGULATION OF DECLARATION OF PROTECTED AREAS

Article 41 of the Law on Protection of Nature provides legal grounds on which an area can be declared protected. Thus, national parks are declared by the National Assembly by law. Strict and special reserves of nature, protected habitats, regions of exceptional characteristics (with cultural goods of exceptional significance on their territory), parks of nature (spreading on the territory of two or more local self-governments), as well as natural goods which enjoy international protection are declared for protected by act of Government (previous opinion of the competent ministries, organs of the autonomous province is necessary). The competent organ of the autonomous province, with the previously obtained opinion of the Government and competent ministries, declares protected regions of exceptional characteristics (without cultural goods of exceptional significance), which lay in their entirety on the territory of the autonomous province. It also declares for protected parks of nature which are on the territory of the province and which run through the territory of

more than one local self-government. The competent organ of the local self-government, with the consent of the Government declares parks and monuments of nature, as well as regions of exceptional characteristics (without cultural goods of exceptional importance) for protected if they are on their territory. Based on the proposal of the competent ministry, the Government can do the same if the competent organ of the autonomous province or local self-government fails to do it, or if it is ascertained that the given area is of exceptional or republican importance.

The procedure for declaring an area for protected can be initiated by the Republic of Serbia, autonomous provinces, local communities, as well as by legal or natural persons as users of natural resources and goods, managers of protected areas, civil, professional and scientific organizations, public services, or other organizations. Adoption of the declaration act is always preceded by elaboration of a proposal. This includes working out and passing of a protection study by the Institute. About this procedure the local population, owners and users of the area have to be informed. The protection study is aimed to ascertain the value of the area that has to be protected and manners of its management. Financial means for the elaboration of the study are provided from the budget of the Republic of Serbia, autonomous provinces, or local self-governments. The Law prescribes the content of the study, which among others has to contain the reasons for the initiation of the procedure, concepts of protection and furtherance, prospects of sustainable development, key values of the good, as well as the estimation of needed financial means for the protection. One of the important solutions of the Law on Protection of Nature is the obligation of the competent organ to inform the public about the proposal of declaring an area for protected through its publication in at least one daily newspaper which is distributed on the whole territory of Serbia. The act on the declaration for protected has to be also published, depending on the organ that adopts the act, either in the official journal of Republic of Serbia, autonomous province, or of the local self-government. This publication has to contain, among others, the name and type of protected area, its boundaries, the regimes of protection, prohibited activities in the zones of protection, rights and obligations of the managers, way of assuring financial means for securing protection. Besides, the organ which adopts the act declaring the area protected has to register this fact with the competent court within 30 days, as this fact has to be entered into the Register of Real Estate. Besides, the Republican Institute for Geodesy (which enters the fact into the Register of Protected Goods) and the manager of the protected area has to be informed. Areas might enjoy so-called preliminary protection based on the decision of the ministry if the Institute ascertains that it has the capacity of protected area or procedure of declaring it for protected has already been initiated. However, in this case it is necessary that the competent organ adopts the act on declaring for protected the area in question within one year. Failing this, preliminary protection ceases, and it cannot be reestablished. The decision on preliminary protection has to be published in the Official Gazette of the Republic of Serbia and communicated to the competent organ that is responsible for declaring the area protected, as well as to the Institute to register the fact of preliminary protection.

CONCLUSION

The act of passing the Law on Protection of Nature is a significant step towards assuring a uniform, complex and integral protection of nature in Serbia. At the same time, this Law respects internationally recognized principles of efficiency and sustainable usage of natural resources. However, in spite of progressive and good legal solutions provided by this Law, there are certain issues related to this field, which should be paid greater attention in the near future. First of all, it would be important to define precisely (in the Law) methods of financing of the management of protected areas, avoiding the possibility of promiscuous misuse of basic principles during the draft of executive acts for this purpose. Besides, practical implementation of some legal measures is also an important issue. Even if it is clear that there is social awareness regarding the need of saving, protecting and preserving nature, it is questionable how determined and ready we are to put through concrete and radical measures necessary in the field of protecting areas as natural goods, when taking into account available technical, technological and personal potentials.

It is very important that the new legal regulation aims at switching from so-called "network of isolated islands" to the system of planning the development of natural goods as regional, national, and international systems of protected areas. Besides, management is transferred from national level to regional and local levels, thus this kind of decentralization is in accordance with the interests, needs, and goals of local communities, what is otherwise a European tendency. It should be also mentioned that the concept of management and protection of nature in earlier legal acts was based on nature as area without human inhabitants, while the new Law on Protection of Nature takes into account also the needs, interests, cultural-historic inheritance, way of life, achievements and values of the inhabitants.

The new Law through assuring the right to pursue certain activities on protected areas might drive the development of tourism, catering trade and other economic activities. Participants in these activities and users of protected areas might see certain limitation of their opportunities and rights in some of these legal solutions (especially in aggravation of protection measures). Thus, it might happen that they will slow down practical implementation of these provisions.

In our opinion, the protection of nature and its goods is self-evident. It is important to concentrate more means on the restoration, revitalization and rehabilitation of the nature. New legal solutions are steps forward to achieve numerous socio-economic goals through adequate usage of natural goods. The foreseen elaboration of the Strategy for the protection of nature and natural values could create better conditions for putting through management based on long-term programs, as well as, much better and more efficient approach to the protection and preservation of the environment. We are of the opinion that through new legal solutions Serbia has become ready to integrate its natural goods and protected areas into international networks and systems of protected areas.

By all means, the new Law on Protection of Nature gives a contribution of invaluable importance by providing adequate protection for these areas. Goals are clearly set; systems and mechanisms of protection are foreseen in accordance with international obligations of Serbia. It remains to efficiently implement these legal solutions and to endure in protecting and preserving the nature.

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