

CRIMINAL LIABILITY OF CORPORATE ENTITIES FOR CRIMINAL OFFENSES AGAINST THE ENVIRONMENT

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CRIMINAL LIABILITY OF CORPORATE ENTITIES FOR CRIMINAL OFFENSES AGAINST THE ENVIRONMENT

INTRODUCTION

The issue of criminal liability in the domain of the environment is in practice rarely raised in the Republic of Serbia. Namely, in most cases, the responsible person within a corporate entity is subject to criminal liability for a criminal act that is a consequence of illegal business activities of the company, and the eventual outcome of the criminal procedure is punishing the individual, but not the company. However, in

light of environmental protection, it is necessary that the competent institutions - public prosecutor's offices and courts, recognize the importance of applying effective law in order to sanction the illegal behavior of both individuals and corporate entities as perpetrators of crimes against the environment which, as a result, can have incalculable harmful consequences.

LEGAL FRAMEWORK

*The Criminal Code of the Republic of Serbia*¹ recognizes the environment as a protective object and in Articles 260-277, prescribes 18 (eighteen) criminal offenses against the environment, of which the most significant are Environmental Pollution (Art. 260) and Environmental Damage (Art. 264), for which the legislator has provided the most severe criminal sanction: imprisonment.

However, the application of the *Law on Liability of Corporate Entities for Criminal Offenses*², which has been in force in the Republic of Serbia since 2008, is of great importance in the field of criminal law, and in relation with environmental protection. This law regulates the conditions of liability of corporate entities for criminal offenses from a special section of the

Criminal Code, as well as other laws. This law prescribes criminal sanctions for a corporate entity, namely: fines and termination of the corporate entity, suspended sentence, as well as security measures, so the court may prohibit the responsible corporate entity as a security measure to perform certain registered activities or activities in connection with which the criminal offense was committed for a period of one to three years from the day the verdict became final. For the aforementioned criminal offenses against the environment, the application of the Law on Liability of Corporate Entities for Criminal Offenses is of special importance, bearing in mind that these criminal offenses are a direct consequence of business activities of corporate entities - companies.

¹ "Official Gazette of RS", Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019

² "Official Gazette of RS", Nos. 97/08

CRIMINAL LIABILITY OF LEGAL ENTITIES IN PRACTICE

After a legal analysis of the relevant documentation collected from the competent institutions, RERI initiated 2 (two) proceedings and filed 2 (two) criminal charges against SERBIA ZIJIN COPPER DOO BOR, as a corporate

entity ("**Zijin Copper**"), and the responsible person within the corporate entity, due to the existence of a reasonable suspicion that they committed the criminal act of environmental pollution.

I Criminal Charge for Air Pollution in the City of Bor

In January 2021, RERI filed a criminal complaint against the company Zijin Copper, whose registered activity is the *exploitation of ores of other ferrous, non-ferrous, precious and other metals*, as well as the responsible person within the corporate entity, due to a suspicion that the operation of this company led to exceeding the limit values of pollutants of sulfur dioxide in the city of Bor, with amounts several times higher than permitted by the regulations. Having in mind the above, i.e. the accumulation of the degree of pollution and the time continuity of the pollution, RERI proposed that the competent prosecutor's office in Bor initiate proceedings against the suspect company and the responsible person.

According to RERI's information, submitted by the Basic Public Prosecutor's Office in Bor, an evidentiary procedure was conducted in which relevant evidence was presented and the defendant was questioned. The Institute of Chemistry, Technology and Metallurgy of the University of Belgrade, an institution of national importance for the Republic of Serbia has prepared an Expert Report *with the task of determining the cause of air pollution, as well as how air pollution in Bor and its surroundings can be maintained within prescribed limits, as well as what actions and measures should be taken as part of the technological process by the responsible persons in order to reduce air pollution by a greater extent, and in a wider area, and bring it down to permitted levels.*

Taking into account the arguments and evidence from the criminal report, as well as the evidence obtained in the pre-criminal proceedings by the competent public prosecutor's office, i.e. the degree of suspicion that the suspects committed the crime charged against them, the competent public prosecutor's office will decide whether to file an indictment against the suspect company and the responsible person for the criminal offense of environmental pollution.

II Criminal Charges for the Pollution of the River Mali Pek

In May 2021, RERI filed a criminal complaint based on the grounds for suspicion that due to illegal business activities by the company Zijin Copper, environmental pollution occurred to a greater extent, in accordance with Article 260 of the Criminal Code, and suggested to the competent prosecutor's office to initiate proceedings against the suspect corporate entity, as well as the responsible person within this corporate entity.

Namely, after addressing the citizens on the occasion of the event when the Pek River took on a cloudy, red, copper and green color in March 2021, RERI hired the Institute of Mining and Metallurgy Bor, which conducted sampling of sludge from the Mali Pek River. The sampling results showed that the sludge was extremely polluted due to high concentrations of pollutants, namely: copper: 17 times higher than the prescribed value, arsenic: 3.5 times higher than prescribed, as well as lead: almost twice higher value than prescribed.

Also, in order to determine the pollution of Mali Pek, RERI hired the Timok Institute for Public Health from Zaječar, which conducted a sampling of the surface and wastewater in the municipality of Majdanpek.

The sampling was performed at 3 locations: upstream from the mine, downstream from the inflow of wastewater from the mine, and immediately after the inflow of Mali Pek into the Pek River, in order to prove that pollution can only come from the illegal activities of Zijin Copper. The results of surface and wastewater tests showed multiple exceedances of the limit values of pollutants, **downstream from the inflow of wastewater from the mine**, namely: iron in the amount 5 times higher than the prescribed value, and manganese, twice the amount prescribed. At the same time, the values of these pollutants at the other two sampling sites were within the permitted values.

Acting on the criminal report by RERI, in April 2022, the Public Prosecutor's Office in Negotin issued an order postponing the criminal prosecution³ of Zijin Copper, as well as the responsible person, for the crime of environmental pollution, and ordered them to pay the amount of RSD 1,000,000.00 to humanitarian or other public causes.

Namely, in accordance with Article 283, paragraph 1 of the Criminal Procedure Code, the public prosecutor may postpone criminal prosecution for criminal offenses punishable by a fine or imprisonment for up to 5 years, if the suspect accepts any of the obligations prescribed

by the same law, such as payment of funds for humanitarian or other public causes. In case the suspects do not pay the amount they are obliged to pay within the set deadline, the prosecution will initiate a criminal prosecution.

³ Basic Public Prosecutor's Office in Negotin, department in Majdanpek, Order no. Kt.264 / 21 and Ktpl.2 / 21 of 18/04/2022.

CONCLUSION

First of all, it is especially important to emphasize that opening the issue of the corporate entity's responsibility for crimes related to environmental pollution is a significant contribution to legal practice and a partial satisfaction in achieving special prevention against the company as a perpetrator. It is also important to emphasize that the response to the illegal activities of polluters, which includes initiating appropriate court proceedings and ultimately punishing companies, especially taking into account the threat to the environment, is a common mechanism that includes not only criminal charges but also an appropriate response by the competent prosecutor's offices, and in the case of initiated criminal proceedings, the impartiality and determination of the competent courts to sanction any illegal activities of companies.

Following the proceedings on criminal charges for air pollution, as well as pollution of the river Mali Pek, it is evident that there is a reaction by the competent institutions, specifically the competent public prosecutor's offices in Bor and Negotin, which acted to establish the facts as a starting

point for raising possible charges against the responsible persons. However, what is worrying about the issue of criminal liability of corporate entities, in this case Zijin Copper, is the lack of reaction from the competent inspection bodies, which confirmed the illegalities pointed out by RERI, but failed to file any criminal charges.

Finally, although in the procedure for the pollution of the Mali Pek River, neither formally nor legally, any criminal proceedings have not, and will not be initiated in the event that Zijin Copper and the responsible person accept to pay the requested amount within the given timeframe, this represents a step forward in practice, given that the prosecution had conducted the evidentiary procedure, and that this company was in a certain way, in fact, "punished" with paying a sum of money that is not negligible. This certainly represents a certain form of satisfaction, in terms of a "warning" to this or any other company that commits crimes against the environment, that any illegal doings in their activities will not go unpunished.



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