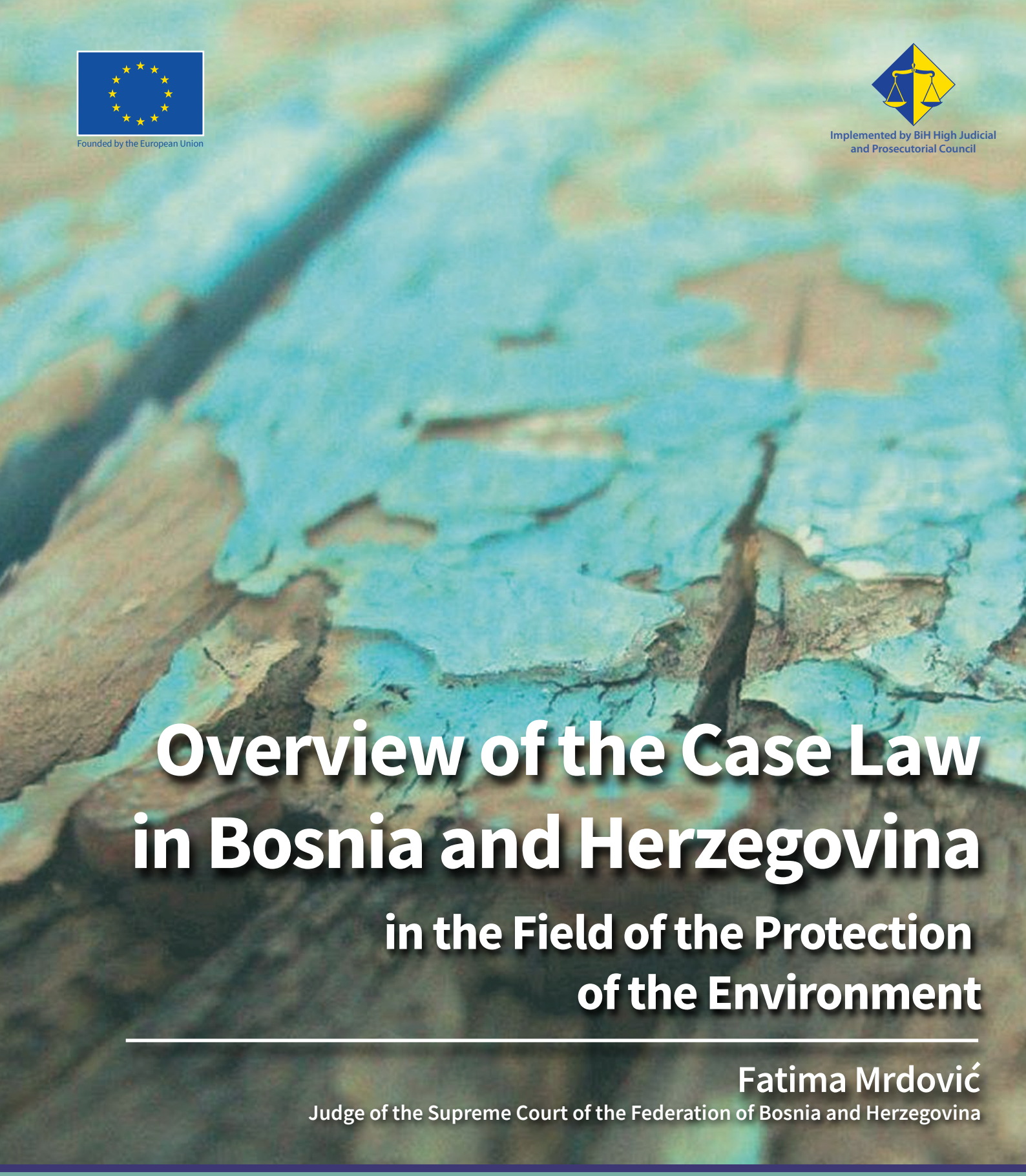

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Overview of the Case Law in Bosnia and Herzegovina

in the Field of the Protection of the Environment

Fatima Mrdović
Judge of the Supreme Court of the Federation of Bosnia and Herzegovina

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Sarajevo, 2023

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Foreword by the BiH HJPC President

Dear readers,

In front of you is the publication "Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment". The publication was created as part of the project "EU Support to Justice Reforms in BiH - IPA 2019", under activity 1.2.1. "Strengthening the Case Law Department". By initiating the creation of this and other case-law publications within this project, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina wanted to provide, in cooperation with partner courts, i.e. the courts of the highest instance in Bosnia and Herzegovina, an overview of the latest case law in the specific matters that the courts are dealing with in their daily work. While selecting the topic of the publication, the BiH HJPC and partner courts took into account the overall importance of environmental protection.

The state of Bosnia and Herzegovina has signed and ratified the majority of international agreements related to the protection of the environment, and in 2008 BiH signed the United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), as a new and modern international law instrument, with which, in the meantime, the national legislation of Bosnia and Herzegovina related to environmental protection has been fully harmonized.

This publication presents the most significant aspects of the protection of the right to a healthy environment, the European standards for the protection of environmental rights as a human right, as well as the relevant legal framework and the case law. The central and key part of the publication is the analysis of the case law from the whole of Bosnia and Herzegovina, which has never before been systematized or presented in this way in any publication. The court decisions cited in this publication are published through the HJPC's Central Case Law Database, which is accessible via the website https://csd.pravosudje.ba, and are thus available to members of the professional and academic communities and other members of the public concerned.

The Supreme Court of the Federation of Bosnia and Herzegovina appointed judge Fatima Mrdović, the president of the Case Law Department of the Supreme Court, to draft this publication. According to the author, the challenge was to find the relevant case law of the entity courts and the courts of the Brčko District of Bosnia and Herzegovina, and the case law was collected, among other things, through direct contacts with the courts and by using the Case Law Portal of Bosnia and Herzegovina.

I would like to take this opportunity to thank all the participants in the process of creating this publication. My special thanks go to the author, who made a significant effort to analyze complex issues in a relatively short period of time, and whose reflections and analyses will significantly contribute to achieving a higher quality of the judiciary and better judicial protection of the environment, and help judicial office holders dealing with these cases in their daily work.

I would also like to thank the Working Group of the BiH HJPC that reviewed the quality, topicality and usability of this publication, as well as the staff of the Court Documentation and Education Department at the BiH HJPC's Secretariat and the legal advisors engaged through the Case Law Harmonization Support Unit IPA 2019, which continuously cooperated with the author of the publication in obtaining court decisions for analysis and coordinated the accompanying activities until the publication was finalized.

In the coming years, we will try to support the development of new publications of the case law on the topics selected by the courts of the highest instance in Bosnia and Herzegovina, in cooperation with the BiH HJPC.

Halil Lagumdžija
President
BiH HJPC

Author's Preface

The idea and inspiration for writing this publication is the result of monitoring the environmental protection case law over many years, the author's participation in several very important regional and international conferences on environmental protection, and cooperation and exchange of opinions and experiences with the judges from Europe and the rest of the world.

Significant contribution to the creation of this publication was made by colleagues from the courts in Bosnia and Herzegovina who submitted their judgments, for which the author is grateful. And finally, special thanks go to the hardworking and creative legal adviser in the Case Law Department of the Supreme Court of the Federation of Bosnia and Herzegovina, Maja Kadribašić, for her great support and assistance in collecting and analyzing the material, and also to Emina Čaušević, Tarik Velić and Armin Džebo. The very title of this publication, "Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment", indicates that its goal is to provide an overview of the overall case law in the field of environmental law, as a modern law whose development in Bosnia and Herzegovina has been quite intensive over the past decades due to its special importance.

INTRODUCTION

Environmental law or "law on the environment and natural resources" is a term that encompasses a set of regulations of local, national and international legislation and agreements aimed at protecting the human environment from destruction and creating conditions for its improvement. The purpose of the laws on the protection of the environment is to protect the environment by creating rules about how people can use natural resources. The laws on the protection of the environment focus on issues of conservation of air, water and other natural resources, and regulate various fields, such as climate control, energy sources, pollution and responsibility for preserving a healthy environment.

The Declaration on the Environment was adopted at the United Nations Conference on the Human Environment, held in Stockholm on 5-16 June 1972, which marked the beginning of raising environmental awareness and promoting environmental action more significantly at the global level. Since that landmark event, which led to the adoption and promotion of 26 principles related to the environment and development and the creation of the United Nations Environment Programme (UNEP), modern environmental law, both international and domestic, continues to develop in parallel with the emergence of new environmental challenges, and, accordingly, environmental case law is constantly developing and getting enriched.

In certain legal systems, environmental law, as it developed, was integrated into the curricula of Law Schools, and even specialization in this law field was introduced. Especially significant is the specialization of judges in environmental protection cases and the networking and cooperation among judges within associations that develop and promote good practices in this field, at the regional and international levels. An example of regional judicial cooperation is the creation of the European Forum for Judges for the Environment (EUFJE)[1] with the aim of contributing to as best implementation of national, European and international environmental law as possible by improving knowledge about environmental law among judges, exchanging the case law and experiences in judicial training in that law field.

The state of Bosnia and Herzegovina has signed and ratified most of the international agreements related to the protection of the environment, and in 2008 it became a party to the United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), as a new and modern instrument of international law, with which, in the meantime, national legislation related to environmental protection has been fully harmonized. Since the entry into force of the Aarhus Convention, all BiH institutions are obliged to ensure the right to access to information, public participation in the decision-making process related to environmental issues, and access to court.

The Constitution of Bosnia and Herzegovina does not directly regulate the right to a healthy environment. However, this right falls under the concept of the right to life and it is an integral part of that right, as a fundamental human right, which the Constitution guarantees to all citizens.

Accordingly, the protection of the right to a healthy environment as a human right in Bosnia and Herzegovina is possible through various legal means in the fields of administrative law, criminal law, minor offense law and civil law.

This publication presents the most important aspects of the protection of the right to a healthy environment, the European standards for the protection of environmental rights as a human

1 www.eufje.org

right, as well as the legal framework and part of the case law in Bosnia and Herzegovina related to the protection of the environment. The goal is to acquaint the readers, primarily young lawyers in Bosnia and Herzegovina who want to do research in environmental law, with the acquired knowledge and established practices in this field of law and to promote and further encourage the development of environmental law in our country and its protection in accordance with the highest standards.

In addition, this publication presents the case law collected all over Bosnia and Herzegovina, which has never been systematized in any publication or presented in this way, and so, this publication can also serve as an idea for creating a comprehensive database of court decisions through which judges, and also other members of the professional community, members of the academic community and the public concerned, including international factors that monitor the state of the environment in the countries whose economies are in transition and which are involved in the EU stabilization and association process, can be regularly informed of how the courts in Bosnia and Herzegovina apply international agreements and interpret their standards for the effective protection of environmental law.

1. LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF THE ENVIRONMENT IN BOSNIA AND HERZEGOVINA

There are four legal systems in Bosnia and Herzegovina, and consequently, the responsibility for the environmental protection is assigned to several administrative levels. Despite numerous recommendations, there is no law on the environmental protection at the state level.

The BiH Ministry of Foreign Trade and Economic Relations is responsible for issues of environmental protection, development and use of natural resources at the state level. Within the Ministry, the Environmental Protection Department is responsible for coordination and cooperation with the competent institutions in the field of the environment at all levels of government in Bosnia and Herzegovina; participation in the implementation of international agreements in the field of environment; participation in the work of international bodies in the field of environment; preparation and implementation of environmental protection projects; development and use of natural resources at the state level; implementation of the procedure for signing and acceding to international agreements, conventions and protocols; monitoring the implementation of IPA projects and the projects of other international organizations in the field of the environment; preparation of the information on the state of the environment; collection, monitoring and analysis of data on environmental trends in the country and the world; and cooperation and exchange of information with global and regional international organizations and forums. All other environmental responsibilities are assigned to the two entities - the BiH Federation and the Republika Srpska - and to the Brčko District of BiH, all of which adopted environmental protection laws.

The process of Bosnia and Herzegovina's accession to the European Union is one of the main drivers of environmental reforms, which began in 2003, and which mostly relate to the harmonization of domestic legislation with the body of law accumulated by the European Union (EU acquis). In addition to the adoption of new laws, implementing regulations, rules and procedures and the ratification of numerous international agreements, a number of strategic documents were developed, which represent the basis of Bosnia and Herzegovina's continuous efforts in the implementation and reform in the environmental sector.

The "Environmental Protection Strategy of the Republika Srpska 2022-2032" was adopted by the Republika Srpska Government at its session held on 17 November 2022 and it is an integral part of the "Environmental Strategy of Bosnia and Herzegovina - BiH ESAP". The "Environmental Protection Strategy of the Brčko District of BiH 2022-2032", as an integral part of the "Environmental Strategy of Bosnia and Herzegovina - BiH ESAP", was adopted by the Government of the Brčko District of BiH on November 2, 2022.

These documents include seven thematic areas: water management; waste management; biodiversity, and nature protection; air quality, climate change and energy; chemical safety and noise; sustainable resource management; and environmental management. For each thematic area, the Environmental Protection Strategy establishes measures and priorities to improve the state of the environment and mitigate the impact of climate change, to better align the regulations with the EU law and international agreements in the field of the environment, to ensure more efficient management in the environmental sector in BiH and the provision of better public environmental services.

In the past, the BiH Federation had the "FBiH Environmental Protection Strategy 2008-2018", while the "Environmental Strategy and Action Plan of BiH 2030+ (ESAP BiH 2030+)" is being

developed.[2]

In the BiH Federation, the Ministry of the Environment and Tourism performs administrative, professional and other duties under the jurisdiction of the BiH Federation, relating to: the environmental protection of air, water and soil; development of an environmental protection strategy and policy; air, water and land quality standards; environmental monitoring and control of air, water and soil; drafting of tourism and hospitality development strategy and policy; monitoring tourism flows in domestic and foreign markets; directing the long-term development of tourism within an integrated economic system, and other duties defined by law.

In the Republika Srpska, the Ministry of Physical Planning, Civil Engineering and Ecology performs administrative and professional tasks related to integrated planning and physical planning, development of the physical planning information system, construction of buildings and improvement of construction, housing relations and communal activities, as well as comprehensive protection and improvement of the environment and the protection and preservation of nature and waste management. In cooperation with other institutions and relevant stakeholders, the Ministry improves the legal and institutional framework while participating in the European integration processes through projects and financing programmes in the field of physical planning, civil engineering and ecology.

In the Brčko District of BiH, within the Department for Physical Planning and Property Affairs, there is a Sub-Department for Issuing Site Permits and the Environmental Protection, which carries out tasks related to: issuing location conditions, extracts from the physical planning documentation, the legalization of illegally built buildings, the protection of cultural and historical buildings and the protection of the environment within the territory of the Brčko District of BiH.

In the BiH Federation, the ministries that are responsible for the environmental protection exist also at the cantonal level.

a. International agreements

i. Mechanisms established for the purpose of implementing international agreements/treaties/conventions ratified by Bosnia and Herzegovina

1. The Conclusion of the Council of Ministers of Bosnia and Herzegovina on the Regulation of Institutional and Organizational Infrastructure for Environmental Management and GEF Programmes in Bosnia and Herzegovina (the 66th session of the Council of Ministers of Bosnia and Herzegovina, held on 16 May 2002);
2. Instruction of the Minister of Foreign Trade and Economic Relations of Bosnia and Herzegovina on the selection and operation of the focal point appointed by the BiH Minister of Foreign Trade and Economic Relations, number: 01-1-02-3262/12, dated 29 November 2012;

2 The ESAP 2030+ project represents the activity of the Embassy of Sweden in BiH, the aim of which is to support the development of an environmental strategy and action plan for the whole of BiH, with strategies and action plans for all four levels, at the invitation of competent authorities at the level of BiH, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko Districts of Bosnia and Herzegovina. In the long run, the project should contribute to the improvement of the state of the environment in BiH, as well as to achieving progress in the process of BiH moving forward to the EU membership.

3. Decision of the Council of Ministers of Bosnia and Herzegovina on the establishment of the Designated National Authority of Bosnia and Herzegovina (DNA of Bosnia and Herzegovina) for the implementation of the projects of the Clean Development Mechanism defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change, "Official Gazette of Bosnia and Herzegovina", number 102/10;

4. Decision on Amendments to the Decision on the Establishment of the Designated National Authority of Bosnia and Herzegovina (DNA of Bosnia and Herzegovina) for the implementation of the projects of the Clean Development Mechanism defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change ("Official Gazette of Bosnia and Herzegovina", number 45/15), which also defines the NAMA projects (National Appropriate Mitigation Actions);

5. Decision of the Council of Ministers of Bosnia and Herzegovina on the conditions and manner of implementation of the Montreal Protocol and gradual phase-out of the consumption of ozone depleting substances in Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", numbers 36/07 and 67/15;

6. The National Stockholm Convention on Persistent Organic Pollutants Implementation Plan, adopted by the Council of Ministers of BiH on 10 March 2016, which includes the Stockholm Convention implementation structure;

7. Decision on conditions for cross-border movement of hazardous waste in accordance with the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, "Official Gazette of Bosnia and Herzegovina", number 83/16.

ii. Bilateral agreements related to environmental protection which Bosnia and Herzegovina signed with other countries

1. Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Croatia on cooperation in the field of environmental protection and sustainable development ("Official Gazette of Bosnia and Herzegovina - International Agreements", number: 2/17);

2. Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Serbia on cooperation in the field of environmental protection and sustainable development ("Official Gazette of Bosnia and Herzegovina - International Agreements", number: 2/16).

iii. International conventions and protocols related to environmental protection, ratified by Bosnia and Herzegovina

1. Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 8/09;

2. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 31/00;

3. The Aarhus Convention/the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters;

"Official Gazette of Bosnia and Herzegovina – International Agreements", number 8/08;

4. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 11/08;

5. Convention on the Transboundary Effects of Industrial Accidents (TEIA); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 13/12;

6. Convention on the Conservation of Migratory Species of Wild Animals (CMS); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 8/17;

7. Convention on Long-Range Transboundary Air Pollution (LRTAP); "Official Gazette of SFRYU – International Agreements", number 1/90 and "Official Gazette of RBiH", number 13/94;

8. Protocol on Strategic Environmental Assessment (SEA); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 3/17;

9. UN Convention on Biological Diversity (UNCBD); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 12/02;

10. The UN Framework Convention on Climate Change (UNFCCC); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 19/00;

11. Convention on Wetlands of International Importance Especially as Waterfowl Habitat (the Ramsar Convention) – taken over by succession in 2001, the 2001 Notification of Succession;

12. The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 26/98;

13. Protocol concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 26/98;

14. Protocol concerning pollution from land-based sources and activities; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 26/98;

15. Protocol concerning specially protected areas and biological diversity in the Mediterranean; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 26/98;

16. Cartagena protocol on biosafety to the Convention on biological diversity (29 January 2000), taken over by succession; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 12/08;

17. Kyoto Protocol; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 3/08;

18. Stockholm Convention on Persistent Organic Pollutants; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 1/10;

19. Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention); "Official Gazette of Bosnia and Herzegovina – International Agreements", number 08/08;

20. Vienna Convention for the Protection of the Ozone Layer – taken over by succession; "Official Gazette of SFRYU

– International agreements", 1/90 and "Official Gazette of RBiH", number 13/94;

21. Montreal Protocol on Substances that Deplete Ozone Layer – taken over by succession; "Official Gazette of SFRYU – International agreements", number 16/90;

22. London Amendments and Adjustments to the Montreal Protocol on Substances that Deplete the Ozone Layer; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 8/03;

23. Copenhagen Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 8/03;

24. Vienna amendments to the Montreal Protocol on substances that damage the ozone layer, "Official Gazette of Bosnia and Herzegovina – International Agreements", number 08/03;

25. Montreal Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 8/03;

26. Beijing amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 6/11;

27. Paris Agreement enhancing the United Nations Convention on Climate Change; "Official Gazette of Bosnia and Herzegovina – International Agreements", number 1/17.

b. Environmental protection legislation at the level of the entities and the Brčko District of Bosnia and Herzegovina

Environmental protection within the territory of Bosnia and Herzegovina is regulated by the numerous pieces of primary and secondary legislation. Over the last 10 years, they have been changed and adapted to environmental law as it develops, and harmonized with the European Union law and adopted international standards for protection.

i. Federation of Bosnia and Herzegovina

1. Law on the Protection of the Environment ("Official Gazette of the BiH Federation", number 15/21)

2. Law on Waste Management ("Official Gazette of the BiH Federation", numbers 33/03, 72/09 and 92/17)

3. Law on Air Protection ("Official Gazette of the BiH Federation", numbers 33/03 and 4/10)

4. Law on Nature Protection ("Official Gazette of the BiH Federation", number 66/13)

5. Law on the National Park "Una" ("Official Gazette of the BiH Federation", number 44/08)

6. Law on the Protection against Noise ("Official Gazette of the BiH Federation", number 110/12)

7. Law on the Fund for the Protection of the Environment ("Official Gazette of the BiH Federation", number 33/03)

8. Law on Waters ("Official Gazette of the BiH Federation", number 70/06)
9. Law on Tourism Activity ("Official Gazette of the BiH Federation", number 32/09)

ii. Republika Srpska

1. Law on the Protection of the Environment ("Official Gazette of the Republika Srpska", numbers 71/12, 79/15 and 70/20)
2. Law on Waste Management ("Official Gazette of the Republika Srpska", numbers 111/13, 106/15, 16/18, 70/20 and 63/21)
3. Law on Air Protection ("Official Gazette of the Republika Srpska", numbers 124/11 and 46/17)
4. Law on the Fund and Financing of the Protection of the Environment of the Republika Srpska ("Official Gazette of the Republika Srpska", numbers 117/11 and 90/16)
5. Law on the National Park "Kozara" ("Official Gazette of the Republika Srpska", number 121/12)
6. Law on the National Park "Sutjeska" ("Official Gazette of the Republika Srpska", number 121/12)
7. Law on the National Park "Drina" ("Official Gazette of the Republika Srpska", number 63/17)

iii. Brčko Distrikt of Bosnia and Herzegovina

1. Law on the Protection of the Environment ("Official Gazette of the Brčko District of BiH", numbers 24/04, 1/05, 19/07 and 9/09)
2. Law on Air Protection ("Official Gazette of the Brčko District of BiH", numbers 25/04, 1/05, 19/07 and 9/09)
3. Law on the Protection of Waters ("Official Gazette of the Brčko District of BiH", numbers 25/04, 1/05 and 19/07)
4. Law on Forests of the Brčko District of BiH ("Official Gazette of the Brčko District of BiH", number 14/10)
5. Law on the Protection of the Environment ("Official Gazette of the Brčko District of BiH", numbers 24/04, 1/05, 19/07 and 9/09)
6. Law on Waste Management ("Official Gazette of the Brčko District of BiH", numbers 25/04, 1/05, 19/07, 2/08 and 9/09)

iv. Monitoring the reform in the environmental sector in Bosnia and Herzegovina

The conclusions of the United Nations Environmental Performance Reviews for countries in transition, Bosnia and Herzegovina, 2004, read as follows: "According to general health indices, the health of Bosnia and Herzegovina's population is worse than that of the population of the EU countries, but comparable to that of the population of Central and East European countries. Underreporting and under diagnosis of diseases and incomplete registration of demographic indicators influence the quality of health statistics, which are reported separately for the two

entities. Only basic health indicators are reported state-wide to the World Health Organization. Most of the currently available health data are estimates; they therefore do not fully reflect the real situation. There is a lack of studies investigating the influence of environmental conditions on the health of the population in Bosnia and Herzegovina".

In Bosnia and Herzegovina, even in 2023 there is no centralized system for collecting, transmitting and processing environmental data, not only regarding human health, but also regarding other consequences of environmental damage for the population.

The United Nations Economic Commission for Europe (UNECE) concluded in 2018 that "continuous efforts are needed to strengthen the capacity of judicial institutions to ensure access to justice in environmental matters".[3]

Regarding the case law related to environmental protection in Bosnia and Herzegovina, it is important to emphasize that the decisions reached in the proceedings conducted before courts and administrative bodies since the end of the war in 1996 have not been recorded or systematized in a single database. This is why they are mainly unavailable to the public and cannot be searched. After the entry into force of the Law on Freedom of Access to Information[4], which sets the standards for access to information in general and also those pertaining to the right to a healthy environment which are harmonized with international and European standards, the courts in Bosnia and Herzegovina deal with these matters also in administrative disputes.

The analysis of court decisions reached in cases concerning the rights which are provided for in environmental protection laws reveals that the courts have knowledge of and apply international agreements which guarantee the right to access to environmental information, public participation in decision-making and access to justice and that the legal provisions of domestic primary and secondary legislation regulating environmental protection are interpreted and applied in accordance with the standards established by the European Court of Human Rights in applying the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The main principles on which judicial protection of the right to a healthy environment in Bosnia and Herzegovina is based are:

1. Legality – The principles that the public administration should follow, as well as the procedure in which administrative bodies make decisions on individual rights are all prescribed by the law. The court examines the legality of the contested act within the limits of the motion, but not limiting itself to the grounds for complaint.

2. Access to justice - Individuals and non-governmental organizations involved in environmental protection can submit appeals against decisions, actions or omissions of public bodies to higher public authorities (administrative extraordinary review/appeal filed by those whose rights have been violated or who have a legal interest in having a certain decision vacated), as well as apply for judicial review using an extraordinary legal remedy.

3. Judicial review – When reviewing the legality of administrative decisions, the courts have the authority to review the application of both procedural and substantive law.
4. Court decisions are binding and may not be subject to extrajudicial review. The competent administrative body is bound by the legal opinion of the court, as well as by the court's observations regarding the procedure. Judgments are enforced by the body responsible for enforcing administrative or other acts.

3 Third Environmental Performance Review of Bosnia and Herzegovina, the United Nations Economic Commission for Europe (UNECE), 2018
4 "Official Gazette of the BiH Federation, No. 32/01 and 48/11

v. Laws on the protection of the environment

The FBiH Law on the Protection of the Environment and the RS Law on the Protection of the Environment regulate: environmental protection principles; protection of environmental components; jurisdiction in the field of environmental protection; environmental information and education; access to environmental information and public participation in the field of environmental protection; environmental protection planning; strategic environmental impact assessment; establishment of environmental quality standards; environmental impact assessment; environmental permit; prevention of large-scale disasters; financing of environmental protection; civil liability for causing environmental damage; eco-labelling and environmental management system; inter-entity cooperation in the field of environmental protection; administrative control and inspection, and minor offences.

According to the provisions of both laws, environmental protection is implemented with the aim of: reducing use, preventing burdening, polluting and damaging the environment; improving and restoring the damaged environment; protecting human health and improving environmental conditions for the quality of life; sustainable management, preserving and protecting natural resources; rational use of resources and doing business in a way that ensures the renewable resources; aligning the social, economic and other interests of the entities with the requirements for environmental protection; international cooperation in environmental protection; providing opportunities for initiatives and public participation in activities aimed at environmental protection; coordination of the economy and the integration of social and economic development in accordance with the prescribed standards for environmental protection; and establishing and developing institutions for the protection and preservation of the environment.

The principles of the protection of the environment are: the principle of sustainable development, the principle of precaution and prevention, the principle of substitution, the principle of an integrated approach, the principle of cooperation and division of responsibilities; the principle of public participation and access to information, and the "polluter pays" principle.

Under all environmental protection laws which are in place in BiH, every individual and organization must have appropriate access to environmental information held by administrative bodies and administrative organizations, including the information on hazardous substances and activities in their communities, as well as the possibility of participating in decision-making. The authorities that make regulations and the bodies responsible for environmental protection are obliged to provide assistance and raise public awareness, as well as to encourage participation in decision-making, enabling the accessibility of information to the general public. The public has the right to participate in proceedings originating in the motions filed by operators and investors in accordance with the provisions of the law or other regulations. In order to be awarded damages or to obtain legal protection, every interested party has the right to protection in administrative and judicial proceedings, and every individual has the right to equal access to environmental information, regardless of gender, age, religious and racial background.

Under Article 27 of the Law on the Protection of the Environment of the BiH Federation (Role of the Judiciary in the Protection of the Environment), in the event of environmental damage or the presence of a threat to the environment, the provisions of the Criminal Code of the BiH Federation, the Criminal Procedure Code of the BiH Federation and other regulations which are in force in the BiH Federation will apply.

c. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention),

Bosnia and Herzegovina ratified the Aarhus Convention[5] on 15 September 2008. Since then, as an international agreement, it has been part of the legal system of Bosnia and Herzegovina.

The public authorities - public administration, as the principal authority - and the public and the public concerned, especially non-governmental organizations, have overall responsibility for giving effect to the obligations and rights under the Aarhus Convention.

Along with the Aarhus Convention, the Protocol on Pollutant Release and Transfer Registers (PRTR) – the Kyiv Protocol - was adopted 2003 and entered into force on 8 October 2009, after it was ratified by 16 states, whereby it became a legally binding international instrument for the State Parties to the Aarhus Convention. Its goal is to improve the public access to information through the creation of harmonized pollutant release and transfer registers, which will help identify the largest point sources of pollution, including those that emit greenhouse gases that contribute to climate change. In this way, the implementation of the first pillar of the Aarhus Convention - the right to information - is ensured. As of today, there are 27 Parties to the Kiev Protocol, among them the European Union which adopted the E-PRTR Regulation in 2006, by which it fully implemented the Kiev Protocol for the EU. Bosnia and Herzegovina signed the PRTR Protocol in 2003, but has not yet ratified it.

Due to their importance, environmental issues cannot be decided without involving the public concerned in the decision-making process. That is why, the most important goal of the Aarhus Convention is for governments and relevant authorities, as well as the private sector (investors), to open up and make available the information they hold, which may have an impact on the environment. The obligations of the State Parties to the Arhus Convention are directly related to their obligation to ensure the exercise of the rights which form the three basic pillars of the Convention: the right to access to information; the right to public participation in decision-making and the right to access to justice (judiciary).

It is the duty of the public administration to consult the public when making proposals for certain activities[6], when it is assumed that the proposals could have a negative impact on the environment (e.g. the construction of a solid waste incinerator in a city, proposals related to the physical planning of city development, draft laws on waste, water, etc.). The Aarhus Convention defines precisely what types of information must be made available to the public and in what way.

The goal of the Aarhus Convention is to strengthen the role of citizens and civil society organizations in environmental matters. The State Parties are required to make the necessary provisions so that public authorities, at a national, regional or local level, will contribute to these rights to become effective. The Aarhus Convention, through its three basic pillars, provides for:

1. Access to environmental information - The Convention establishes the right of individuals to have access to environmental information that is held by public authorities, including the information on emissions, pollutants and other environmental factors. The Convention also sets standards for providing and disseminating this information.

2. Public participation in environmental decision-making - the Convention recognizes the importance of involving the public in

5 The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted on 25 June 1998 in the Danish city of Aarhus (Århus) at the Fourth Ministerial Conference "Environment for Europe". It entered into force on 30 October 2001. The goal of the Aarhus Convention is to strengthen the role of citizens and civil society organizations in environmental issues.
6 Annex 1 to the Convention.

the decision-making process and establishes rules for public participation in environmental impact assessment procedures, as well as in preparing plans, programmes and policies that may affect the environment.

3. Legal protection - The Convention provides for access to administrative and judicial procedures for the purpose of contesting decisions affecting the environment. This right includes the right to appeal decisions, access to information relevant for the case and the possibility of filing a motion to ban an activity or a damage claim. Before initiating an administrative dispute before the court, where so provided for by law, an appeal to the second-instance administrative body should be allowed. The administrative procedure should be conducted quickly, with as little costs as possible for the party, but in such a way as to obtain everything necessary for the proper establishment of facts and for reaching a lawful and proper ruling. The appellate proceedings before an authority of second instance and those that started by filing complaints with a court of law are considered expedited proceedings. Ensuring environmental legal protection implies protection through administrative law, criminal law, minor offence law and civil law.

d. Implementation of the Aarhus Convention in Bosnia and Herzegovina

Having ratified the Aarhus Convention, Bosnia and Herzegovina fully harmonized its environmental legislation with this international agreement, so that the protection of the rights guaranteed by the Convention is achieved through the following laws:

At the level of Bosnia and Herzegovina: the BiH Constitution; Law on Freedom of Access to Information (hereinafter: LFoI) in BiH; Law on the Council of Ministers of Bosnia and Herzegovina; Law on Administration; Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina; Law on Civil Service in the Institutions of Bosnia and Herzegovina; Law on Administrative Procedure; Law on Administrative Disputes of BiH; Law on Personal Data Protection.

At the level of the Federation of Bosnia and Herzegovina: the FBiH Constitution; Law on Freedom of Access to Information in FBiH; Instructions for implementing the Law on Freedom of Access to Information in FBiH; Law on the Protection of the Environment; Law on the Organization of Administration in FBiH; Law on the Federation Ministries and Other Bodies of the Federation Administration; Law on Civil Service in FBiH; Law on the Principles of Local Self-Governance in FBiH; Law on Administrative Procedure; Law on Administrative Disputes; cantonal regulations on organization of administration and cantonal ministries and other administrative bodies.

At the level of the Republika Srpska: the RS Constitution; Law on Freedom of Access to Information; Decision on the costs of making copies of the required information, in accordance with the BiH LFoI; Law on the Protection of Environment; Law on the Republika Srpska Administration; Law on Administrative Service in the Administration of the RS; Law on Local Self-Governance; Law on General Administrative Procedure; Law on Administrative Disputes.

At the level of the Brčko District of BiH: Statute of BD BiH; Law on Freedom of Access to Information in BiH; Instructions for the implementation of LFoI in BiH in BD; Law on the Protection of the Environment; Law on the Government of BD BiH; Law on Civil Service in the Administrative Bodies of BD BiH; Law on Administrative Procedure of BD BiH; Law on Administrative Disputes.

i. Law on Freedom of Access to Information

The Laws on Freedom of Access to Information ensure that every person has the right to access to information held by a public body to the greatest extent possible, in accordance with the public interest, given that it represents a valuable public good and that public access to this information promotes greater transparency and accountability of the public authorities. The Laws on the Protection of the Environment and the Aarhus Convention provide for this right especially in relation to environmental information. Public authorities, on the other hand, have the obligation, first, to release, on their own initiative, certain information relating to the environment, and second, to deliver information in response to submitted requests for access to information, unless one of the exceptions is established as a ground for denying access to information. After examining each individual case, the presence of an exception to the release of the requested information is established only in cases where the competent authority establishes the presence of an exception provided for in the Laws on Freedom of Access to Information or in the Laws on the Protection of the Environment, depending on the law that applies in a specific case.

ii. Right to public participation in decision-making

Pillar II of the Aarhus Convention is implemented in the laws on environmental protection in BiH as the right to public participation in decision-making that affects the environment. The concept of public participation in legal terms is two-fold and, in the narrow sense, it implies a set of rights that allow the public concerned to engage actively in the decision-making process in the earliest stages on the basis of available information, while in a broader sense, it implies the totality of relations that mark the democratic decision-making process, which includes all three pillars of the Aarhus Convention: the right to access to information, the right to participate in decision-making and the right to access to justice.

iii. Right to access to justice

It means the right to a legal remedy and it refers to the possibility of having decisions reached in administrative procedures reviewed by using legal remedies, both in relation to the right to access to information and the right to public participation in decision-making, and also by contesting acts and omissions of private persons and public authorities which contravene provisions of domestic law relating to the environment. The right to "access to justice" within the meaning of the Aarhus Convention means the right to have recourse to an independent and impartial authority or the court.

Under the provisions of Article 4 of the Aarhus Convention, each Party should ensure that public authorities, in response to a request for environmental information, make such information available to the public, including copies of the actual documentation containing or comprising such information. The environmental information should be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request.

The Aarhus Convention defines precisely the required types of information on a proposed decision and how the public is informed (through media or individually). It emphasizes the importance of public participation in the early stages of the decision-making process, a "public hearing" where the public can ask questions and express their views, give comments, make proposals or provide arguments to decision-makers and introduces the obligation of public administration authorities to inform the public about all the decisions they have made.

Under the Aarhus Convention, the public

concerned will be informed either by public notice or individually early in an environmental decision-making procedure in an adequate, timely and effective manner of the proposed activity and the application on which a decision will be made, the nature of possible decisions or the draft decision, the public authority responsible for making the decision, the envisaged procedure and the fact that the activity is subject to a national or transboundary environmental impact assessment procedure. Each Party should strive to promote effective public participation at an appropriate stage of the procedure, and while options "are still open", during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. Each Party should also ensure that any person who considers that his or her request for information has been ignored, wrongfully dismissed or otherwise not dealt with in accordance with the provisions of the Aarhus Convention, has access to a review procedure before a court of law or another independent and impartial body established by law.

Every individual has the right to file a case with a court of law or another independent authority when the requested information has not been released or the individual has been prevented from participating in an environmental decision-making process. This right also applies to the cases in which an individual or a public authority violates the existing environmental laws or in which a person's right to a healthy environment is threatened. Non-governmental organizations can initiate administrative or judicial processes if their intention is to protect the environment.

It transpires from the above that the legal framework for the protection of the right to a healthy environment and its preservation in Bosnia and Herzegovina is harmonized with the Aarhus Convention and other international agreements that protect human rights. It ensures that the quality of protection of that right is in harmony with the standards of international and European law. However, some laws were adopted more than 10 years ago, while the available case law leads to a conclusion that the rights in some sectors are still often impaired (e.g. those defined in the FBiH Law on Waters). This is the reason why activities have been launched to amend these laws in order to provide for the better protection of the rights and preservation of the country's natural resources.

However, the case law slowly follows the European case law, mainly because the courts in Bosnia and Herzegovina rarely deal with environmental protection cases, which is the reason why the case law is deficient.

During the collection of judgments and data necessary for the preparation of this publication, difficulties arose in accessing final judgments of the courts in Bosnia and Herzegovina relating to the environment due to the fact that there is no systematized case law database.

However, the decisions that have been collected and will be presented in this publication clearly show that the courts in Bosnia and Herzegovina continuously deal with environmental cases, that cases are often brought by non-governmental organizations or civic associations and that the judges dealing with such cases apply the Aarhus Convention, especially when the cases are related to exercising the right to participate in decision-making related to the environment or that may affect the environment. The training of judges in this field, provided by the Centres for Training of Judges and Prosecutors of the BiH Federation and the Republika Srpska, made a significant contribution to this.

2. EUROPEAN ENVIRONMENTAL PROTECTION STANDARDS

Regarding the standards for the protection of the right to a healthy environment as a human right, the principles applied by the European Court of Human Rights in environmental law cases are always taken into account. These principles include the positive obligation of the state to protect lives from industrial activities that are hazardous by their very nature, the procedural rights in environmental cases, such as the right to access to information, public participation in decision-making and the right of access to a court, and enabling individuals and groups to contribute to the public hearing on these issues through the exchange of information and ideas on matters of public interest. Selected European Court's environmental case law has been analyzed and published in the Guide to the Case-Law of the European Court of Human Rights (Protection of the Environment)[7].

Since the European Convention for the Protection of Human Rights and Fundamental Freedoms[8] (hereinafter: the European Convention) does not prescribe the right to a healthy environment directly, as one of the rights from the catalogue of human rights, the European Court of Human Rights (hereinafter: the European Court) found the ground for the applicability of the European Convention in the case of violation of that right in the provisions of Article 2 (Right to life) and Article 8 (Right to respect for private and family life, home and correspondence).

Namely, according to the presented understanding of the European Court, Article 2 applies not only where actions or omissions on the part of the State have led to a person's death, but also where there has been no death but a person has obviously been exposed to a risk to his or her life, which is real and immediate (*Kolyadenko and Others v. Russia, 2012; Boudayeva and Others v. Russia 2008; Brincat and Others v. Malta; Fadeyeva v. Russia*) and the Court must also consider whether the authorities knew or ought to have known, at the material time, that the applicant had been exposed to a mortal danger (*Öneryıldız v. Turkey; Brincat and Others v. Malta*). Where it has not been established that the risk to which a person was exposed was lethal, his or her situation may be assessed under Article 8 of the European Convention, where his or her private or family life was affected by establishing whether his or her private or family life was affected (*Brincat and Others v. Malta*).

The European Court held that the obligation to protect the right to life is stricter with respect to industrial activities, that is, human activities which are dangerous by their very nature (*Öneryıldız v. Turkey*; *Boudayeva and Others v. Russia*; *Kolyadenko and Others v. Russia*; *Brincat and Others v. Malta*) and this obligation exists also in the case of the threat of a natural disaster if that threat is immediate and clearly identified (*Boudayeva and Others v. Russia; M. Özel and Others v. Turkey*).

The positive obligation to take appropriate steps to safeguard life involves a primary duty on the State to secure the right to life by putting in place a legislative and administrative framework designed to provide effective deterrence against threats to the right of life. The state prescribes rules for the prevention of dangerous activities, which are adapted to the specific characteristics of certain activities, especially with regard to the level of potential risk that these activities may have for human lives. Regulations aimed at protecting people's lives must not only exist and be adequate, but must also be complied with by competent authorities (Öneryıldız v. Turkey).

The European Court also dealt with the protection of the right to access to information within the framework of the protection of the right to life and expressed its understanding that in the

7 Published for the first time in 1993, updated on 31 August 2022.
8 Rome, 4 November 1950.

case of dangerous activities and foreseeable natural disasters, the State is obliged, even without a prescribed obligation, to provide the relevant information to persons exposed to a mortal risk (*L.C.B. v. United Kingdom*).

a. The Case Law of the European Court of Human Rights

The European Commission began in 1980 to declare admissible individual applications related to violations of the Convention rights caused by environmental pollution, while the European Court decided the first case in 1990 in which it had applied the evolving concept of interpretation of the European Convention on environmental matters.[9]

In the case of *Powell and Rayner v. United Kingdom* (1990), the applicants, who lived near Heathrow Airport, complained of high levels of aircraft noise due to the failure by the UK government to take noise abatement measures. Since the European Convention protects individuals only from interventions by the State, the Court concluded that the violation of the Convention rights could be found also in the State's failure to fulfil its positive obligation to ensure appropriate conditions of protection, i.e. in the failure to prevent or reverse the interventions of private individuals in the environment which led to the violation of the rights of other private persons (horizontal effect of the European Convention).

In this case, the Court found that the provision of Article 8 of the European Convention applies to the circumstances of the case since the aircraft noise undoubtedly adversely affected the quality of private life of the applicants. Following the position that the state enjoys a certain freedom of assessment in determining the measures to be taken in order to ensure compliance with the European Convention, the Court also assessed the circumstance that large international airports, even those located in densely populated urban areas, are necessary for the economic prosperity of the state. As one of the busiest airports in the world by aircraft movements, Heathrow Airport is crucial for international trade and the UK economy, which is the reason why its operation is justified even if the negative consequences for the environment could not be completely eliminated by taking protective measures. Bearing in mind that the competent UK authorities introduced a whole range of measures to control, reduce and compensate for the aircraft noise around the Airport, which involved the public, the Court did not accept the applicants' argument that the UK government had exceeded the margin of appreciation afforded to them or upset the fair balance required to be struck under Article 8 of the European Convention.

Although a violation of the European Convention was not established in this case, the fact that the European Court assessed the complaint about the violation of Article 8 on its merits showed the Court's stance that environmental issues can be related to Article 8, and as such can be dealt with by the European Court.

Namely, although the European Convention does not explicitly guarantee the right to a healthy environment as one of the fundamental human rights, according to the European Court case law, the violation of that right can be dealt with under Article 8 of the European Convention, because even violations of the right which are not concrete or physical, such as those caused by noise, immissions or other types of disturbances, can affect a person's right to respect for private life, which is the reason why he or she must be provided with a practical and effective right to access to justice.

The case of *Powell and Rayner v. The United Kingdom* is also an example of how the court assesses,

9 In the cases of Golder v. The United Kingdom from 1975 and Tyrer v. The United Kingdom from 1978, the European Court introduced the doctrine of evolutionary interpretation, which is based on the understanding of the European Convention as a "living instrument", that is, an instrument of development and improvements, which must therefore be interpreted in the light of current circumstances, in a way that fulfills the objectives of the Convention and makes the rights practical and effective.

also in environmental cases, whether there is a balance between the violated right of an individual to private life and the right of legal entities or individuals to undertake economic activities that can endanger the environment, where the State has not only a wide margin of appreciation in prescribing measures for the protection of private and family life in the context of interventions in the environment but also the obligation to take active action towards the effective protection of those rights.[10]

Regarding the protection of the right to life, which is guaranteed under Article 2 of the European Convention, the Court must consider whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably "put at risk" (*L.C.B. v. The United Kingdom*, 1998), and whether the State put in place a preventive and deterrent legislative and administrative framework. Where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished. Since the scope of the positive obligations under Article 2 of the Convention largely overlap with those under Article 8, the principles developed in the Court's case law relating to environmental matters affecting private life and home may also be relied on for the protection of the right to life (*Boudayeva and others v. Russia*, 2008).

b. Decisions of the European Court of Human Rights

The decisions of the European Court of Human Rights presented below show how the Court approaches environmental matters and ensures the protection of the right to a healthy environment as one of the fundamental human rights.

1. Case of *Öneryildiz v. Turkey* (2004)

This ruling is significant because the European Court presented all the relevant legal principles related to the positive obligations of the States arising from the substantive and procedural aspect of Article 2 of the European Convention when the right to life is put at risk by hazardous activities.

The applicant claimed that the State authorities were responsible for the death of his relatives and the destruction of their property as a result of a methane explosion that occurred on 28 April 1993 at the Ümraniye landfill in Istanbul.

Facts: At the time of the harmful event, the applicant lived with twelve close relatives in the slum quarter of Kazým Karabekir in Ümraniye, a district of Istanbul. Since the early 1970s a household-refuse tip had been in operation in Hekimbaşı, a slum area adjoining Kazım Karabekir. On 22 January 1960, the Istanbul City Council had been granted use of the state-owned land for a term of ninety-nine years; situated on a slope, the site spread out over a surface area of approximately 35 hectares and from 1972 onwards was used as a rubbish tip by the districts, under the authority and responsibility of the State authorities. When the rubbish tip started being used, the area was uninhabited and the closest built-up area was approximately 3.5 km away. However, as the years passed, rudimentary dwellings were built without any authorization in the area surrounding the rubbish tip, which eventually developed into the slums of Ümraniye. The applicant's house was built in the

10 Jasna Omejec: Zaštita okoliša u praksi Europskog suda za ljudska prava, Upravnopravna zaštita okoliša, knjiga 26 / Barbić, Jakša - Zagreb: Hrvatska akademija znanosti i umjetnosti, 2015, str. 41–115 (Jasna Omejec: Environmental Protection in the European Court of Human Rights Case-Law, Environmental Protection through Constitutional Law, Book 26/Barbić, Jakša-Zagreb: Croatian Academy of Science and Arts, 2015, pp. 41-115)

settlement adjacent to the municipal rubbish tip. According to the findings of an expert witness, the rubbish tip did not conform to the technical requirements and, accordingly, presented a number of dangers liable to give rise to a major health risk for the inhabitants of the valley. On 28 April 1993 a methane explosion occurred at the site. Following a landslide caused by mounting pressure, the refuse erupted from the mountain of waste and engulfed some ten slum dwellings situated below it, including the one belonging to the applicant. Thirty-nine people died in the accident.

The Court decision: In their legal analysis, the Court started from the position that the goal and purpose of the European Convention, as an instrument for the protection of individuals, requires that its provisions be interpreted and applied in such a way as to make its protective mechanisms practical and effective.[11] Article 2 of the European Convention prescribes the obligation of the State to take appropriate measures to protect the lives of those under their jurisdiction[12], which implies the obligation of the State to establish a legal framework for effective prevention of threats to the right to life. Accordingly, regulations issued by the state must regulate the licensing, establishment, operation and control of activities that can be a source of danger, as well as the obligation for all responsible persons to take appropriate measures to ensure the effective protection of citizens whose lives can be threatened by the dangers these activities entail, and the public must be informed about it.

The Court held that if the infringement of the right to life or to physical integrity is not caused intentionally, the obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims.[13] However, where it is established that the negligence attributable to State officials or bodies on that account goes beyond an error of judgment or carelessness, in that the authorities in question, fully realizing the likely consequences and disregarding the powers vested in them, failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2 of the European Convention, irrespective of any other types of remedy which individuals may exercise to protect their lives.

The Court emphasized that in relation to the fatal accident provoked by the operation of a dangerous activity for which the state is responsible, Article 2 of the European Convention requires State authorities to initiate, on its own motion, an investigation into the causes of loss of life, because without such an investigation, an injured individual may not be able to use available remedies to obtain legal satisfaction, since the evidence necessary to establish the facts in such a case is often exclusively in the hands of government officials or authorities.

In this case, the Court concluded that the State had not shown that any measures had been taken to avert risks to human lives, because the regulatory framework proved to be improper, as did the town planning policy, and the inhabitants of the slums had not been provided with information enabling them to assess the risks they might run as a result of the choices they had made to build on that site. The Court considered that in the absence of practical measures to avoid the risks to the lives of citizens, even the fact of having respected the right to information would not have been sufficient to absolve the State of its responsibilities.
The Court found a violation of Article 2 of the European Convention in its substantive aspect on

11 Yaşa v. Turkey, 2 September 1998.
12 L.C.B. v. The United Kingdom, Paul and Audrey Edwards v. The United Kingdom.
13 Vo v. France, No. 53924/00; Calvelli and Ciglio v. Italy, and Mastromatteo v. Italy.

account of the lack of appropriate steps to prevent the death of nine members of the applicant's family and a violation of Article 2 of the Convention in its procedural aspect, on account of the lack of adequate protection by law safeguarding the right to life. The Court found a violation of Article 1 of Protocol No. 1 to the Convention. The responsibility of the State was established primarily due to the fact that the State authorities had not done everything in their power to protect the inhabitants of the slums from the immediate and known risks to which they were exposed.

2. Case of *Kolyadenko and Others v. Russia* (2012)

The applicants lived in Vladivostok close to the Pionerskoye river and water reservoir and were affected by major flooding in August 2001. They alleged that the authorities had exposed their lives to danger by releasing water from the reservoir without giving any emergency warning and by failing to maintain properly the channel of the river, and that there had been no appropriate judicial response and that no legal remedy had been available to them.

The Court found that, first, the authorities failed in their obligation to protect the applicants' lives as they failed to establish a clear legislative and administrative framework to enable them effectively to assess the risks and to implement town planning policies in the vicinity of the reservoir that was a source of danger for the lives and health of the people, in compliance with the relevant technical standards. Secondly, there was no coherent supervisory system to encourage those responsible to take steps to ensure adequate protection of the population living in the area, and there was not sufficient coordination and cooperation between the various administrative authorities to ensure that the risks brought to their attention did not become so serious as to endanger human lives.

The Court emphasized that the authorities remained inactive even after the flood that was the subject-matter of the application, with the result that the risk to the lives of those living near the reservoir appears to persist to this day. The Court established a violation of Article 2 of the European Convention on account of the failure of the Government to discharge its obligation to protect the lives of the applicants, and the court's response to the disputed event did not ensure the full responsibility of officials or competent bodies. A violation of Article 8 of the European Convention and Article 1 of Protocol No. 1 to the Convention was also found. The Court found no violation of Article 13 of the European Convention in conjunction with Article 8 and Article 1 of Protocol No. 1 as the law allows the applicants to seek compensation in a civil case.

3. Case of *Murillo Saldias and Others v. Spain* (2006)

The decision in this case relates to severe flooding following torrential rains at the Biescas camp site in the Spanish Pyrenees, leaving 87 persons dead, among them the brother and sister of one applicant, while the other applicants were injured.

The applicants complained that Spain had not taken all preventive measures to protect the users of the Biescas camp because the authorities had granted permission to use the land as a campsite despite being aware of the potential dangers.

The European Court declared the application of the first applicant inadmissible on account of damages awarded to him by the Special High Court of Spain in an amount that could not be considered unfair, which the Supreme Court of Spain would probably uphold or even increase in the review process, which is the reason why the applicant could not be considered a victim within the meaning of Article 34 of the European Convention.

The applications of the other applicants were rejected as inadmissible because it was established that they had not exhausted all legal remedies.

4. Case of *Tătar v. Romania* (2009)

In its judgement in the case of *Tătar v. Romania,* the Court held that there had been a violation of Article 8 of the European Convention on account of the Romanian authorities' failure to assess, to a satisfactory degree, the risks and consequences that the hazardous industrial activities might entail and to discharge their obligation to inform the public.

The applicants lived in the town of Baia Mare, near a gold mine that used the sodium cyanide leaching process. In 2000, the dam on the Tisza River breached, as a result of which around 100,000 m3 of sewage contaminated with cyanide was released into the river and its surroundings, a dam had breached, releasing around 100,000 m3 of cyanide-contaminated tailings water into the environment, which caused serious environmental damage in the entire region. The applicants claimed that the investor in whose plant the accident had occurred put their lives in danger with his inappropriate technological solutions, and that the State, despite the requests, had failed to do anything to safeguard their rights.

In this judgment, the European Court emphasized that the existence of a serious risk for health and well-being of the people entailed a duty on the part of the State to assess the risks, both at the time it granted the operating permit and subsequent to the accident, and to take the necessary measures. As in this specific case the competent authority issued an operating license to the mine without a prior valid assessment of the impact of the hazardous activity on the environment, and in addition, the plant continued to operate after the accident, the Court concluded that the State had failed to take the appropriate measures to protect the rights of the applicants to respect for private life and home, and found a violation of Article 8 of the European Convention.

This judgment is of particular importance because the European Court also ruled with regard to the Aarhus Convention rights. Namely, the Court found that the right to access to information, granted to members of the public, is of primary importance[14], which gave rise to the State's positive obligation to enable members of the public to access the documents and participate in the decision-making process related to the environment. In this particular case, the public authorities failed to apply domestic regulations on public hearings[15], because the participants were not given access to the results of the study that served as the basis for granting a certificate of environmental compliance, which made it impossible for representatives of the public to contest the decision before a court of law.[16]

5. Case of *Brincat and Others v. Malta* (2014)

The ship repair yard workers were exposed to asbestos over a long period of time. The applicants alleged that they and their relative, who later died, had been exposed to asbestos and that the State had failed to protect them from the fatal consequences of such exposure.

The Court concluded that despite the State's margin of appreciation as to the choice of means, the Government in this case had failed to satisfy their obligation to legislate or take other practical measures to ensure that applicants were adequately protected and informed of the risk to their health and

14 The Aarhus Convention, Article 4.
15 The Aaarhus Convention, Article 6.
16 The Aarhus Convention, Article 9.

lives.

A violation of Article 2 of the European Convention was found, because the Government knew or ought to have known of the dangers arising from exposure to asbestos, and the Government failed to adequately regulate asbestos-related activities or provide any practical measures to protect employees whose lives may have been endangered by the risk of exposure to asbestos. In addition, no adequate information was, in fact, provided or made accessible to the applicants during the relevant period that would have allowed them to assess the risks to their health and lives, and the only practical measure that the State, as an employer, took was to distribute protective masks, which proved to be inadequate and ineffective. In this case, the Court pointed out that in certain special circumstances, in the absence of relevant legal provisions, the positive obligation of the State could be discharged also in practice.

6. Case of *Okyay and Others v. Turkey* (2005)

Citizens exposed to pollution from thermal power plants complained of the non-implementation of court decisions ordering their closure, citing the right to "live in a healthy environment".

The court found that the protection of the applicants' physical integrity was violated due to their exposure to the disputed pollution, which was why they had the right to protect themselves from activities that endangered the environment and seek compensation in case of non-implementation of the decisions. The Court emphasized that it was clear from the submissions the applicants had filed with the administrative authorities and the proceedings that had been conducted before the domestic courts that they contested the operation of the three thermal power plants on grounds of the damage they caused to the environment and the risks they posed to the lives and health of the population of the region in which were located. Although the applicants did not claim that they had suffered any economic or other loss, they invoked their constitutional right to live in a healthy and balanced environment, which was also recognized by the decisions of the administrative courts.

In this case, the Court presented the reasons for the applicability of Article 6 of the European Convention, which guarantees the right to access to a court.

Namely, according to the assessment of the European Court, the applicants, as individuals who are guaranteed the right to a healthy environment under the laws of the Republic of Turkey, also had the right to file a motion with the administrative courts for the suspension of the activities of the thermal power plants that are dangerous to the environment and demand the annulment of decisions on the continuation of their operation. Since the administrative courts delivered judgments favourable to the applicants, any decision dismissing or bypassing their enforcement may "open the way for compensation, and, accordingly, it can be considered that the outcome of the proceedings before the administrative courts, as a whole, refers to the civil rights of the applicants", which is the reason why they must be granted access to a court.

7. Case of *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox and Mox v. France* (2006)

In this case too, the Court found a violation of Article 6 of the European Convention.

In a (class) action brought by an environmental protection association to set aside a decree authorizing the expansion of a nuclear fuel factory, the Court concluded that it was a civil right matter on account that any interested party could, on an individual basis, request respect for that right

before a national court. The fact that the applicants "faced two giants - the state and a multinational company" was enough for the Court to conclude that they were clearly at a disadvantage when presenting the case before the court. The Court emphasized that, although a strict reading of Article 6, paragraph 1, of the European Convention might suggest that it was inapplicable in the absence of a dispute over a civil right, "such an approach would be at variance with the realities of today's civil society, where associations play an important role, inter alia, by defending specific causes before the domestic authorities or courts, particularly in the environmental protection sphere".

In this case, the European Court referred to the decision obligating the association to pay the costs of the court proceedings. The European Court concluded that in this way the court not only punished a weak party, which, unlike a multinational company, has very limited resources, but also "adopted a measure that can deter the association from any future use of judicial channels to carry out its legal task", ignoring that the defence of goals, such as environmental protection in court proceedings, is part of the main role that non-governmental organizations play in a democratic society.

8. Case of *Giacomelli v. Italy* (2006)

This judgment is an example of judicial sanctioning of the State's non-compliance with the regulations that transposed the European Union legislation concerning environmental impact assessment and waste management into the domestic legal order.

It was established in the environmental impact assessment process that the waste treatment plant (hazardous and non-hazardous wastes) poses a health hazard to the local population. The applicant also obtained a temporary measure from the competent administrative court for the closure of the factory, but the competent authority did not implement that measure, nor did it temporarily close down the plant in order to comply with environmental regulations.

The Court found that for several years the applicant's rights to respect for home were threatened by the operation of the landfill built 30 meters from the house where she lived. Since the authorities had not succeeded in striking an adequate and fair balance between the interest of the community in having a landfill for the treatment of toxic waste and the applicant's enjoyment of her right to respect for her private and family life and her home, a violation of Article 8 of the European Convention was established.

9. Case of *Di Sarno and Others v. Italy* (2012)

The applicants complained of environmental pollution caused by poor management of waste collection, treatment and disposal services in the Italian region of Campania.

In this case, the European Court pointed out the special importance of the right to access to information from Article 5, paragraph 1(c) of the Aarhus Convention, which ensures that "in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected".

It was pointed out in the decision that where the State has to solve complex issues of environmental and economic policy, the decision-making process must include appropriate research and studies with the aim of prevention and assessment, provide public access to the conclusions of such studies and to the information enabling an assessment of the danger to which citizens are exposed, and

enable the persons concerned to complain.

Legal positions from the European Court decisions related to the application of Article 8 of the European Convention in environmental cases

For Article 8 of the European Convention to be applicable, the applicant who claims that his or her right has been violated must be able to show that there was actual interference with his private sphere on account of the environmental situation complained of, and that interference attained a minimum level of severity.[17]

- In the absence of any proof of a direct impact on the applicants or their quality of life, there can be no interference in their private lives, therefore, Article 8 of the European Convention was inapplicable.[18]

- The harmful effects of the environmental pollution must attain a certain minimum level of severity[19], and the assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects on the applicant's health or quality of life.[20]

- Violations of the right to respect for the home are not limited to concrete physical violations, such as trespassing into a person's home, but also include those that are not concrete or physical, such as noise, smells, odours, or other forms of interference. A serious injury can lead to a violation of a person's right to respect for his home if it prevents him from enjoying the comfort of his home.[21]

- Also, the general environmental context should also be taken into account - there would be no arguable claim under Article 8 of the European Convention if the detriment complained of was negligible in comparison to the environmental hazards inherent in life in every modern city.[22]

- A person's health does not necessarily have to be affected, or even threatened due to exposure to pollution or other nuisances, but that the nuisances affected his quality of life and well-being.[23]

- There is no doubt that industrial pollution negatively affects public health in general and worsens the quality of life of an individual, but it is often impossible to quantify its effects in each individual case. When it comes to damage to health, it is hard to distinguish the effect of environmental hazards from the effects of other relevant factors, such as age, profession or personal lifestyle. "Quality of life" is a subjective characteristic which does not lend itself to a precise definition.[24]

17 Çiçek and Others v. Turkey, 2020.
18 Ibid.
19 Solyanik v. Russia
20 Fadeyeva v. Russia, Oluić v. Croatia
21 Hatton and Others v. United Kingdom
22 Fadeyeva v. Russia, Mileva and Others v. Bulgaria, Çiçek and Others v. Turkey. 2020
23 Lopez Ostra v. Spain, Sciavilla v. Italy, Taskin and Others v. Turkey
24 Dubetska and Others v. Ukraine, 2011.

c. Cases against Bosnia and Herzegovina

1. Judgement in the case of *Kožul and Others v. Bosnia and Herzegovina*, of 22 October 2019

On 4 February 2002 the local authorities issued a decision ordering a private company "P" d.o.o. to demolish its industrial buildings which had been erected illegally next to the applicants' homes. On 13 October 2005 the Constitutional Court found a violation of the applicants' right to a fair trial and ordered the local authorities concerned to enforce the decision without further delay. On 27 May 2006 the Constitutional Court found that its decision of 13 October 2005 had not been enforced.

The applicants requested the protection of the rights under Article 8 of the European Convention claiming that the State had failed to protect their homes from noise and dust arising from the operation of company "P".

Under the European Court's assessment, Article 8 may apply in environmental cases, whether the pollution is directly caused by the State or whether State responsibility arises from failure to regulate private-sector activities properly. In order to raise an issue under Article 8, the interference must directly affect the applicant's home, family or private life, and the adverse effects of the environmental pollution must attain a certain minimum level of severity. The assessment of that minimum depends on all the circumstances of the case. Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in any case the State enjoys a certain margin of appreciation.

The Court assessed that the applicants and their families might have been affected by the activities carried out by "P". However, the Court must also establish whether it has been shown that the adverse effects of the industrial building reached the minimum level of severity set by its case-law, that is, whether the noise level and the air quality in the applicants' houses indeed exceeded the norms set either by domestic law or by applicable international environmental standards, or exceeded the environmental hazards inherent in life in every modern town.

As the Court concluded that the established noise levels complained of were not serious enough to attain the high threshold set in the Court's case law, it could not establish that the State had failed to take reasonable measures to secure the applicants' rights under Article 8 of the European Convention and rejected the application as manifestly unfounded within the meaning of Article 35, paragraph 3 of the European Convention.

This is the only decision against Bosnia and Herzegovina related to environmental protection before the European Court of Human Rights. However, this does not mean that there are no environmental cases in Bosnia and Herzegovina, but that there is not a significant number of such cases or that they are still pending.

The review of the decisions of the domestic courts that follows below will make it possible to assess whether the reason for the small number of cases before the European Court may also be that the courts in Bosnia and Herzegovina deciding environmental cases properly interpret the principles and provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and properly apply the provisions of domestic laws and international agreements, particularly those of the Aarhus Convention, and in this way, have an impact on the situation where the matters related to environmental protection are resolved in accordance with the adopted standards,

especially in relation to the exercise of the right to access to information, public participation in decision-making and the right to access to justice.

In addition, it is important to point out that non-governmental organizations, environmental protection associations and other civic associations, which significantly contribute to the quality of presenting cases before the court, using all available and effective remedies, in consultations with the relevant professional community, participate in the majority of proceedings related to the protection of the right to a healthy environment, which significantly contributes to the quality of court decisions in this sphere.

3. JUDICIAL PROTECTION OF THE ENVIRONMENT IN BOSNIA AND HERZEGOVINA

a. Decisions of the Constitutional Court of Bosnia and Herzegovina

The Constitutional Court of Bosnia and Herzegovina, as part of its appellate jurisdiction in matters defined by the Constitution, when they become the subject of a dispute on account of a judgment delivered by any court in Bosnia and Herzegovina, under Article VI/3.b) of the Constitution of Bosnia and Herzegovina, deals with cases related to the application of environmental laws. The number of these cases is not large, because the case law in this sphere in Bosnia and Herzegovina is not extensive, but it is still sufficient for an insight into the current situation and the conclusion that courts in environmental protection cases generally apply the aforementioned trial standards, and interpret the provisions of the laws that regulate this sphere in a way that is in accordance with international standards in the area of human rights protection.

1. AP-2941/22 of 18 October 2022

The court found a violation of the right to a fair trial from Article II/3.e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the right to access to justice in the proceedings before the Cantonal Court in Sarajevo, number 09 0 U 040538 22 U.

The Constitutional Court concluded that the failure to make a decision on the complaint seeking the annulment of the environmental permit decision within 10 months represents a violation of the right to effective access to a court/trial within a reasonable time, precisely because it was a case seeking the judicial protection of human health and the environment, and its importance does not lend itself to an acceptable justification for not deciding the appellant's complaint within that period.

The facts of the case: "M.K" d.o.o. Mostar (hereinafter: the investor) filed with the Ministry on 20 October 2020 an application for an environmental permit for the "Z" quarry located near Mostar. The Ministry, having posted the application on 6 November 2020 on its website in order to engage the public in the procedure, issued the required environmental permit to the investor by way of a decision of 20 January 2021. On 14 September 2021, the investor applied to the Ministry of Construction and Physical Planning of the Herzegovina-Neretva Canton for a town planning permit for the exploitation of mineral raw materials in the area of the quarry, and on 8 October 2021 the investor applied to the Ministry of the Economy of the Herzegovina-Neretva Canton for an exploitation permit. The Ministry of the Economy suspended the permitting procedure by its conclusion of 26 October 2021 as the permitting process for a town planning permission for exploitation had not been completed. The civic initiative "Kuti" - an informal group of citizens, including the appellant, submitted a request to the Ministry on 9 December 2021 for access to information on the environmental permitting case. The access was granted.

On 20 January 2022, the appellant, together with three other persons, filed a complaint with the Cantonal Court in Mostar against the Ministry seeking the annulment of the environmental permit decision, and the appellant alleges in his appeal, inter alia, that the failure of the Cantonal Court to decide amounted to a violation of his right to a fair trial under Article II/3.e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the opinion of the appellant, this administrative

dispute ought to be expeditiously completed as it concerns the environment, otherwise, there will be unforeseeable consequences of an irreparable nature for the environment and the people, as in this case.

It was alleged in the appeal that when issuing the environmental permit, the environmental impact study had not been submitted for evaluation to the competent authorities and interested parties, and the quarry is located close to the applicant's settlement, and by carrying out works on that site, both residents and the environment would be exposed to harmful impacts on a daily basis, caused by blasting and seismic effects that can affect the stability of the buildings and the regime of water sources in the surrounding environment, which was neglected during the environmental permitting process. In addition, during the exploitation attempt, material damage was caused to the local population, since the bridge and the local road that the locals had built across their plots, had been destroyed. He proposed that the BiH Constitutional Court issue a temporary measure prohibiting the operation of the quarry pending the final decision in an administrative dispute or a different court decision.

The BiH Constitutional Court assessed that the outcome of this procedure was decisive for the applicant's civil rights and obligations, because it sought to secure the judicial protection of the people's health and the environment, as well as the right to property and protection of the home from harmful effects that could be caused by the operation of the quarry. Therefore, the Court decided that Article II/3.e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1, of the European Convention were applicable in this case.

Since the right of access to the court, which is guaranteed by Article 6 of the European Convention, according to the European Court's case law, includes not only the right to initiate proceedings, but also the right to a "decision" on the dispute that resolves the dispute, it would be illusory if the domestic legal system allowed an individual to start proceedings before a court of law without guaranteeing that a final court decision would be made in the case. That is why the Constitutional Court decided whether the Cantonal Court's inaction diminished the applicant's right to access to court to such an extent that the very essence of that right was violated.

The Constitutional Court concluded that in this case there is no acceptable justification for not making a decision on the applicant's complaint, because by failing to include his case in the court case schedule for the current year, with the uncertainty of when it could even be taken up and resolved, the appellant's substantial and effective access to justice and thereby also to the right to a fair trial is limited. Bearing in mind the circumstances of the present case, the Constitutional Court assessed that the failure of the Cantonal Court to initiate the proceedings for the purpose of making a decision on the appellant's complaint in the present case represents a violation of the appellant's right to substantial and effective access to justice.

In this case, the Constitutional Court did not deal with the protection of the appellant's rights, which is the subject-matter of the dispute before the court, but reached its conclusion on the merits of the appeal based on the fact that the appellant had not been granted access to justice, emphasizing that access to a judicial or administrative authority must be substantial, not just formal, which is why in this particular case the fact that the court did not make a decision in this case within 10 months amounts to a violation of that right.

2. AP-1170/14 of 15 February 2017

The appeal submitted by the public electric power company JP "EP BiH" d.d. Sarajevo against the judgement of the Supreme Court of the Federation of Bosnia and Herzegovina No. 32 0 Ps 132251 12 Rev, dated 26 December 2013, the judgment of the Cantonal Court in Tuzla No. 03 0 Ps 002804 09 Pž, dated 28 May 2012, and the judgement of the Municipal Court in Tuzla No. 932-0-PS-06-000-519, dated 3 July 2009, is dismissed as unfounded.

The court of first instance ordered the defendant, JP "EP BiH" d.d. Sarajevo, to pay the plaintiff, the Tuzla Canton, the fee for air pollution from thermal energy facilities in the amount of 7,105,110.56 BAM, plus default interest, for 2002, 2003, 2004, 2005 and the period January-March 2006, in accordance with the provisions of Article 74 of the Law on the Protection of the Environment of the Tuzla Canton[25], under which the incentives for environmental protection measures in the Tuzla Canton are provided from the funds defined by this law and separate regulations, and the Tuzla Canton Government's Decision of 20 November 2001 on the amount of charges for air pollution from thermal energy facilities, introducing a fee for air pollution from facilities and boiler rooms with a capacity above 0.5 MW. On 15 February 2002, the appellant paid the environment protection fee in the amount of 151,450.00 BAM, and then stopped paying the fee to the plaintiff. Since Article 118 of the 2003 Law on the Protection of the Environment of the BiH Federation stipulates that the provisions of special laws and implementing regulations governing environmental protection issues which are not at variance with this law continue to apply, and the payer is in any case the polluter, the appellant, as the payer, is obliged to pay off the debt to the defendant under the above-mentioned legal provisions in conjunction with Article 262 of the Law on Obligations.

The appeal alleges that the ordinary courts arbitrarily based the obligation to pay an air pollution fee on the wrong legal acts. The appellant believes that the conclusion of the courts that the above-mentioned legal regulations remain in force even after the adoption of a series of environmental protection laws in 2003 is wrong. According to the provisions of Articles 101 and 102 of the Law on the Protection of the Environmental of the BiH Federation, which has been implemented since 27 October 2003, the financing of environmental protection will be done through the funds to be established by law, and that the fee rate and the method of calculation and allocation of funds will be defined by that law, and the authority for the fee and securing the funds to incentivize environmental protection measures is transferred from the cantons to the Federation level.

Relevant regulations: Under Article 74 of the Tuzla Canton Environmental Protection Law, material and other conditions for incentives for environmental protection measures in the Canton are provided from the funds established by that law and special regulations, from the following sources: environmental pollution fees (pollution of soil, water, air); fees for the use of natural resources and goods in general use of cantonal importance; investment funds for industrial, mining, energy and transport facilities of cantonal importance, for which the obligation to prepare an environmental impact study is prescribed, in the amount of 0.3% of the investment value; investment funds for all economic facilities of cantonal importance for which the obligation to prepare an environmental impact study is not prescribed, in the amount of 0.2% of the value of the investment; funds from the registration of vehicles and vessels in the amount of 10% of the amount of the compulsory insurance, and 5% for vehicles with a built-in catalytic converter, collected fines under this law and from other sources (donations, etc.). The decision on the fee rates and the method of payment from paragraphs 1 and 2 of this Article, unless it is defined by other regulations, will be made by the Government of the Canton. Under Article 78 of the same law, the allocation of funds under Article 74 is carried out

25 "Official Gazette of the Tuzla Canton", 6/98 and 15/00.

by the Government of the Canton at the proposal of the competent Ministry, in accordance with the medium-term programme and an annual plan, while the allocation of funds is done in proportion to the amount of funds collected from a certain branch for the protection of the environment.

The Supreme Court of the BiH Federation stated in the reasoning of its ruling No. 32 0 Ps 132251 12 Rev, dated 26 December 2013, that the provisions of the Law on the Protection of the Environment of the BiH Federation, its part on "Objectives of the Law", prescribe, inter alia, that the law regulates the financing of environmental activities and voluntary measures and duties and tasks of administrative bodies at different levels of government (Article 1) and that the Federation Ministry and the cantonal Ministries, each within its own jurisdiction, are responsible for the issues specified in that Article (Article 40). The provisions of Articles 43 and 44 expressly assign certain responsibilities of these Ministries, although the way of financing environmental protection is not expressly defined according to the responsibilities of the Federation Ministry and the cantonal Ministries. This delineation is governed by the provisions of Division XIV of the Law on the Protection of the Environment, under which the Federation Fund for the Protection of the Environment and the cantonal Funds for the Protection of the Environment will be established by law to support development (Article 101, paragraph 1), and the funds of the Federation Fund consist of funds from the Federation budget, donations, loans and credits, fees for resource-based activities and the financing instruments that include fees set by the provisions of Articles 103 to 109 of that law (Article 102). The Court also emphasized that the aforementioned law does not regulate the issue of cantonal funds or financing of environmental protection and that, in accordance with the provisions of Article 118, the provisions of special laws and implementing regulations which are not at variance with that law continue to apply. In accordance with the above, the Court concluded that in the present case, the provisions of the Law on the Protection of the Environment of the Tuzla Canton and the Decision on the Fee Rates apply, as was rightly decided by the first-instance court.

The Constitutional Court concluded in this case that there is no violation of the right to a fair trial guaranteed by Article II/3.e) of the Constitution of Bosnia and Herzegovina when the ordinary court obliged the appellant to pay off a debt for environmental pollution, which is based on a legal obligation which refers, inter alia, to the appellant, and the court examined all her objections and provided a detailed and clear explanation that the Constitutional Court does not consider as arbitrary.

This case is important because it shows that the legal provisions governing the financing of environmental protection are properly applied in proceedings conducted before ordinary courts in the BiH Federation.

The same decision was reached in the case AP-2508/20, which dealt with the application of the Environmental Protection Law of the Zenica-Doboj Canton and the Decision of the Zenica-Doboj Canton on the rates of the fee for air pollution from thermal energy facilities. In that decision, the Constitutional Court emphasized that the provisions of the Law on Air Protection regulate the technical conditions and measures for preventing or reducing air emissions caused by human activities, which must be observed in the production processes within the BiH Federation territory, air quality protection planning, special sources of emissions, cadastre of emissions, air quality, supervision and fines for offenses imposed on legal entities and individuals (Article 1), but that the issue of financing air protection is not regulated, which is the reason why the Court found the appellant's allegations that the Law on the Protection of the Environment and the Decision on Air Pollution Fee Rates (of the Zenica-Doboj Canton) was repealed with effect after the date of entry into force of the Law on Air Protection as unfounded.

3. AP-3016/17 of 17 July 2019

The appeal submitted by M.I. against the ruling of the Supreme Court of the Federation of Bosnia and Herzegovina, No. 45 0 P 029454 17 Rev of 16 May 2017 and the judgment of the Cantonal Court in Goražde, No. 45 0 P 029454 16 Gž 2, of 7 December 2016, is dismissed as unfounded since the Court found no violation of the right to a fair trial guaranteed by Article 6 of the European Convention and the right to property guaranteed by Article 1 of Protocol 1 to the European Convention, as well as the right to home guaranteed by Article II/3.f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, given that in this particular case, no official measurements were performed to confirm that immissions, that is, the levels of noise and waste, exceed the legally set limits, bearing in mind the purpose of the playground as a source of those immissions.

The first-instance judgment established that the plots of land owned and possessed by the defendant, marked as cadastral plot No. 1505/1 and cadastral plot No. 1521, entered in the property register 345 Cadastral Municipality of Goražde I, are the sources of harmful immissions towards the plaintiffs in the form of noise and shouting and excessive garbage, resulting from the use of the defendant's real estate contrary to the legal purpose of the land - a playground - which hinder the plaintiffs' peaceful possession of their property - apartments, and ordered the defendant, G. Municipality, to eliminate the causes and immissions by removing and relocating the facility - the playground - to another location, or to prevent its use and public use and thereby prevent excessive immissions. The appeal of the defendant was granted by the second-instance ruling and the first-instance ruling was reversed by dismissing the claim in whole. By the ruling of the Supreme Court of the BiH Federation No. 45 0 P 029454 17 Rev of 16 May 2017, the plaintiff's extraordinary appeal was dismissed.

Established facts: The plaintiffs are the owners of real estate located next to the defendant's real estate on which a playground was built and is used by children of all ages, and sometimes also by adults where they play sports (soccer, handball, basketball) and other games, at any time of the day, sometimes even at night. When used, the playground is a source of noise, which originates from the shouting and ball hitting, with the balls sometimes hitting the wall and windows of the building where the plaintiffs' apartments are located. In this way, the plaintiffs are prevented from peacefully enjoying their apartments, and also material damage is caused to their property (damaged air conditioner, broken windows, damaged facade).

The second-instance court found that although it was established that the use of the playground causes noise and damage to the plaintiffs, that is, that the defendant's real estate is used in a way that causes disturbance to other people's property, the immissions in this case are not excessive considering the purpose of the disputed property – the playground - and they correspond to the place and time, and the damage they cause is insignificant. For this reason, the second-instance court, bearing in mind the provisions of the Law on the Protection against Noise, found that the noise was not impermissible, and that the first-instance court's conclusion that the immissions were impermissible was partial, especially if it is taken into account that it has not been proven in this proceeding either that any of the users of the playground have been punished for a committed offense or that misdemeanour charges have been filed against those persons. For this reason, the Court dismissed the claim as unfounded, which, inter alia, required that the defendant should remove the children's playground and relocate it to a different location, that is, prevent its public use.

From the reasoning of the Supreme Court's judgment: This case is about the use of public areas in urban settlements, where it is normal and necessary to have children's playgrounds, because they are required by modern urban housing. It is also normal for children's playgrounds to generate noise, but this noise is not considered excessive because it is common, considering their nature and purpose,

which implies the presence of a large number of people in the same space, playing, cheering and the like. Namely, it is about the immissions resulting from the modern way of living, in which the residents must be provided with space for playing and sporting activities, and the one who lives in such an environment must accept it. For this reason, the Supreme Court accepted the assessment by the second-instance court as correct: that the plaintiffs' motion for the protection of their rights against harmful immissions was not founded, and that the plaintiffs should exercise their rights in accordance with the regulations governing offenses against public order and peace as the forms of behaviour that unlawfully disturb the peace, work and normal way of life of citizens, and defining the penalties for misdemeanours against perpetrators.

In this case, the Constitutional Court of Bosnia and Herzegovina reached a decision number: AP-3016/17 dated 17 July 2019, dismissing the appeal.

From the reasoning of the decision of the Constitutional Court: *The Constitutional Court notes that the appeal seeks protection from immissions (noise, shouting and excessive waste) coming from the playground, which, according to the facts established in the decisions of ordinary courts, is located in the very centre of the city, which is densely populated with a large number of children, and the playground was built to satisfy their needs. In this regard, the Constitutional Court points out that the needs of citizens, in every modern city, require the construction of both children's playgrounds and sports fields, parks, etc., so that citizens, primarily children, in urban, densely populated areas, have a safe place where they can spend time socializing, playing and recreating in open areas. However, the construction of such "areas" in the city does not mean that the activities of the users of those "areas" may produce sounds and waste that exceed the limits permitted by law, bearing in mind the purpose of the facility, the time and place in which they occur and the surroundings. In this regard, the Constitutional Court has noticed that in this particular case the appellant (or other plaintiffs) did not propose or provide evidence to establish the circumstance related to the permissible levels of noise in the specific situation (item 8 of this decision), and potentially excessive levels of noise, taking into account the purpose of the playground in question. Also, the appellant did not provide evidence related to "excessive waste" generated by the use of the playground, that is, the possibility of infection/risk for him and his family members posed by the waste. Bearing in mind the purpose of the playground (which implies the activities of the playground users, which produce higher levels of sound and waste), and the fact that in this particular case no official measurements were made to confirm that the levels of sound and waste exceed the legally set limits, and which was necessary given the specific circumstances of the case, the Constitutional Court cannot conclude that the noise, shouting and waste in the specific case attained a minimum level of severity required to constitute a violation of Article 8 of the European Convention.*

In this case, it is evident that the Constitutional Court of Bosnia and Herzegovina applied the legal standards presented by the European Court of Human Rights in its decision in the case of *Fadeyeva v. Russia* and other decisions concerning determination of the "excessiveness" of harmful immissions in each specific case.

4. AP-1512/17 of 10 April 2019

The appeal of "O" d.o.o. Z. and "H.S" d.o.o. Z. submitted against the judgment of the Higher Commercial Court in Banja Luka, number 59 0 Ps 026514 14 Pž of 24 March 2017, is dismissed as unfounded.

By its judgment, the District Court, number: 59 0 Ps 026514 13 Ps, of 22 October 2014, dismissed the appellants' claim in whole, which requested that the defendant be ordered to refrain from actions and to eliminate the causes originating from his real estate, which lead to the release of unpleasant odours that make it difficult for the appellants to use their properties, and to make further

investments for the purpose of finding technical solutions that would prevent immissions and damage to the appellants by installing the appropriate devices, filters and the like.

The appellants' claim is based on allegations about immissions in the form of an unpleasant, suffocating odour coming from the neighbouring property where the defendant carries out his production activity of wood impregnation – impregnation of wooden and iron thresholds. The District Court concluded that the Department for Housing and Utility Affairs issued on 12 August 2011 a decision granting the defendant an environmental permit for a timber assortment impregnation plant and ordering that the effects on air through evaporation during the wood impregnation process must be reduced to a minimum by using proper and certified equipment and that air quality should be measured once a year. In addition, according to the decision by the Ministry of Health and Social Protection of the Republika Srpska, dated 15 September 2011, the defendant fulfils the requirements for carrying out the activities related to transportation, storage and use of the chemical - creosote oil - and the decision by the Ministry of Labour and the Protection of Disabled Veterans of 23 October 2012, the defendant fulfils the set requirements in the field of occupational health and safety. The professional institutions, Institute for Construction IG d.o.o. Banja Luka and V&Z protection d.o.o. Banja Luka, measured and analyzed emissions of pollutants into air from the wood impregnation plant of the defendant, and the last measurement was performed by the institution V&Z protection d.o.o. Banja Luka during the first-instance proceedings, when it was established that the measured emission values do not exceed the limit values or are far below the maximum allowable value. According to the written findings and opinion by the workplace safety, fire and environmental protection expert witness N.S. that the litigants had no objection to, there is no unpleasant odour, that is, there are no polluting colourless gases, coming from the defendant, in the business (working) premises of the appellants. Unpleasant odours are present in front of the first applicant's footwear production plant, under the canopy where workers rest during breaks, as well as at the workplace of security workers. During one impregnation cycle, the odour is present in the air for 1.5-2 hours at different times of the day, however, all the measurements performed show that the immissions of harmful gases are within the limits. Since it is about the immissions from the defendant's production plants during the wood impregnation process, the defendant is a potential source of immissions. However, the District Court stated that both the appellants and the defendants are located within an industrial zone, which presupposes adaptation to such an environment and its characteristics, and only when a certain level of tolerance i.e. the permitted level referred to in Article 76, paragraph 1 of the Property Rights Law, is exceeded, will it be possible to talk about the protection against immissions.

Having assessed the presented evidence, the court established that the odours generated by the defendant's activities do not exceed the allowable tolerance limit for the appellants, and dismissed the claim as unfounded. In the reasoning of the judgment by which the High Court dismissed the plaintiff's appeal, the High Court stated that harmful immissions, such as the transmission of smoke, unpleasant odours, heat, soot, waste water and the like, endanger the environment, but in each specific case it is necessary to establish whether these harmful immissions are excessive in order for the motion for the judicial protection of a violated right to be well-founded.

In this case, the appellants stated that their "right to a healthy environment" was violated by the contested judgments, but they did not point to a specific right guaranteed by the Constitution of Bosnia and Herzegovina or by Annex I to the Constitution of Bosnia and Herzegovina with a list of Human Rights Agreements that apply in Bosnia and Herzegovina. Starting from the case law of the European Court and the Constitutional Court of BiH, under which the legal qualification of the allegations presented in the appeal is determined on the basis of the facts stated therein, and not just on grounds of the legal basis that the appellant relied on, the Constitutional Court examined the disputed decisions in relation to the guarantees under Article II/3e of the Constitution of BiH and

Article 6, paragraph 1, of the European Convention (right to a fair trial), and Article II/3f of the BiH Constitution and Article 8 of the European Convention (right to home).

With regard to the appellants' allegations of the violation of the "right to a healthy living and working environment", and to the harmful consequences of disputed emissions, the Constitutional Court pointed to the case law of the European Court, under which, although the European Convention does not provide for an exclusive right to a clean and quiet environment, in a situation where an individual is directly and seriously affected by noise or another form of pollution, a question may arise under Article 8 of the European Convention. At the same time, a violation of the right to respect for home is not limited only to the physical prevention of peaceful enjoyment of the home. As the applicants in this case are legal entities, and "home" is by definition a place or a physically defined space where private and family life develops, the Constitutional Court concluded that there is no violation of the right to home, guaranteed by Article II/3f) of the BiH Constitution and Article 8 of the European Convention.

In this case, the appellants were not provided with the protection of their rights because, according to the Constitutional Court, the presented facts cannot in any way justify the claim that there is a violation of the above-mentioned human rights, since the rights of the appellants, as legal entities, are not protected by the European Convention.

b. The protection of the environment through criminal law in Bosnia and Herzegovina

Due to their importance, human behaviours that destroy or damage the environment are also punishable criminal legislation. Environmental crime is defined in the Criminal Codes as a set of socially dangerous acts of action or inaction, effects on the environment or its individual components, the rational use and protection of which is ensured by normal human activities.

It is the crime the consequence of which is environmental pollution, which endangers the life and health of people or causes the destruction of plants and/or animals.

In Bosnia and Herzegovina, in accordance with its constitutional set-up and responsibilities, environmental crimes are punishable under the entity-level Criminal Codes and the Criminal Code of the Brčko District of BiH.

The criminal offences which are punishable under the Criminal Codes in Bosnia and Herzegovina are: environmental pollution; endangering the environment with installations; endangering the environment by waste; endangering the environment by noise; production of harmful preparations for the treatment of animals; veterinary malpractice; unauthorized rendering of veterinary services; failure to comply with regulations for suppressing animal and plant diseases; concealing the existence of a contagious animal disease; contaminating fodder or water used by livestock; destruction of plantations; careless actions in circulation of pesticides; devastation of forests; forest theft; causing forest fire; torturing and killing an animal; illegal hunting; illegal fishing; damage, destruction and illicit export of cultural monuments and protected natural objects; and illicit research works and appropriation of cultural monuments (the BiH Federation and the Brčko District of BiH), and: environmental pollution; pollution of the environment by waste; noise affecting the environment; illegal construction and putting facilities and plants into operation; damaging facilities and equipment for the protection of the environment; damage and destruction of protected natural goods; production of harmful preparations for the treatment of animals; contaminating food and water used by animals; failure to

comply with regulations for the suppression of animal and plant diseases; careless actions in the circulation of pesticides; careless veterinary treatment; unauthorized veterinary treatment; destruction of plantations; failure to comply with an order on measures for the protection of the environment; importing hazardous material into the Republika Srpska; forest theft; depredation of forests; causing forest fire; torturing and killing of animals; exporting protected plants or animals; usurpation of real property declared as goods of general importance, a cultural monument, natural rarity or other natural wealth; illegal hunting; illegal fishing (the Republika Srpska).

Criminal offenses against the environment, agriculture and natural resources are punishable under Chapter XXVI of the Criminal Codes of the BiH Federation and the Brčko District, and under Chapter XXIX of the RS Criminal Code. These articles differ in the three Criminal Codes, they are not fully harmonized with the European law as they do not cover the whole spectrum of criminal offences as provided in the EU Directive 2008/99/EC on the protection of the environment through criminal law, but all three Codes provide for both accomplice liability and liability of legal persons as required by Articles 4 and 6 of the EU Directive[26].

i. Criminal offences against the environment

Criminal offences against the environment refer to the air, soil or water pollution, pollution by waste, use of facilities or equipment that pollute the environment, causing a large number of deaths of protected species, poaching, exporting protected plants or animals, etc. These criminal offences are punishable by imprisonment or fines.

Depending on the territory and the Criminal Code under which a criminal offence is punishable, the Criminal Procedure Codes also apply. They define the rules of criminal procedure that the courts, prosecutors and all others have to comply with. The Criminal Procedure Code of BiH applies at the state level, the Criminal Procedure Code of FBiH and the RS Criminal Procedure Code apply at the entity level, and the Criminal Procedure Code of the Brčko District of BiH applies in the Brčko District. The Laws on the Protection of the Environment at the entity and cantonal levels contain provisions regarding minor offences that provide for penalties for individuals and legal entities, as well as for the responsible persons in legal entities for minor offences punishable by those laws.

ii. Case law

By researching the Case-Law Web Portal in Bosnia and Herzegovina[27] and by reviewing the decisions submitted by the courts for the purpose of preparing this publication, it can be concluded that the number of legal proceedings in environmental cases that ended in final judgments is insignificant, and that the decisions of the courts refer mainly to milder criminal offenses or they were reached based on plea agreements.

Some decisions are presented below in order to provide insight into the manner in which these proceedings are conducted and the courts' approach in dealing with such cases.

26 Third Environmental Performance Review of Bosnia and Herzegovina, the United Nations Economic Commission for Europe (UNECE), 2018.
27 https://pravosudje.ba

1. Judgment of the Municipal Court in Kiseljak, No. 49 0 K 055363 21 K of 17 May 2021

The facts and circumstances of the case: The Cantonal Prosecutor's Office in Travnik filed an indictment on 28 August 2020 against G.S. from K. for the criminal offense Endangering the Environment by Waste, punishable under Article 305, paragraph 1, of the FBiH Criminal Code. According to the indictment, the accused, as the founder and owner of a legal entity, ordered on 9 August 2019 that 21,148.12 kg of meat and meat products in the initial stage of spoilage be taken out of the company and disposed of at a site in the Municipality of Kreševo. After this was done, a strong, unpleasant odour began to spread around the area, endangering the quality of air, soil and water, which could have led to deteriorated living conditions for humans or animals or endangered the existence of forests, plants and other vegetation.

In the indictment, the prosecutor proposed that the court issue a warrant for pronouncement of the sentence imposing a three-month suspended sentence on the accused G.S. and at the same time determine that the sentence will not be carried out unless the defendant commits a new criminal offense within 1 (one) year. On 26 April 2021, the accused concluded a plea agreement with the Cantonal Prosecutor's Office, and the court accepted the agreement and imposed a fine in the amount of 1,000.00 BAM, which the convicted person is obliged to pay within 2 (two) months from the date of finality of the verdict. The court ordered the defendant to pay 1,560.40 BAM in damages to Municipality K. The legal entity ŠPD "Srednjobosanske šume" d.o.o. Donji Vakuf was instructed by the court to seek damages in civil proceedings.

Relevant regulations: Veterinary Law ("Official Gazette of FBiH", No. 46/00); Law on Food and General-Use Items Safety and Monitoring ("Official Gazette of the Central Bosnia Canton", No. 5/14); Criminal Code of the Federation of Bosnia and Herzegovina ("Official Gazette of the FBiH", Nos. 36/2003, 21/2004 - correction 69/04, 18/05, 42/10, 42/11, 59/14, 76/14 , 46/16 and 75/17)

Under Article 305, paragraph 1 of the FBiH Criminal Code - Endangering the Environment by Waste - whoever, contrary to regulations, disposes, deposits, collects, stores, treats and transports waste or in general handles it in a way which imperils the quality of the air, soil, water, watercourses, the sea, the seabed or the sea underground in a wider area and to the extent that can deteriorate living conditions for humans or animals or endanger the existence of forests, plants and other vegetation, shall be punished.

Therefore, the act of committing this criminal offense is alternatively defined as: disposing, depositing, collecting, storing, treating, transporting or handling in other ways, contrary to regulations, which endangers the quality of soil, water, waterways, sea, seabed or the sea underground.

For this criminal offence to exist, the way of undertaking the action is also important, which must be contrary to the regulations, which indicates its blanket character, since the way of treating waste is regulated by the environmental law[28]. In addition, the consequences of endangering the environment with the aforementioned actions appear in two forms: 1) as endangering the quality of air, land, water, watercourses, the sea, the seabed or the sea underground if two requirements are met: a) that the consequence occurred in a wider area, and b) to the extent that it can worsen the living conditions for humans or animals or threaten the existence of forests, plants or other vegetation, and 2) as causing danger to the life and health of the people or animals or as destruction or significant damage to forests, plants or other vegetation in a wider area. Here, too, the consequence can have

28 Law on Waste Management.

two forms: a specific danger or an injury (destruction or damage) of a larger scale or in a wider area, the determination of which is a factual matter for the court in each specific case.

In this case, the court, before accepting the plea agreement concluded by the accused with the Cantonal Prosecutor's Office, was first satisfied that the accused had pleaded guilty wilfully, consciously and knowingly and that he was aware of the possible consequences, including the possibility of paying damages and covering the costs of criminal proceedings. Also, the court was satisfied that the accused understood that the plea agreement waived his right to a trial and that he would not be able to appeal the sentence that the court was going to impose on him.

The accused was questioned about the circumstances of the time and manner of committing the criminal offence, and stated that the allegations in the indictment were true, i.e. that it was completely true that the critical event had taken place at the time and in the manner as stated in the indictment. The evidence on the basis of which his guilt was confirmed was not specifically substantiated, given that the judgment was rendered on the basis of the plea agreement, and in view of the following evidence: a crime scene investigation report, photo-documentation, the report on technical search of the site, the report on illegal disposal of waste of animal origin, a copy from the court register of the Municipal Court in Travnik, the records of the Ministry of Agriculture, Water Management and Forestry, the claim of the Municipality K., the claim of Š.K., a copy from the criminal records for G.S., and a large number of records of the examination of witnesses, as well as the records of interviews with the suspect, and the court undoubtedly established that there was sufficient evidence of the defendant's guilt for the crime he was charged with. When deciding on the sentence, the court considered as mitigating circumstances the defendant's confession of the criminal offence and the defendant's remorse, and the fact that the defendant is the father of four children, while the court did not find any aggravating circumstance. The judgment is final and binding.

2. Judgment of the Cantonal Court in Zenica, number: 39 0 K 052693 20 Kž, of 10 July 2020

The facts and circumstances of the case: The Cantonal Prosecutor's Office in Zenica filed an indictment against M.E., M.B. and M.S. for the criminal offense Malicious Mischief, punishable under Article 293 of the FBiH Criminal Code, and the criminal offence of Environmental Pollution, punishable under Article 303, paragraph 2, in conjunction with paragraph 1 of the FBiH Criminal Code, all in conjunction with Articles 31 and 54 of the FBiH Criminal Code, in concurrence. By the judgment of the Municipal Court in Tešanj, dated 28 February 2020, the defendants were acquitted of the charge that at the time, place and in the manner as described in detail in the operative part of the first-instance judgment, they had committed the criminal offense of Malicious Mischief, punishable under Article 293, paragraph 1, of the FBiH Criminal Code, and the criminal offence of Environmental Pollution, punishable under Article 303, paragraph 2, in conjunction with paragraph 1 of the FBiH Criminal Code, all in conjunction with Articles 31 and 54 of the FBiH Criminal Code. The cantonal prosecutor filed an appeal against the first-instance judgment on the ground of significant violations of the criminal procedure, wrongly or incompletely established factual situation and the violation of the Criminal Code. By the judgment of the Cantonal Court in Zenica of 10 July 2020, the appeal of the Cantonal Prosecutor's Office of the Zenica-Doboj Canton was dismissed and the judgment of the Municipal Court in Tešanj of 28 February 2020 was upheld.

Relevant regulations: The Criminal Code of the BiH Federation.

The criminal offense Environmental Pollution under Article 303 of the FBiH Criminal Code refers to polluting the air, soil, running, still or underground water, watercourses, the sea or the seafloor or

the sea underground by violating regulations or in some other way imperils the purity and quality of air, soil, water, watercourses or the sea, the seafloor or the sea underground, or the natural genetic harmony of biological diversity within a wider area and to the extent which can deteriorate living conditions for humans or animals or endanger the existence of forests, plants and other vegetation. The object of protection is a healthy and preserved environment in whole or in part. The offence has two basic forms of manifestation: a) polluting the air, water and soil, and b) imperilling the purity and quality of air, water and soil. The air, water and soil pollution is committed by a person who, by violating regulations, pollutes air, soil, running, still or underground water, watercourse, sea, seabed or sea underground. An act of commission is the pollution of air, water or soil. Imperilling the purity and quality of air, water and soil is committed by a person who threatens the purity and quality of air, soil, water, watercourses, the sea, the seabed and the sea underground or the natural genetic harmony of biological diversity within a wider area and to the extent which can deteriorate living conditions for humans or animals or endanger the existence of forests, plants and other vegetation within a wider area. The act of commission is any action or inaction that can cause a consequence - a concrete danger in the form of endangering the air, water or soil. The perpetrator in both forms can be any person, and in terms of guilt, intent and negligence are possible.

The criminal offense has two more serious forms, depending on the type of the serious consequence caused and the form of guilt with which the principal offense was committed: 1) when due to the act committed through negligence, a serious consequence is caused in the form of a serious physical injury caused to a person or large-scale property damage, there is the first more serious form for which, depending on the form of guilt of the principal criminal offence, a different punishment is prescribed, i.e. if the principal offense was premeditated, a punishment of imprisonment of one to ten years may be imposed, and if the principal offense was committed through negligence, a punishment of imprisonment of six months to five years may be imposed, and 2) when due to the act committed through negligence, a serious consequence is caused in the form of the death of one or more persons, there is another serious form for which a different punishment is prescribed depending on the form of guilt of the principal criminal offence, and if the principal offense was premeditated, a punishment of imprisonment of one to twelve years may be imposed, and if the principal offense was committed through negligence, a punishment of imprisonment of one to eight years may be imposed.

In this case, the first-instance court, on the basis of the pieces of evidence presented by the prosecution and the defence (which were evaluated individually and in relation to each other), found beyond a reasonable doubt that the acts of the defendants constitute the essential elements of criminal offenses and the factual and legal conclusions of the first-instance court were completely upheld by the second-instance court. Namely, the court concluded that none of the heard witnesses had seen the defendants cutting the pipes in the manner described in the indictment, nor had they witnessed the outlet from the manhole to the channel being shut off with concrete. In addition, the record of the performed inspection does not reveal the facts and circumstances that would lead to the conclusion that the defendants committed the criminal offense, because the record does not state anywhere that the plugging was done with concrete, but that it was done with foam. As the record does not contain any observations of the inspector about the matter for which he had been summoned, which the court could relate to the statements of the witnesses and draw the conclusion that the acts of cutting the pipes with concrete and closing the manhole water outlet were indeed committed, the second-instance court evaluated the conclusion of the court of first instance as correct that it was not proven that the defendants committed the criminal offense of Malicious Mischief, punishable under Article 293, paragraph 1, of the FBiH CC, in conjunction with Article 31 of the FBiH CC or the criminal offence of Environmental Pollution, punishable under Article 303, paragraph 2, in conjunction with paragraph 1 of the FBiH Criminal Code. In addition, the court assessed that the other pieces evidence presented during the proceedings, such as the internal physical and chemical analysis carried out by

utility company JP "Rad" d.d. Tešanj, at the request of the injured party, and the report by the Water Utility Inspector of Tešanj Municipality, from which the conclusion is drawn that septic tanks and waste water do not endanger the life and health of the population in Dobropolje, the hamlet of M., or the family of M. N. and B., do not, according to the court's assessment, point to the defendants as the perpetrators of the criminal offences, so the facts that constitute the elements of the criminal offences in question have not been proved by the presented evidence.

3. Judgment of the Municipal Court in Jajce, No. 128 0 K 035741 22 Kps, of 26 April 2022

The facts and circumstances of the case: The Cantonal Prosecutor's Office of the Central Bosnia Canton in Travnik issued on 30 December 2021 an indictment against M.Z. and N.H. for the criminal offense Endangering the Environment by Waste, which is punishable under Article 305, paragraph 1, of the FBiH Criminal Code, in conjunction with Article 31 of the FBiH Criminal Code, as well as against a legal entity for the criminal offense Endangering the Environment by Waste, punishable under Article 305, paragraph 1, in conjunction with Article 128, paragraph 1, sub-paragraph c) of the FBiH Criminal Code. According to the indictment, in the early November of 2018, M.Z. who was an official veterinarian performing veterinary health control in the legal entity, and N.H. who was the manager of that legal entity, acted contrary to the provisions of Article 43, paragraph 6 of the Law on Veterinary Medicine of BiH, and failed to ensure waste transport in the legally prescribed manner, but instead issued an order to the persons known to them and allowed the slaughterhouse waste in the amount of 10 m3 to be transported on 8 November 2018 and, contrary to the provisions of the Law on Veterinary Medicine of the FBiH and the Law on Food and General-Use Items Safety and Monitoring, disposed of at a site in the Municipality of Jajce, after which a strong organoleptic odour began to spread from that site. With such acts, they imperilled the quality of air, soil, water, watercourses in a wider area, to an extent that could worsen the living conditions of the people and animals, and threaten the existence of forests, plants or other vegetation in that area or in its immediate vicinity.

Relevant regulations: Veterinary Law ("Official Gazette of the FBiH", No. 46/00); Law on Food and General-Use Items Safety and Monitoring ("Official Gazette of the Central Bosnia Canton", No. 5/14); Criminal Code of the Federation of Bosnia and Herzegovina ("Official Gazette of the FBiH", No. 36/03, 21/04 - correction, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16 and 75/17), Criminal Procedure Code of the FBiH ("Official Gazette of the FBiH", No. 35/03, 56/03–correction, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 813, 59/14 and 74/20).

At the hearing held on 4 April 2022, the defendants admitted guilt for the criminal offense they were charged with in the upheld indictment and agreed with the proposed criminal sanction, and the court found that the guilt of the accused was also corroborated by the evidence presented by the prosecutor (a total of 39 pages).

Under Article 350, paragraph 1 of the Criminal Procedure Code of the FBiH, "For criminal offenses for which the law prescribes a prison sentence up to five years or a fine as the main sentence, for which the prosecutor has gathered enough evidence to provide grounds for the prosecutor's allegation that the suspect has committed the criminal offense, the prosecutor may request, in the indictment, from the court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced against the accused without holding the main hearing."

Since the prosecutor proposed in the indictment that a warrant for pronouncement of the sentence be issued, pursuant to Article 350, paragraph 1 of the FBiH Criminal Procedure Code, the court punished the accused M.N. and N.H. for the committed criminal offense of Endangering the Environment

with Waste from Article 305, Paragraph 1, in conjunction with Article 31 of the FBiH Criminal Code, imposing on each defendant a fine in the amount of 2,000.00 BAM, and on the legal person, for the same criminal offense, a fine in the amount of 5,000.00 BAM.

From the reasoning of the court decision: As the indictment proposed issuing a warrant for pronouncement of the sentence, and considering that the accused pleaded guilty and agreed to the criminal sanction proposed in the warrant, the court, having assessed that the acts of the accused satisfied all the essential characteristics of the said criminal offense, for which the defendants are found guilty, and that the purpose of punishment can be achieved with the imposed fines, issued a warrant for pronouncement of the sentence in accordance with the indictment. The evidence that confirms the guilt of the accused is enumerated in the decision, and includes the on-site investigation report, photo-documentation and a large number of acts of the competent institutions, animal passports, records of the slaughtering of livestock and the destruction of ear tags, as well as records of hearings of the witnesses and interrogation of the suspects.

4. Judgment of the Municipal Court in Lukavac No. 126 0 K 199130 19 K, of 17 May 2019

The facts and circumstances of the case: The Cantonal Prosecutor's Office of the Tuzla Canton issued an indictment on 25 December 2018 against the accused legal entity "G" and D.G. as a responsible person in the legal entity for the criminal offense Environmental Pollution, punishable under Article 303, paragraph 2 of the FBiH Criminal Code in conjunction with paragraph 1 of the FBiH Criminal Code. Accused D.G. was charged that, *acting as a responsible person, in his capacity as director general, he acted contrary to Article 18 of the FBiH Law on the Protection of the Environment ("Official Gazette of the FBiH", no. 33/03 and 38/09), which stipulates that 'during the management or use of hazardous substances, including their exploitation, i.e. extraction, storage, transport, production, manufacturing and application, or when dangerous technologies are applied, all necessary protective and safety measures must be taken to reduce the risk for the environment to the lowest level or to eliminate the possibility of such hazards in accordance with separate regulations', by failing to undertake any effective protective measures that would reduce the risk of environmental hazards to the lowest level, by failing to undertake any of the measures prescribed by the Decision of the Federation Ministry of the Environment and Tourism on the issuance of an environmental permit for G. dated 24 January 2012, with a validity period of 5 years and the Integrated Activity Plan of G., which was drawn up and offered by G., with measures and deadlines for the gradual reduction of emissions, i.e. pollution, and for compliance with the best available technology for plants and facilities for G. L., which is an integral part of the environmental permit, and by which G. was obliged to make investments in the amount of 111,000,000.00 BAM during the period of validity of the environmental permit of 5 (five) years, 2012-2017, in order to prevent or reduce the emissions of harmful pollutants into the environment, the defendant failed to make the mentioned investments in the reconstruction and acquisition of decrepit plants, and to completely exclude from use those that are sources of hazardous pollution, as well as to maintain them fully, as a result of which, due to the dilapidation of plants and equipment, as well as non-investment, there was a continuous release of hazardous substances into the running water in the riverbeds within the factory compound, and then also in the riverbeds of the S. river, i.e. a liquid acidic waste stream with corrosive properties from the category of hazardous waste, waste water with a very high chloride content that gives toxic properties, liquid toxic waste stream with a pronounced content of suspended particles that make it a thick suspension with a high content of fat and oil and tar residue polluted with heavy metals, with an extremely high content of cyanides, phenols, polychlorinated biphenyls, aromatic hydrocarbons and absorbable organic compounds, some of which, such as arsenic, cadmium, benzo(a)pyrene, are proven carcinogens, some of which have values from 500 to 155,480 times higher than the allowable limit values, then emissions into the air from stationary sources of pollution (chimney of the coke V battery boilers II and III in the Energana plant), mixtures of various*

gaseous pollutants, solid particles, hydrogen sulphide and heavy metal emissions, the soil pollution with heavy metals in and around the factory compound up to a depth of 30 cm, where heavy metals (chromium, cadmium, nickel and lead) accumulated from flue gases via wet and dry deposits, and such soil, according to the degree of pollution with heavy metals, may not be used for the production of food intended for human and animal consumption, and all of these substances have an extremely harmful effect on the human organism, as well as on the plant and animal communities that come into direct contact with them and which, by being releasing into the recipient, lead to endangering the ecosystem of the recipient as well as the biological disappearance of sensitive species of organisms, and the substances released into the air endanger the health of the general population of residents of the city of L. with the associated suburban settlements, because a coke battery is a plant that represents a constant source of highly toxic, poisonous, corrosive, harmful, carcinogenic and mutagenic compounds that endanger the health of workers and residents, in which way it caused danger to the health of people and animals, especially in the form of cancerous diseases of the respiratory system, diseases of the lung parenchyma as a tissue reaction to aerosol deposition of solid inorganic particles, cancer of the lungs, nasal cavity and paranasal sinuses, the effects on the development of the nervous system and harmful effects on the cognitive development and performance of children, and diseases of the digestive, renal and skin systems.

The criminal proceeding against the accused D.G. was separated and is still pending, and the representative of the accused legal entity, procurator M.F. concluded a plea agreement with the Prosecutor's Office, accepting a fine in the amount of 100,000.00 BAM and the obligation to pay the costs of the criminal proceedings in the amount of 97,678.82 BAM.

Relevant regulations: Law on the Protection of the Environment of the FBiH ("Official Gazette of the FBiH", No. 33/03, 38/09); Criminal Code of the Federation of Bosnia and Herzegovina ("Official Gazette of the FBiH", No. 36/03, 21/04, 69/04, 18/05, 4210, 42/11, 59/14, 76/14, 46/16 and 75/17); Regulation on conditions for discharge of waste water into natural recipients and public sewage systems ("Official Gazette of the FBiH", No. 101/15 and 1/16); Rulebook on limit values of hazardous and harmful materials for technological waste water.

From the reasoning of the decision: It was established that all the measurements carried out showed excessive discharges of harmful substances into the air and water, and the soil pollution, and that the harmful emissions are several thousand times higher than those allowable by the standards set in the Regulation on conditions for discharge of waste water into natural recipients and public sewage systems ("Official Gazette of the FBiH", No. 101/15 and 1/16) and the Rulebook on limit values of hazardous and harmful materials for technological waste water, and that the said harmful materials, which are listed in the reports, inspection records and expert witness report, are dangerous for human life and health, for animals and fauna and certain sensitive species. As a result, dangerous substances were released into the running water in the riverbeds around the factory, and then into the riverbed of the Spreča river, some of which, such as arsenic, cadmium, and benzo(a)pyrene, are proven carcinogens, some of which have values of 500 to 155,480 times higher than the allowable limit values. All of this directly affected the air, which continuously imperilled the health of the general population of the city of Lukavac and its suburbs. On the basis of the above, the court concluded that the actions of the accused legal entity contained all the essential features of the criminal offense Environmental Pollution punishable under Article 303, paragraph 2 in conjunction with paragraph 1 of the FBiH Criminal Code, all in conjunction with Article 128, sub-paragraph a) of the same law. When choosing the type and amount of the sanction, the court assessed all the circumstances affecting the severity of a sentence, so by accepting the fine proposed by the plea agreement, the court found that it was proportionate to the degree of liability of the legal entity and adequate to the current financial and economic situation of the accused legal entity, and that the specified fine can achieve the purpose of punishment prescribed by law.

It is important to point out that this is the first judgment rendered in Bosnia and Herzegovina for the criminal offense of environmental pollution. The procedure was conducted against the legal entity, the coke production factory, as the polluter, and its responsible person. Due to severe environmental incidents that occurred in the period February-June 2018, G.L. was issued a fine, and the then director general fled abroad before the indictment was filed and is still at large, which is the reason why the criminal proceedings against him have not yet been completed. The judgment is important because of the very seriously prepared and abundant evidence, which includes a large number of expert witness reports. However, it is necessary to point out that after the finality of this judgment, no proceeding was initiated for compensation for damage resulting from this criminal offence before the courts in Bosnia and Herzegovina.

On the basis of the presented case law, it can be stated, first of all, that the domestic substantive criminal legislation contains a special category of criminal offenses against the environment, agriculture and economic assets, which are, for the most part, regulated by the norms of a blanket nature, which are supplemented, during their application, by the legal norms contained in the laws on environmental protection, veterinary medicine, plant health protection, trade in poisons, forests, hunting, fishing, cultural and historical and natural heritage, etc.

While searching through the accessible case law in Bosnia and Herzegovina, we noticed an extremely low level of prosecution of environmental crimes and an insignificant number of judgments in this field.

Regarding the court decisions and the type of criminal sanctions, it should be noted that out of the analyzed four court decisions, three were the convictions and one was acquittal. Furthermore, all cases in which a guilty verdict was issued were concluded through the mechanism of simplified/alternative criminal proceedings, on the basis of concluded plea agreements or by a verdict accepting the proposal for the issuance of a warrant for pronouncement of the sentence.

Accordingly, the judgments do now reveal the way in which the court evaluated the evidence in relation to the existence of essential features of criminal offences and the guilt of the accused, except in the judgment of the Municipal Court in Lukavac, dated 17 May 2019, where, despite the plea agreement, the court evaluated the evidence.

An extremely low degree of repressive actions of the state can be observed when it comes to the type of criminal sanction in the specific cases, that is, a fine is the sanction that was imposed in all three cases in which the defendants were found guilty. When it comes to compensation for damage caused by incriminating behaviours, it is evident that damages were awarded in only one criminal judgment, in an extremely small, almost symbolic amount, given that those were the crimes with a particularly serious consequence.

In the end, the conclusion that can be drawn from the previously mentioned general observations would be that it is necessary to improve the level of criminal prosecution, which, undoubtedly, largely depends on the cantonal/district public prosecutor's offices, which, by filing indictments, fulfil the first prerequisites that are necessary for the creation and improvement of the case law in this field. Furthermore, it is necessary to analyze the penal policy and try to determine the real damage caused by the commission of criminal acts whenever possible in criminal proceedings, and to practice the awarding of damages, considering that, as already mentioned, it is about criminal offences with particularly serious consequences. Since legal entities and responsible persons in legal entities often appear as defendants, it is also important to evaluate this circumstance in the context of the adopted standards of protection through criminal law, because the liability of these persons is greater,

especially when it comes to activities that may pose a danger to life or health of humans and other living things.

5. Decision of the Cantonal Court in Široki Brijeg, No. 63 0 Pr 037620 21 Pžp, of 11 November 2022 (minor offence proceeding)

The public electric power company JP "EP HZHB" and the responsible person in the company are charged with minor offenses punishable under Article 116, paragraph 2, in conjunction with Article 68 of the FBiH Environmental Protection Law. By decision of the Municipal Court in Ljubuški, number 63 0 Pr 037620 19 Pr of 14 May 2021, they were declared liable and were given suspended sentences, namely the legal entity was fined 3,000.00 BAM and the responsible person was fined 500.00 BAM, while the sentence will not be enforced if the accused legal entity does not commit a new offence within 8 months of the date of finality of the decision.

The Federation Inspection Authority filed an appeal against this decision on account of the minor offence sanction, in which it stated that the purpose of punishment could not be achieved with the suspended sentence. The second-instance court concluded that the appeal was well-founded and that the court of first instance had given too much importance to the mitigating circumstances on the part of the defendants, while at the same time failed to give the appropriate importance to earlier punishments for similar offenses, so it imposed the minimum fines on the defendants, in the amount of 3,000.00 BAM on the legal entity, and 300.00 BAM on the responsible person in the accused legal entity.

Relevant regulations: Law on the Protection of the Environment ("Official Gazette of the FBiH", No. 33/03 and 38/09); Law on Minor Offenses ("Official Gazette of the FBiH", No. 63/14).

Under Article 116 of the Law on the Protection of the Environment, "A fine in the amount ranging between 3,000.00 BAM and 15,000.00 BAM shall be imposed for a minor offence on any legal person which:...builds or manages the operation of plants and facilities or carries out activities without an environmental permit or contrary to the environmental permit or regulations..... A fine in the amount between 300.00 BAM and 1,500.00 BAM for minor offences referred to in paragraph 1 of this Article shall be imposed on an individual and the responsible person in the legal entity".

From the reasoning of the decision: *"It follows from the case file that the first-instance court considered as a mitigating circumstance on the part of the defendants the fact that the deficiencies identified during the inspection had been removed, and it was established that the noise level was within the allowable limits, so the minor offence did not result in the harmful consequences for the environment, which is inappropriate also in the opinion of this court, given that it is a minor offence that is committed in the very act of non-fulfilment of measures set out in the environmental permit, i.e. regardless of the results of subsequent measurements. The above follows from the meaning of Article 4, paragraph 1, sub-paragraph 12 of the Law, from which it is clear that the intention of the legislator is to undertake all appropriate activities and measures aimed at preventing the risk of damage and environmental pollution, and only then at reducing or removing the damage caused and restoring the pre-damage state".*

It is evident from the analyzed decision that there are situations in which the legislator prescribes minor offence liability for activities which are hazardous for the environment, which arises from Article 116 of the FBiH Environmental Protection Law, while Article 68 of the same law regulates the issuing of an environmental permit as follows: *"The environmental permit aims at achieving a high level of environmental protection. The implementing regulation shall determine the plants and facilities that can be built and put into operation only if they have been issued an environmental permit in accordance*

with the provisions of this law and the Law on Administrative Procedure. If the issuing of other permits for plants and facilities is defined by special regulations, the permits shall be issued together/harmonized with the environmental permit. Authorities responsible for issuing other permits are included in the environmental permit issuing procedure. An environmental permit is obtained also in case of significant changes in the operation of plants and facilities. The competent ministry shall issue an environmental permit for a period of five years".

In this specific case, it is important to note that the court of second instance emphasized in its decision the importance of prevention, which the legislator insists on, and notes that the fact that there were no harmful consequences for the environment or that the omissions on the part of the defendants were subsequently removed cannot be considered as a mitigating circumstance, considering that in this way prevention is neglected, and the emphasis is placed only on the potential damage.

However, even though the second-instance court imposed (stricter) fines, it still opted for minimal ones, despite the established fact that both the individual and the legal entity are repeat offenders in committing similar offenses.

c. The protection of the environment through civil law

The protection of the environment through civil law is achieved through the regulations pertaining to the following issues: who can initiate court proceedings for compensation for damage resulting from endangering the environment, how the proceedings are initiated, what constitutes damage to the environment, how responsibility for damage is determined, who is compensated for damage and how such damage is reversed.

Causing damage, as one of the sources of obligations, and the general rules for compensation for damage are regulated by the Law on Obligations (hereinafter: LoO)[29]. However, when it comes to the environment and the removal of damage caused by the destruction or endangerment of the environment, the question arises as to whether the general rules on causing damage are sufficiently precise, clear and complete.

In environmental protection through civil law, we distinguish between preventive and repressive protection. Preventive protection refers to the prevention of damage to the environment and it can be achieved through the following complaints: 1. harmful emissions complaints, 2. trespassing complaints, and 3. environmental complaints. Repressive protection is achieved by filing a complaint seeking compensation for damage caused by environmental pollution.[30]

According to the rule set forth in Article 154, paragraph 1 of the LoO, the person who causes damage to another person is obliged to compensate that person for the damage, unless he proves that the damage occurred through no fault of his own (subjective responsibility for the damage). For the damage caused by things or activities that cause an increased risk of damage to the environment, the person is liable regardless of fault (Article 154, paragraph 2 of LoO - objective responsibility for damage). Liability for damage regardless of fault exists also in other cases provided for by law (paragraph 3).

In addition, under Article 156 of the LoO, anyone can request that another person remove a source of danger that threatens him or an unspecified number of persons with considerable damage, as well as refrain from activities that cause disturbance or danger of damage, if the occurrence

29 LoO of the BiH Federation, LoO of the Republika Srpska.

30 Dinka Šago, "Ekološka tužba kao instrument građanskopravne zaštite okoliša", Zbornik radova Pravnog fakulteta u Splitu, god. 50, 4/2013 (Dinka Šago, "Environmental Complaint as a Tool of Environmental Protection Through Civil Law", Journal of the Faculty of Law in Split, year 50, 4/2013).

of disturbance or damage cannot be prevented through appropriate measures (paragraph 1). At the request of the person concerned, the court will order that appropriate measures be taken to prevent damage or disturbance, or that the source of danger be removed, at the expense of the owner of the source of danger, if he fails to do so by himself (paragraph 2). If damage occurs in the performance of a generally useful activity for which a permit has been obtained from the competent authority, only compensation for damage that exceeds normal limits can be requested (paragraph 3). But, even in that case, it may be required to take socially justified measures to prevent the occurrence of damage or to reduce it (paragraph 4). The aforementioned legal provisions represent the legal basis for making an environmental complaint.

In addition to the general rules on compensation for damage that are set out in the LoO, liability for environmentally hazardous activities is also regulated by the Law on the Protection of the Environment of the FBiH in Chapter XII: *Financing of Environmental Damage and Liability for Environmental Damage (lex specialis)*. According to the provisions of Article 116 of the Law, the person who carries out an activity which is hazardous to the environment (operator) is responsible for the damage caused by that activity to the people, property and the environment (paragraph 1), and the possibility for the activity which is an environmental hazard to cause damage is assessed on the basis of the mode of operation of the facilities, types and concentrations of substances used or created by that activity, the use of genetically modified organisms or micro-organisms, meteorological conditions, as well as the time and place of occurrence of the damage (paragraph 2). It is especially prescribed that plants and facilities, such as mines, mineral oil deposits or refineries, gas supply and metal smelting plants, thermal power plants, coke ovens, plants for the production and processing of metals and minerals, chemical plants, plants for the treatment, thermal processing and storage of wastes, waste water treatment plants, slaughterhouses, dye houses and tanneries, paper production plants, dams and hydropower infrastructure, gas or oil pipelines and storages of liquid atmospheric gases pose a danger to the environment due to the way in which they are managed, due to the materials they use or the activities performed in them (paragraph 3). If several operators jointly carry out activities which are hazardous to the environment, they are jointly responsible (paragraph 4). The last operator is responsible for remediation measures at the sites where the plant and facility have suspended their operations or their activity is terminated (paragraph 5). The law defines exemptions from liability, the right of the injured party to information on the circumstances that have an impact on proving that an activity caused damage, compensation for environmental damage, and the establishment of the Environmental Protection Fund of the BiH Federation, which is established under a separate law, with the aim of improving the development of the economic organization favourable to the environment, preventing damage to the environment, and implementing measures to eliminate environmental damage; preservation of protected natural areas; motivating and improving the use of the best available techniques or alternative solutions favourable for environmental protection; and improvement and raising of public awareness of environmental protection and environmental research.

The Law on the Protection of the Environment of the Republika Srpska, in a special chapter (XI – Civil Liability for Damage Caused to the Environment), regulates the issue of liability for damage. Special provisions prescribe the obligation of legal entities and natural persons to ensure the protection of the environment in the performance of their activities, namely: by applying and enforcing regulations on environmental protection; sustainable use of natural resources, goods and energy; by introducing the latest energy technologies and using renewable natural resources; using products, processes, technologies and practices that are less harmful to the environment; by taking measures to prevent or eliminate the consequences of endangering and harming the environment, keeping records on the consumption of raw materials and energy, the release of polluting substances and energy, waste types, characteristics and

quantities; control of activities and operation of facilities that may pose a risk or cause danger to the environment and human health, and other measures in accordance with the law (Article 118, paragraph 1). Under the provision of Article 119, paragraph 1 of the same law, the polluter that causes environmental pollution is liable for the resulting damage according to the principle of objective liability, while both legal and natural persons who caused or allowed, through their unlawful or improper activities, the pollution of the environment are liable for the pollution of the environment (Article 119, paragraph 2). If the damage caused to the environment cannot be reversed with appropriate measures, the person who caused the damage pays the compensation equal to the value of the destroyed property (Article 120, paragraph 2). A responsible person who carries out an activity which is hazardous to the environment is obliged to provide funds for compensation for potential damage, as well as to provide a guarantee to ensure the payment of costs during and after the performance of the activity (Article 124, paragraphs 1 and 2), and activities that represent a significant risk for the people, property or the environment are designated as environmentally hazardous activities: management of sites that are hazardous to the environment, release of genetically modified organisms and release of micro-organisms. Exclusions of liability for damage are also prescribed.

Under Article 125 of the Law, every person who suffers damage is entitled to compensation for damage, which is exercised by filing a damage claim either directly with the responsible person in the plant or with the insurer of the responsible person that suffered the damage (paragraphs 1 and 2). If several polluters are responsible for the damage caused to the environment, while the share of individual polluters cannot be determined, they will bear the costs jointly (paragraph 3). The damage claim is considered as an urgent civil matter. The law also stipulates that the Republika Srpska reserves the right to compensation for damage if no other person has that right, and that the regulations pertaining to the obligations apply to all issues of liability for damage caused to the environment that are not specifically regulated by this law.

The Law on Environmental Protection of the Brčko District of Bosnia and Herzegovina regulates in Chapter XV – *Civil Liability for Environmental Damage* – liability for activities dangerous to the environment, remediation of environmental damage, burden of proof, exemptions from liability, access to information on responsible persons, rules for granting rights to non-governmental organizations and the duty of responsible persons to pay damages. Under Article 106 of the Law, if the damage caused to the environment cannot be remediated by appropriate measures, the person who caused the damage is responsible for paying the compensation in the amount equal to the value of the destroyed property. The amount of compensation should be close to the economic and ecological value of the destroyed environmental asset. If this value cannot be determined through common procedures, then the court should determine the amount of compensation. If the legal person caused the damage unintentionally or accidentally or if the payment of full damages would push it into poverty, the court can reduce the amount of compensation to a reasonable level. The Brčko District is obliged to pay damages if there are no other persons liable for the damage.

i. Harmful emissions complaint

Protection against harmful effects of emissions through property law is realized by an *actio negatoria* (action to deny). It may be filed by the owner, i.e. the assumed owner of the real estate, an authorized person and any other person who possesses the property on the basis of a right derived from the right of ownership (e.g. on the basis of rental or lease).

The lawsuit is filed against the owner or the person who possesses the property on the basis of a right derived from the right of ownership, which emanates immissions, although the natural or legal

persons that directly caused unlawful immissions or ordered the activities that caused disturbance by unlawful immissions or for the benefit of which disturbance was undertaken, while such persons did not distance themselves from it or they allowed it, have standing to be sued. The right to file this lawsuit is not time-barred, because it is a real action under the Property Law[31].

The Law on Property Rights explicitly stipulates in Article 76, paragraph 1 that nobody may use or benefit from property in such a way that smoke, unpleasant odours, soot, waste water, vibrations, noise etc. reach someone else's property by accident or by action of natural forces, if they are excessive with regard to the purpose that corresponds to that property in accordance with the place and time, or cause considerable damage, or are illicit under the provisions of a separate law (excessive indirect immissions).

Direct immissions are those in which the action is directed directly to certain solid, gaseous or liquid substances reaching the neighbouring land (e.g. throwing garbage, pouring water, etc.), and they are, as a rule, always prohibited. Indirect immissions are those in which the neighbour's land is accidentally or by action of natural forces exposed to disturbance originating from activities on the neighbouring land.

When deciding on the protection against harmful immissions in the context of the protection of the right to a healthy environment, the interpretation of the rules of a general property-right character for the purpose of implementing the principle of preventive nature of environmental protection depends on the cases in which the protection against immissions can be required, i.e. which immissions are considered illicit. The European Court expressed its opinion on this in its own decisions.

Namely, immissions are divided into normal, which are allowed, and excessive, which are not allowed. The basic criterion for differentiation is the habitualness of use, taking into account the nature and purpose of the property and local conditions.

Owners of property that is exposed to excessive indirect immissions can demand that the owner of the property from which they emanate remove the sources of the immissions and compensate for the damage they have caused, and refrain from doing anything on the property that causes excessive immissions in the future until such time as the owner has taken all the necessary measures to prevent it. The injured party may also demand compensation for the damage caused by the immissions and may demand that measures be taken to prevent or reduce excessive immissions in the future.

ii. Environmental complaint

Under Article 156 of the Law on Obligations, everyone may request another person to remove a source of hazard that might cause substantial damage to him or to other persons or to sustain from an activity which causes disturbance or might cause damage if disturbance or damage cannot be prevented with appropriate measures.

The position of legal theory and case law, under which the provision of Article 156 of the Law on Obligations represents the legal basis for filing an environmental complaint, was confirmed by the European Court of Human Rights in its Decision No. 3321/1 in the case of *Cokarić v. the Republic of Croatia,* dated 19 January 2006, stating that "the case law of the Supreme Court of the Republic of Croatia shows that compensation for environmental damage can be requested under the Law on Obligations in relation to a possible drop in the property value, and therefore, a civil lawsuit filed with

31 Article 76 of the FBiH Law on Property Rights and the RS Law on Property Rights.

a domestic court is an effective legal remedy that must be used before bringing the case before the European Court for Human Rights".[32]

An environmental complaint may be filed by every individual and every legal entity, which enables a large group of people to achieve environmental protection in this way, and this particularly applies to non-governmental organizations dealing with environmental protection. Any natural person or legal entity that is the owner of a source of hazard, i.e. that carries out an activity that poses a risk, has standing to be sued, which provides a wider protection against harmful effects on the environment, which also includes their prevention.

It is expected that the complaints are most frequently filed by civic associations or non-governmental organizations, although such complaints are not often found in Bosnia and Herzegovina's case law, even in cases where there is evidence in support of the existence of a source of hazard and damage.

One of the reasons could be that procedures related to the impact of industrial or other hazardous activities on the environment are expensive and time-consuming as they need complex and extensive expertise. The reasons can also be found in the lack of experience or insufficient education of lawyers who rarely engage in the complex process of proving crucial facts in such cases. In addition, in an environmental complaint, it is not enough to ask for the removal of the source of hazard that threatens to cause damage, but concrete measures must also be proposed to prevent damage or disturbance, which makes the procedure complex. Under Article 121 of the FBiH Law on the Protection of the Environment, an attempt should first be made to reverse the environmental damage using the appropriate measures, and only if this fails, the person who caused damage must compensate the injured party by paying the amount of money corresponding to the value of the destroyed property. If this value cannot be determined using the common economic methods, the court will determine the amount of damages according to the principle of equality, taking into account the necessary costs of remediation, the degree of individual responsibility and the benefit gained by causing damage to the environment.

The complaint referred to in Article 156 of the Law on Obligations is suitable for taking a preventive action against harmful effects on the environment as it can stop the initiation of activities that could harm the environment before the damage occurs. However, we should not ignore the fact that industrial development also brings significant advantages for a society, primarily economic, and in this regard, it is necessary to prevent the possible abuse of this legal mechanism in a situation when the harmful consequences do not seriously and permanently endanger human life and health.

In proceedings originating from an environmental damage claim, the plaintiff is obliged to prove to the court that the damage has already occurred and that the harmful consequences are still present or that the damage has not yet occurred but there is an imminent threat of damage. That danger must be objectified, i.e. it must be concrete and certain, not conditional or uncertain.

It is extremely important in these litigations to conduct an appropriate analysis on the basis of which it will be possible to determine the extent and severity of pollution, i.e. the existence of a legally relevant connection between a certain industrial or other hazardous activity and an increase in mortality or the number of diseased residents within a certain area. The expert evidence should also include the possibility of taking the appropriate measures to prevent pollution, because the plaintiff requests

32 Dinka Šago, „Ekološka tužba kao instrument građanskopravne zaštite okoliša", Zbornik radova Pravnog fakulteta u Splitu, god. 50, 4/2013. (Dinka Šago, "Environmental Complaint as a Tool of Environmental Protection Through Civil Law", Journal of the Faculty of Law in Split, year 50, 4/2013).

that the defendant take certain measures to prevent the occurrence of significant damage or remove the source of hazard, which the plaintiff can also do at his expense.

Where the source of hazard or disturbance arises in the performance of an activity of general utility for which permission has been obtained from the competent authority, socially justified measures may be requested to prevent the occurrence of, or reduce, damage and compensation for the so-called excessive damage, while it should be pointed out that the concept of general utility activity, socially justified measures and excessive damage are not precisely defined, so it is determined on a case-by-case basis whether an activity is of general utility and whether the proposed measure is socially justified, and whether the damage caused is excessive. That is why, when deciding, it is important to know the standards of proof created through case law and in the absence of domestic case law, to apply the European and international standards, as well as the principles of environmental law.

When it comes to excessive damage, the European Court of Human Rights presented in its decisions the legal positions according to which it should be the damage that exceeds allowable limits of damage resulting from the performance of certain activities. Therefore, it is a factual question of what is the usual limit that the injured party must endure, which is determined according to the circumstances of each individual case. In addition, it is important to point out that it is correct to evaluate these facts in the context, that is, in accordance with the present time and space, which is also the legal position of the European Court.

It is evident from one example mentioned in this paper[33] that the court determined as decisive facts the usual or allowable limits of noise in an urban area, the purpose of the space, the time of noise generation, and the intensity of noise that exceeds the usual limits.

iii. Action for damages /complaint seeking damage reversal

Another aspect of environmental protection through civil law refers to liability for environmental damage that has already occurred and to the repair of that damage, that is, the removal of pollution. In this case, compensation for the damage suffered, if all the legal prerequisites exist, can be awarded only for the types of damage prescribed by law. As the damage can be material and non-material, it is important to point out that Article 200, paragraph 1 of the Law on Obligations does not provide for non-material damage for mental pain suffered due to the negative impact of pollution.

Under the special environmental protection laws, the polluter is responsible for damage caused to the environment and the legal entities engaged in activities that may endanger the environment are liable for the damage caused by the performance of that activity to people, their property and the environment (the "Polluter Pays" principle). Compensation for damage is claimed under the general liability rules, by an individual claim or a class action, the rules on objective liability for damage apply, and the amount of compensation is determined according to the value of the damaged property. A responsible person that carries out an activity which is hazardous to the environment is obliged to provide funds for compensation for potential damage, and the state creates special funds for this purpose. In addition to persons engaged in activities that may endanger the environment, some of which are specified in the regulations, any individual or legal entity whose activity directly or indirectly caused pollution is liable for damage caused to the environment, which means that they can also be held accountable on the basis of fault, and this is in the case when the person performing any activity fails to remove the hazard or prevent the potentially resulting damage to the environment. According to the above, an action seeking reversal of damage caused by environmental pollution can

33 Decision of the Supreme Court of the BiH Federation, No. 070-0-Rev-07-000798 of 9 September 2008.

be a very effective legal remedy that has both a repressive and a preventive character.

The term "damage" is defined in the Law on Obligations as the reduction in value of someone's property (ordinary damage) and the prevention of its increase (lost profits), and as the infliction of physical or mental pain or fear on another person (Article 155). Damage is inflicted by some harmful action and for an action to constitute a basis for compensation for damage suffered, it must be contrary to valid legal regulations, because, as a rule, allowable actions do not give rise to liability.

The concept of environmental pollution is regulated by laws on the protection of the environment as "direct or indirect introduction of substances, vibrations, heat or noise into the air, water or soil caused by human activity that can be harmful to human health or the quality of the environment and can cause damage to material goods, or impair or interfere with the enjoyment and other legitimate uses of the environment"[34] or "direct or indirect introduction, as a result of human activity, of substances, vibrations, heat, odours or noise into the air, water or soil that may be harmful to human health or property or the quality of life in the environment, as well as any disruption of the amount of certain chemical or biological substances or physical properties in relation to natural values"[35]. The term "damage" in terms of liability for damage caused to the environment means a measurable harmful effect, i.e. a change in natural assets or a direct or indirect measurable disruption in the functioning of natural assets, and "damage in the environment" is any damage caused to protected plant and/or animal species and their habitats, waters, sea, soil and earth's rock crust[36].

Even in the event of an obligation arising from liability for damage caused by environmental pollution, the existence of a causal link between the resulting damage and the harmful action must be established, which, as a rule, must be proven, unless the damage originates from a hazardous thing or a hazardous activity, when the burden of proof that there is no causal link between the harmful act and the damage rests on the sued environmental polluter. Article 123, paragraph 2 of the Law on the Protection of the Environment of the Republika Srpska provides a basis for relief from liability for damage to the environment, if the responsible person proves that the appropriate protective measures required by the circumstances to prevent or mitigate the damage were implemented.

It often happens that damage to the environment is caused by the actions of several entities, which individually or jointly engage in risky activities (e.g. in the field of energy), that is, by the simultaneous action of several causes. In that case, the rules on joint liability of multiple polluters apply.[37]

The issue of determining the extent and value of damage caused to the environment is particularly important, because the harmful effects of pollution on human health are often delayed, immeasurable and long-lasting. For this reason, instead of compensation for damage as the usual civil sanction, the professional liability insurance or compensation from public funds can be used. Thus, all laws on environmental protection in Bosnia and Herzegovina provide for the establishment of an environmental protection fund, one of the goals of which is to finance the remediation of environmental damage[38]. When deciding on the amount of compensation, the rules of the law of obligations apply, according to which the damage is repaired by restitution in kind, i.e. by restoring the state as it was before the damage occurred, by covering the costs incurred by taking measures to restore the

34 Article 14, paragraph 1 z) of the RS Law on the Protection of the Environment.
35 FBiH Law on the Protection of the Environment, Article 4, sub-paragraph 21.
36 FBiH Law on the Protection of the Environment, Article 4, sub-paragraphs 45 and 46.
37 Article 116, paragraph 4 of the FBiH Law on the Protection of the Environment, Article 122, paragraph 3 of the RS Law on the Protection of the Environment.
38 Article 114, FBiH Law on the Protection of the Environment, Article 98, Law on the Protection of the Environment of the BD BiH, Article 117, the RS Law on the Protection of the Environment.

previous state of the environment or by monetary compensation due to the reduction in the value of the environment due to pollution.

Damage claims are statute-barred where statutory limitation periods are set by law (subjective three and objective five years).[39] Where the damage was caused by a criminal offence, and a longer statute of limitations is provided for criminal prosecution, the damage claim against the responsible person becomes statute-barred when the time specified for the statute of limitations for criminal prosecution expires.[40] Damage caused by environmental pollution can also be the result of continuous action, so, a longer period of time can pass between its occurrence and discovery, and it can occur successively, which can be important for the court decision on the beginning of the statutory limitation periods.

iv. Case law

1. Decision of the Supreme Court of the BiH Federation, number: 070-0-Rev-07-000798 of 9 September 2008
The subject-matter of the dispute: Protection against disturbance (harmful immissions)

Under paragraph one of the operative part of the first-instance judgment of the Municipal Court in Zenica, number: P-806/04, dated 21 March 2006, the plaintiff's claim was dismissed. With her claim, the plaintiff demanded that the principal defendant pay her the amount of 3,659.00 BAM in material damages, with statutory default interest. Under paragraph 2 of the first-instance judgment, the claim was dismissed by which the plaintiff requested that the court establish that the co-defendant had prevented her from exercising her ownership rights to the apartment in Z., street...number..., by carrying out activities in the bakery B. in Z. street..., number... by performing unforeseen actions (knocks, a creaking noise from inventory when moved around, noise of water, cleaning, conversation, etc.). During the night from 10:00 p.m. to 6:00 a.m. noise is produced in the plaintiff's apartment above the noise pollution levels, ranging up to 37 DBA; the thermal radiation emitted by the oven in the bakery, which is transmitted through the walls and ceilings to the floor and the walls in the plaintiff's apartment, increases the temperature beyond the allowable limit of comfort; the noise created by rain and melting snow passing through the gutter placed on the tin canopy installed at the level of the first floor next to the balcony door of the plaintiff's apartment; by opening the windows and doors in the bakery, unpleasant odours and smoke are emitted and they enter the plaintiff's apartment; so that the co-defendant be ordered to stop disturbing the plaintiff in the established or another way, as well as to stop such or similar disturbance in the future, and to pay the plaintiff the amount of 4,000.00 BAM in compensation for the damage suffered due to disturbance of ownership rights, with a statutory default interest.

By the second-instance judgment of the Cantonal Court in Zenica, number: 004-0-Gž-06-001145, dated 6 February 2007, the plaintiff's appeal was dismissed and the first-instance judgment was upheld.

By the decision of the Supreme Court of the BiH Federation, number: 070-0-Rev-07-000798, dated 9 September 2008, the plaintiff's extraordinary appeal was granted, the second-instance judgment was vacated and the case was remanded to the court of second instance for a new trial.

39 Article 376 of the Law on Obligations.
40 Article 377, paragraph 1 of the Law on Obligations.

From the reasoning of the Supreme Court's decision: The Court of first instance dismissed the aforementioned claim on the grounds that the co-defendant, as the owner of the bakery was issued a work permit by the competent administrative body, and therefore, there is no unlawfulness in his actions. The court of second instance accepted the legal reasoning of the court of first instance and upheld the decision to dismiss the second claim and established that it follows from the report on the expert opinion on the examination of work tools and equipment from December 2002 and the noise test report from 22 October 2002, which preceded the issuance of the work permit to the co-defendant, that smoke and noise immissions are within the allowable limits.

In this decision, the Supreme Court expressed the following legal position: *"For the correct application of substantive law with regard to the request for the property-rights-based protection against harmful immissions (noise, temperature, smoke and unpleasant odours), the decisive issue is not whether the emitter of harmful immissions has a work permit issued by the competent authority, but whether the emitter complied with the obligations arising from the provision of Article 9, paragraph 1 of the Law on Ownership Relations, i.e. whether those immissions exceed the usual limits with regard to the period and the purpose of the property and the local conditions, or which cause considerable damage".*

Regarding this decision, we can point to the previously adopted legal understanding of the Supreme Court of the BiH Federation, expressed in the judgment number: Rev-188/85 of 16 May 1985, which refers to the application of the legal rule from the amended paragraph 364 of the former General Civil Code and Article 156, paragraph 3 (analogous) of the Law on Obligations: "*The owner of a residential building has the right to compensation for damage only if the use of the building is made impossible or excessively difficult by the implementation of the regulatory plan*". In the reasoning of that decision, the Supreme Court concluded that in the urban (city) environment, restrictions arising from the implementation of the regulatory plan must be tolerated, unless it makes the use of one's own residential space impossible or significantly more difficult (analogous application of the legal rule from the amended paragraph 364 of the former General Civil Code, which prohibits immissions from the neighbouring land if, according to local circumstances, they exceed the limits of tolerance common in the place where that building is located and significantly complicate its use). As in this case the damage suffered by the plaintiff consisted only of reduced sunlight exposure of the building, difficult heating and increased humidity, the court assessed that the changes in housing conditions do not exceed the usual limits of tolerance in the modern environment of a large city (that it is not excessive damage is also indicated by the fact that, according to the expert witness's assessment, the market value of the plaintiff's residential building has decreased relatively little due to the aforementioned defects), which is why the requirements for compensation for damage on the above-mentioned basis have not been met.

2. Judgment of the Supreme Court of the BiH Federation, number: 58 0 Ps 125239 17 Rev of 10 September 2019
The subject-matter of the dispute: Compensation for damage suffered due to failure to meet the requirement from the Law on Freshwater Fishery

The claim filed by the Association of Sport Fishermen "Neretva 1933" Mostar was dismissed as unfounded by the first-instance judgment of the Municipal Court in Mostar, number: 58 0 Ps 125239 13 Ps, of 21 November 2014. The plaintiff requested that the defendant JP "EP HZ HB" d.d. be ordered to pay the plaintiff the amount of 563,740.00 BAM in damages for non-stocking, for the period 01 January 2010-31 December 2013, with a statutory default interest. The second-instance court dismissed the plaintiff's appeal and upheld the first-instance judgment. The Supreme Court of the BiH Federation delivered a judgment number: 58 0 Ps 125239 17 Rev of 10 September 2019 by which it upheld the plaintiff's extraordinary appeal, reversed the contested judgment, upheld the claim and

obligated the defendant to pay the plaintiff the principal debt in the amount of 563,740.00 BAM, with ancillary claims.

The following arises from the established factual situation: the defendant uses the potential and manages the Mostar Hydroelectric Power Plant, which was put into operation in 1987; the construction of the aforementioned hydroelectric power plant prevented the normal migration and natural reproduction of the fish in the Neretva River and its tributaries; the defendant did not stock the Neretva River during most of the period covered by the claim (with the exception of 2011 and 2012), considering that he was not obliged to do so; the plaintiff was granted by the competent cantonal ministry the right to carry out sport and recreational fishing in the Herzegovina-Neretva Canton, after which a contract providing the right to fish in the area of the Mostar fishing zone was concluded for a period of 10 years; the plaintiff created the Fishing Basis of the Mostar fishing zone and annual programmes for the improvement of fisheries in the Mostar fishing zone, which defined the management plan and the stocking plan of the Mostar fishing zone for the period in question.

The lower courts dismissed the plaintiff's claim, explaining that the defendant did not have the obligation to stock the Neretva River, on which the energy facility he is using is located, during the period in question.

From the reasoning of the judgment of the Supreme Court: The provisions of Article 35, paragraph 2 of the Law on Freshwater Fisheries ("Official Gazette of the FBiH", number 64/04) stipulate that the construction or reconstruction of a dam, water management or other facility or plant in the fishing water can be carried out provided that unhindered reproduction of the fish, the protection of the fish stock and the fish migration are secured, and under paragraph 3, if the free migration of the fish from paragraph 2 of this Article is not ensured, the investor, that is, another user of the dam, is obliged to compensate for the damage caused to the user of the fishing area in accordance with the compensation price list in fishery and to make a programme for the revitalization of the living communities and bring them to an appropriate state, while ensuring continuous stocking for the purpose of maintaining natural reproduction.

It is indisputable that the Mostar Hydroelectric Power Plant was put into operation in 1987, and it was established that no so-called return channels had been installed, thus preventing the normal migration and natural reproduction of the fish in the Neretva River and its tributaries (the conclusion by an expert witness). *In the circumstances when the defendant manages and uses the Mostar Hydroelectric Power Plant, where no return channels have been built for the unimpeded migration of the fish, he, as the user of the dam, has the obligation, in accordance with Article 35, paragraph 3 of the aforementioned law, to compensate the plaintiff, as a legal holder of the fishing right to use the fishing area in the Mostar fishing zone, to whom this right was granted for the purpose of sport-recreational fishing, due to the fact that the built dam without return channels prevents the normal migration and natural reproduction of the fish, in the amount needed to bring the fish stock to the state which would have existed if the dam had not been built, i.e. in the amount that the expert witnesses in the fields of agricultural and economics stated in their findings.*

An agriculture expert witness determined "that the construction of the Mostar Hydroelectric Power Plant prevented the movement and thus unhindered reproduction of the fish, which resulted in a decrease in the population of the fish species, which is why, in order to protect the fish stock, it is necessary to carry out continuous stocking of the Neretva river and its tributaries, which is carried out under the Fishery Bases and the Stocking Programmes", and an economics expert witness calculated, based on the data from the findings of the agriculture expert witness, the damage suffered by the plaintiff, separately for every year of the period covered by the claim.

Under such circumstances, the defendant has the obligation to compensate the plaintiff in the amount necessary to bring the fish stock, in the area used by the plaintiff, to the state that would have existed if the dam had not been built. It is wrong to link, as the lower courts do, the authority of the Federation Ministry for the implementation of the aforementioned Law with the request of the plaintiff, because the plaintiff's right to compensation for damage directly derives from the provisions of Article 35, paragraphs 2, 3 of the Law on Freshwater Fisheries and Articles 154 and 185 of the Law on Obligations.

In this case, the court decided the plaintiff's request that the defendant compensate him for the damage he suffers as a holder of the fishing right to use the fishing area in the Mostar fishing zone, due to the fact that the defendant, who uses the facility of the Mostar Hydroelectric Power Plant, did not ensure the normal migration and natural reproduction of the fish nor did he carry out continuous stocking of the Neretva River. The relevant provisions of the Law on Freshwater Fisheries of the FBiH stipulate the obligation of individuals and legal entities that carry out certain activities on watercourses and reservoirs to compensate the user of the fishing area for the damage caused in accordance with the compensation price list in fishery, and to adopt a programme for revitalization of the living communities and bring them to an appropriate state, while ensuring continuous stocking in order to maintain natural reproduction. Since the defendant, as the beneficiary of the dam, did not fulfil his legal obligation, the Supreme Court, deciding within the limits of the claim, applying the rules on compensation for damage from Article 154, paragraph 1 of the Law on Obligations (liability for damage based on fault) and Article 185 of the Law on Obligations (restoration of the previous state and monetary compensation) obliged the defendant to pay the sum of money, the amount of which is determined in the compensation price list.

By the decision of the Constitutional Court of BiH, number: AP 4515/19 17 of 21 April 2021, the appeal filed by JP "EP HZHB" d.d. Mostar was dismissed as unfounded. It was filed against the judgment of the Supreme Court of the BiH Federation, number: 58 0 Ps 125239 17 Rev of 10 September 2019. The Constitutional Court concluded that there was no violation of the appellant's right to a fair trial from Article II/3.(e) of the Constitution of Bosnia and Herzegovina, because the Supreme Court provided clear and precise reasons for the conclusion that the appellant, as the user of the dam where return channels were not built for unimpeded migration of the fish, is obliged, in accordance with the provisions of Article 35, paragraph 3 of the Law on Freshwater Fisheries, to compensate the plaintiff, as the legal holder of the fishing right to use the fishing area in the Mostar fishing zone, for the damage due to prevented migration and natural reproduction of the fish, in the amount required to bring the fish stock to the state which would have existed if the dam had not been built.

It can be seen from this decision that the court provided civil protection to the plaintiff by applying the rules governing compensation for environmental damage resulting from the failure to fulfil the legal obligation to preserve and provide conditions necessary for the long-term and sustainable use of the fish as a natural resource.

3. Judgment of the Supreme Court of the BiH Federation, number: 49 0 P 022262 17 Rev of 18 April 2019
The subject-matter of the dispute: Compensation for material damage due to impossibility of conducing contracted construction works during the construction of a mini hydroelectric power plant

By the first-instance judgment of the Municipal Court in Kiseljak, number: 49 0 P 022262 15 P 2, dated 15 July 2016, the claim of the plaintiff CP d.o.o. was dismissed. It was requested that the defendants (43 individuals) jointly pay the plaintiff the amount of 887,552.85 BAM in compensation for material damage, with ancillary claims. By the second-instance judgment of the Cantonal Court in

Novi Travnik, number: 49 0 P 022262 16 Gž of 22 February 2017, the plaintiff's appeal was dismissed as unfounded and the first-instance judgment was upheld.

By the judgment of the Supreme Court of the BiH Federation, number: 49 0 P 022262 17 Rev of 18 April 2019 the plaintiff's extraordinary appeal was dismissed.

The plaintiff claimed that due to the impossibility to carry out the contracted construction works during the construction of the mini hydroelectric power plant "Luke" on the Željeznica River, which he was prevented from carrying out by the defendants, he suffered material damage in the total amount of 887,552.85 BAM.

It follows from the established factual situation in this case that the plaintiff, on the basis of the Concession Contract for the design, construction, use and transfer of the mini hydroelectric power plant "Luke", dated 14 April 2006, which was concluded between the Federation Ministry of Forestry, Agriculture and Water Management in Travnik, as the owner that granted a concession, and its legal predecessor "J" d.o.o. from Busovača, in the capacity of a concessionaire, took over the rights and obligations related to the design, construction, use and transfer of the mini hydroelectric power plant "Luke" on the river Željeznica, in the area of the Municipality of Fojnica, in the manner and under the conditions established by that contract. It was further established that a group of citizens, among them some of the defendants, by holding public meetings at the disputed site and, in the period from September 8, 2012 to 22 October 2012, prevented the contractor "F.G." d.o.o. Tešanj, with whom the plaintiff had concluded a construction contract, from performing the contracted construction and craft works as part of the construction of the hydroelectric power plant. The amount of damage suffered by the plaintiff was determined by a financial expert witness in a total amount of 877,552.85 BAM, which consists of increased costs of the plaintiff in the period from 8 September 2012 to 1 September 2013 due to the impossibility of carrying out works in the amount of 119,655.30 BAM and lost profits from the electricity generation activity in the amount of 362,366.46 BAM in the same period, and accrued interest in the amount of 472,434.33 BAM, reduced by business expenses of the plaintiff in the amount of 81,630.97 BAM.

The first-instance court assessed that the plaintiff in this proceeding had not proven the existence of a cause-and-effect relationship between the actions of the defendants and the damage he suffered. Namely, by evaluating the evidence presented, that court could not determine with certainty that all the defendants had prevented the plaintiff from performing the works in the period from 8 September 2012 to 1 September 2013, because only a number of the named defendants were present at four protests, which were held in the period from 12 September 2012 to 22 October 2012. Accordingly, the first-instance court assessed that neither the increased costs nor the lost profit of the plaintiff could be linked to the actions of the defendants, so by applying the rules of the burden of proof from Article 126 of the Law on Civil Procedure, in conjunction with Article 123 of the Law on Civil Procedure, it dismissed the defendant's claim as unfounded.

The second-instance court found responsibility for the damage in question solely on the part of the plaintiff, who, as a concessionaire, was obliged to fulfil its obligations in accordance with the Concession Contract from 14 April 2006, concluded in accordance with the provisions of the then valid Law on Concessions. Namely, that court established that according to the provision of Article 51 of the Agreement, the plaintiff was obliged to notify the authority that granted a concession immediately upon learning of the impossibility or difficulty of using the concession, i.e. the Federation Ministry of Forestry, Water Management and Agriculture, which was obliged to take measures against a third party, either alone or through the competent authorities of the Canton or the Municipality of Fojnica, to ensure that the third party stops preventing or hindering the concessionaire from using the

concession. During this proceeding, it was established that the plaintiff did not act in accordance with the aforementioned contractual provision, but directly turned to the Fojnica Police Station to seek protection, and since the public gatherings in which some of the defendants participated had been approved by the Fojnica Police Station, the second-instance court found that there were no elements of unlawfulness in the actions of those defendants who had attended those gatherings, and that they could not be held responsible for the material damage suffered by the plaintiff due to the failure to implement the concluded concession contract.

From the reasoning of the Supreme Court judgment: *The provision of Article 3 of the FBiH Law on the Protection of the Environment prescribes that every person has the right to a healthy and ecologically acceptable environment as a fundamental human right, and the provision of Article 10 of the same law prescribes that environmental protection is realized through the participation of all citizens concerned. The same rights are guaranteed to the citizens of Bosnia and Herzegovina by the provisions of the Aarhus Convention, which our country signed in 2008, but also by those of the Constitution of BiH (right to life). This would mean that the citizens, in this case, the population of local communities, also had the right to express their opinion regarding the impact of the disputed works on their environment, in accordance with legal regulations. Since it follows from the established factual situation in this case that public gatherings of citizens organized for the purpose of expressing their opinions were organized and approved in advance by the competent authorities (the Police Station of Fojnica), no elements of unlawfulness in the actions of the defendants or the intention to cause damage to the plaintiff can be found in the actions of the defendants, which is why the conclusion of the lower courts that the plaintiff did not prove the responsibility of the defendants for the resulting damage is, in the opinion of this court, fully acceptable.*

In this case, the Supreme Court, referring to the provisions of the Law on Environmental Protection and the Aarhus Convention, expressed the understanding that the organized action of citizens expressing their attitude and opinion regarding the impact of a certain activity on their environment cannot contain elements of unlawfulness since the right to a healthy environment is guaranteed to citizens by law.

4. Decision of the Constitutional Court of Bosnia and Herzegovina, number: AP 823/20 of 3 November 2021
The subject-matter of the dispute: Compensation for material damage suffered due to landslide

The appeal filed by the Municipality of Kakanj against the judgment of the Cantonal Court in Zenica, number: 36 0 P 042062 19 Gž, dated 11 December 2019, and the judgment of the Municipal Court in Kakanj, number: 36 0 P 042062 17 P, dated 29 May 2019 was dismissed as unfounded.

Plaintiffs M.K. and M.D. initiated on September 28, 2017 a civil proceeding against the public power utility JP EP BiH d.d. Sarajevo - ZD RMU "Kakanj" d.o.o. Kakanj and the Municipality of Kakanj seeking compensation for the damage caused to the plaintiff's residential and auxiliary buildings by the landslide. The Municipal Court in Kakanj delivered a judgment number: 36 0 P 042062 17 P dated 29 May 2019 ordering the defendants to pay the plaintiffs the amount of 6,350.00 BAM, i.e. the amount of 3,175.00 BAM each, together with the statutory default interest as from the date of the occurrence of the damage (4 January 2015) in compensation for the damage caused to the residential building in Kakanj, while the claim was dismissed in the part in which the plaintiffs claimed the compensation in a total amount of 15,000.00 BAM, i.e. the amount of 7,500.00 BAM each.

The provision of Article 59 of the Law on Mining ("Official Gazette of the FBiH", number 26/10), *Remediation and Recultivation of the Effects of Mining Works on the Environment*, stipulates that after

obtaining a permit to suspend the exploitation of mineral raw materials from Article 37, paragraph 2 of this law, the company must carry out the final remediation of the land and recultivation of the environment and remove the consequences caused by the mining works, based on the remediation and recultivation project.

The company is obliged, under the project of mining works, to continuously carry out land remediation and technical recultivation of the areas devastated by mining works. Before carrying out the final remediation, the company is obliged to implement insurance measures in order to permanently eliminate the danger to life and health of the people and to property and the possible causes of environmental pollution, i.e. damage to buildings and the environment. The company has a duty to inform the Federation Ministry or the cantonal ministry responsible for mining, the relevant mining inspection and the Federation or cantonal environmental inspection authority of the performed actions referred to in paragraphs 1, 2 and 3 of this Article.

The Municipal Court found that the principal defendant is responsible for the damage caused to the plaintiff's residential building on the basis of Article 59 of the Law on Mining, because it was caused by the performance of his registered activity (mining). The responsibility of the co-defendant is based on the provisions of Article 172, paragraph 1 of the Law on Obligations (Liability of a Legal Entity for Damage Caused by its Body), due to its failure to take into account when issuing a construction permit and a certificate of occupancy for the plaintiff's residential building the dangers arising from an artificial landfill. Namely, it was determined through an expert opinion that the services of the co-defendant, which led the process of urbanizing that part of the terrain, overlooked the possibility of a part of the landfill collapsing, and as a result, when issuing the town planning and building permits, it was neglected that there was a tailings dump in the immediate vicinity of these buildings that had not been recultivated and that represented a potential danger to the plaintiff's buildings and lives in terms of landslides. According to the above, the first-instance court found that the co-defendant was responsible for the damage caused to the plaintiff's residential building, and, accordingly, obliged the co-defendant to compensate the plaintiff, and this judgment was upheld by the second-instance court.

The Constitutional Court concluded that there was no violation of the right to a fair trial from Article II/3.e) of the Constitution of Bosnia and Herzegovina and the right to property from Article II/3.k) of the Constitution of Bosnia and Herzegovina when the ordinary courts (in agreement) determined that the appellant and the principal defendant are jointly liable for the damage caused to the plaintiff's residential building, which they explained clearly enough in their decisions in a way that does not leave the impression of arbitrariness in the application of substantive law, as the appellant unfoundedly pointed to.

From the reasoning of the decision: *During the procedure before the Municipal Court, abundant evidence, including expert evidence, was presented and, having evaluated the evidence, the Court concluded, under Article 8 of the Law on Civil Procedure, that this particular case was a dispute on the basis of liability for damage under the provisions of the Law on Obligations (LoO), in which the plaintiffs claim that, in the area of the Bare site, in the immediate vicinity of which the plaintiff's facility was located, the principal defendant carried out works on the disposal of spoil mass, and was obliged to carry out, upon completion of those works, remediation of the environment and elimination of the effects of the mining works on the environment, which the principal defendant failed to do, and because of such behaviour, the plaintiffs suffered damage to their property. The Municipal Court also concluded that, in accordance with the above, the plaintiffs have the right to judicial protection despite the fact that they were participants in the administrative proceedings, in terms of the Law on the Protection and Rescue of People and Property from Natural and Other Disasters (hereinafter: the Protection Law), which governs the issue of rights and*

obligations of the Municipality in the event of a natural disaster. The plaintiffs have the right to prove the merits of the claim in court proceedings, so, accordingly, the objection regarding the lack of absolute jurisdiction and jurisdiction ratione materiae is unfounded.

The Constitutional Court observes that ordinary courts based the appellant's standing to be sued on objective responsibility (Article 172, paragraph 1 of the Law on Obligations) in conjunction with the failure of the appellant to issue a building permit and a certificate of occupancy for the plaintiff's residential building, without taking into account the dangers posed by the artificial landfill.

In this case, in addition to the liability of the polluter for the damage suffered by the plaintiffs due to the activation of the landslide, the liability of the competent authority, which failed in the process of issuing permits for the construction of buildings, to assess the impact of the long-term effects of waste deposits resulting from the performance of mining activities on the environment, was determined. The action of the defendant's (appellant's) authorities was assessed as a legally relevant cause of the damage suffered by the plaintiffs due to damage and reduction in the value of property (residential buildings).

In addition, the courts found that the plaintiffs have the right to judicial protection despite the fact that they were participants in administrative proceedings in terms of the Protection Law, which regulates the issue of the rights and obligations of the Municipality in the event of a natural disaster, which is why they dismissed the objections regarding the lack of absolute jurisdiction and jurisdiction ratione materiae as unfounded.

Since the plaintiffs proved to the court that the cause of the damage, i.e. the occurrence of the damage, was the activity of the principal defendant, and not force majeure, and that the expert witness established that the market value of the plaintiff's residential building is 21,300.00 BAM (the amount that the plaintiffs claimed in the litigation for the damage caused to the residential building), the court granted the plaintiff's claim and obliged the defendants to compensate them jointly for the damage suffered.

5. Judgment of the Municipal Court in Zenica, number: 43 0 P 137327 16 P, of 25 March 2022
The subject-matter of the dispute: Compensation for material and non-material damage caused by steelmaking activity

The claim filed by the plaintiffs H.E. and H.R. (individuals) requesting that the defendant "AM" d.o.o. Zenica (legal entity) compensate them for material and non-material damage caused to them by carrying out the activity of steel production was dismissed by the final judgment.

In this case, the court found that the plaintiffs proved the existence of a legal basis for compensation, that is, the causal link between the resulting damage and the defendant's failure to discharge all obligations from the integrated environmental permit, because the defendant did not implement all 195 environmental protection measures, while 152 measures that were implemented had the effect of reducing emissions by only 5–10%. However, the claim was dismissed in whole due to the fact that the plaintiffs had not provided evidence to prove the circumstance of reduction in the property's value due to the unusability of the fruit seedlings, which is why the court could not determine the exact amount of that damage, while regarding the claim for compensation for non-material damage, they did not even prove the existence of damage, because the medical expert witness - neuropsychiatrist - did not determine the degree of reduction in the plaintiffs' activity due to the effects of pollution on their mental health. The court assessed that "discomfort" due to the proximity of the defendant's

plant and harmful odours due to the performance of the defendant's activities did not lead to a decrease in life activity, since the plaintiffs did not seek medical help or the help of a psychologist and the expert witness did not establish the presence of a mental illness in the plaintiff.

It is evident from this case, which is currently before the Supreme Court of the BiH Federation, where the extraordinary review process is still pending, that there are claims for compensation for damage caused by environmental pollution before the courts, and that the court in this case made its decision by applying the rules on burden of proof.

Without entering into further analysis of this decision, because the proceedings before ordinary courts have not yet been concluded, it is important to point out that where the court determines that the actions of the injurer, in the specific case of the polluter, were unlawful, which is one of the requirements for the existence of his responsibility for damage, it is necessary to pay serious attention to the proof of the resulting harmful consequences, so that the court can determine both the scope and amount of the damage, because the court, according to Article 127 of the Law on Civil Procedure, can only decide at its own discretion in the case when the monetary amount of the damage cannot be determined or could only be determined with disproportionate difficulty.

That is why it is important to work on constant professional improvement of the deliberation and trial skills in litigations related to these and similar lawsuits, for all participants in the procedure, in order to bring the quality of the protection of the right to a healthy environment to the highest possible level.

6. Judgment of the Supreme Court of the Federation, number: 32 0 Ps 132251 12 Rev, of 26 December 2013
The subject-matter of the dispute: Payment of compensation for air pollution from thermal power plants

The defendant public power utility JP EP BiH d.d. Sarajevo, Subsidiary Thermal Power Plant "Tuzla", Tuzla, is obligated by the first-instance judgment of the Municipal Court in Tuzla, number: 032-0-PS-06-000 519, dated 3 July 2009, to pay the plaintiff, the Tuzla Canton - Ministry of Physical Planning and Environmental Protection, the debt for the fee for air pollution from thermal power facilities for 2002, 2003, 2004, 2005... and for the period January-March 2006 in the total amount of 7,105,110.56 BAM, with ancillary claims. By the second-instance judgment of the Cantonal Court in Tuzla, number: 03 0 Ps 002804 09 Pž, of 05/28/2012, the defendant's appeal was dismissed as unfounded and the first-instance judgment was upheld. By the judgment of the Supreme Court of the BiH Federation, number: 32 0 Ps 132251 12 Rev of 26 December 2013, the defendant's extraordinary appeal was dismissed.

Under the provisions of Article 74 of the Law on Environmental Protection of the Tuzla Canton ("Official Gazette of the Tuzla Canton", No. 6/98 and 15/00), funds to incentivize the environmental protection measures in the Canton are provided from the funds defined by that law and separate regulations and the Government of the Canton makes a decision on the amount of fee and the method of payment of the funds from paragraphs 1 and 2 of this Article, unless otherwise defined by other legal regulations.

It follows from the factual situation established in this case that the Tuzla Canton Government, at its session held on 20 November 2001, adopted the Decision on the amount of the fee for air pollution from thermal power facilities ("Official Gazette of the Tuzla Canton", No. 14/01), which establishes the obligation to pay the fee for air pollution from thermal power facilities and boiler plants with the

capacity above 0.5 MW and that the defendant, as the obliged party, partly fulfilled this obligation.

The court determined on the basis of an expert analysis of the data on the method and level of production and what production in megawatts means in consumption and air pollution in terms of gas, liquid fuel, coal and lignite, wood and wood waste in relation to the installed capacity in the use of these energy sources that the defendant used energy sources that are pollutants by their composition, which is why, according to the above-mentioned regulations, the defendant is an air polluter from thermal power plants. The financial expert witness determined the amount of compensation for air pollution on the basis of data obtained from the defendant's business books for the specified period, which refers to the produced electricity in megawatts and in proportion to the percentage of use of certain elements (brown coal and lignite) from Article 4 of the Decision, i.e. their mass fractions, and by multiplying the coefficients based on Article 3 of the Decision (0.50 lignite and 0.70 brown coal) for the specified period, in the total amount of 7,105,110.56 BAM.

From the reasoning of the Supreme Court's judgment: The lower courts correctly applied the substantive law rules from the Law on the Protection of the Environment of the Tuzla Canton, which defines that the environment represents the good of interest to the Federation of Bosnia and Herzegovina and the Canton and enjoys their special protection, and that environmental management is carried out under the conditions and in the manner prescribed by that Law and other laws. Starting from Articles 5 and 6 of the Law, which set the basic goals of environmental protection and the way to achieve those goals, applying the provisions of Chapter VII "Financing of Environmental Protection and Improvement" of the Law, and in particular Article 74, paragraphs 1 and 2, under which the material and other conditions for incentivizing environmental protection measures in the Canton are provided, among other things, from the environmental pollution fee (pollution of the soil, water, air) from paragraph 3 of that Article, the courts resolved the dispute in accordance with the law. Namely, the Government of the Canton makes a decision on the amount of fee and the method of payment of the funds from paragraphs 1 and 2 of this Article, unless this is defined by another legal regulation, and the funds (including the environmental pollution fee), according to the provisions of Article 75 of the Law, are paid to a special account of the Environmental Fund (Environmental Protection Fund), the Cantonal Government or other accounts in accordance with the applicable legal regulations. Therefore, in accordance with the above legal provisions, it is defined who has a duty to pay the fee for air pollution from thermal power plants, the method of setting the amount of the fee and the method of its payment. The defendant did not comply with this legal obligation for its subsidiary, which is the reason why the defendant is obliged to pay this fee in the amount as defined for the specified period, with the corresponding statutory default interest.

By its Decision AP 1170/14 of 15 February 2017, the BiH Constitutional Court dismissed as unfounded the application filed by the defendants against the judgment of the Supreme Court of the BiH Federation, number: 32 0 Ps 132251 12 Rev of 26 December 2013, the judgment of the Cantonal Court in Tuzla, number: 03 0 Ps 002804 09 Pž of 28 May 2012 and the judgment of the Municipal Court in Tuzla, number: 932-0-PS-06-000-519 of 3 July 2009, as it concluded that there was no violation of the right to a fair trial guaranteed under Article II/3.e) of the Constitution of Bosnia and Herzegovina or the right to property from Article II/3.k) of the Constitution of Bosnia and Herzegovina when the ordinary court obliged the appellant to pay the debt related to environmental pollution, which is based on the legal obligation that, among others, the appellant is subject to, whereby the court considered all her objections and provided a detailed and clear explanation that the Constitutional Court does not consider as arbitrary.

In this decision, the Constitutional Court made an observation that ordinary courts, assessing the correctness of the application of substantive law from Article 74 of the Tuzla Canton Law on the

Protection of the Environment, started from the facts established during the procedure, that this legal provision first established the legal basis for ensuring funds defined by this law and special regulations. The above-mentioned law was adopted by the Government of the Tuzla Canton by applying Article 5 of the Law on the Government of the Tuzla Canton, and the Government's Decision on the amount of fee for air pollution from thermal power plants, dated 20 November 2001. The Constitutional Court believes that, in the specific case, the ordinary courts, in their explanation of the disputed decisions, gave satisfactory, clear and complete reasons regarding the application of substantive and procedural law, and that in this way they respected the guarantees of the right to a fair trial.

From the reasoning of the decision of the Constitutional Court: The court bases the defendant's obligation to pay the sum of money from the operative part of the first-instance judgment on the Decision on the amount of fee for air pollution from thermal power plants, in which Article 1 of this Decision includes the appellant as a person obliged to pay the air pollution fee. Furthermore, the ordinary court applied Article 74 of the Law on the Protection of the Environment of the Tuzla Canton, under which the material and other requirements for incentivizing environmental protection measures in the Canton are provided from the funds defined by this law and special regulations, and the funds from paragraph 1 of this Article are provided, inter alia, from the environmental (soil, water, air) pollution fee, which the appellant is obliged to pay.

Furthermore, the Constitutional Court finds that the Cantonal Court concluded that the first-instance court arrived at the amount of money that the appellant should pay by evaluating the evidence, at its discretion, which the appellant cannot reasonably contest by its evaluation of the evidence presented in the appeal.

In this case, it is evident that the court made its decision on the request for payment of the fee for air pollution from thermal power plants after conducting three expert analyses, which clarified the decisive facts using expert knowledge. Often, in such and similar cases, very complex multidisciplinary expert analyses must be carried out so that the court can establish the fact of whether it is an environmental polluter, whether environmental pollution affects people's health and whether it creates other harmful effects, and the amount of fee which the appellant is therefore obliged to pay into the funds from which the environmental protection sector is financed.

7. Judgment of the Republika Srpska Supreme Court, number: 57 0 Ps 126393 20 Rev of 3 February 2022
The subject-matter of the dispute: Return of the paid fee for environmental pollution by packaging waste

The District Commercial Court in Banja Luka dismissed by the first-instance judgment, number: 57 0 Ps 126393 18 Ps, of 07/05/2019, the claim filed by plaintiff B.P. a.d. B., seeking to oblige the sued RS Fund to pay it the amount of 106,955.40 BAM for 2015 and the amount of 208,508.80 BAM for 2016 for unfoundedly paid fees for the pollution of the environment by packaging waste, plus legally set default interest. This judgment was upheld by the judgment of the Higher Commercial Court in Banja Luka, number: 57 0 Ps 126393 19 Pž, of 14 October 2020.

The Supreme Court of the Republika Srpska dismissed the plaintiff's extraordinary appeal by its judgment, number: 57 0 Ps 126393 20 Rev, of 02 March 2022.

It follows from the established factual situation in this case that the decision of the defendant's competent authority established that the plaintiff is the obliged party of the packaging and packaging waste management system and that the plaintiff is obliged to pay the fee for environmental

pollution by packaging waste for 2015 in the amount of 106,955.40 BAM, and for 2016 in the amount of 208,506.80 BAM, which the plaintiff did. After the Constitutional Court of the Republika Srpska established by its Decision No. U-72/16 of 20 December 2017 that Article 2 of the Law on Amendments to the Law on Waste Management, in the part in which Article 63v was added after Article 63, and the Decision on the coefficients for the environmental pollution by packaging waste for 2015 and 2016, were not in accordance with the Constitution of the Republika Srpska, the plaintiff filed a motion on 23 April 2018 with the defendant to amend an individual legal act. Since the plaintiff's motion was not decided, and the plaintiff did not file an appeal due to the "silence of administration", nor did the plaintiff file a petition for a renewal of proceedings in which the aforementioned decisions had been made, the defendant's decisions obliging the plaintiff to pay the fee for environmental pollution by packaging waste, reached on 25 April 2016 and 14 June 2017, remained in force even after the Constitutional Court of the Republika Srpska reached its Decision No. U-72/16.

From the reasoning of the judgment of the Supreme Court: *The defendant issued a decision ordering the plaintiff to pay the fee for environmental pollution by packaging waste for 2015 and 2016, in accordance with the authorization arising from the provisions of Articles 18, 19 and 20 of the Law on the Fund and Financing of the Environment of the Republika Srpska ("Official Gazette of the Republika Srpska", No. 117/11, 63/14 and 90/16), based on the provisions of Articles 63 and 63g, paragraph 3 of the Law on Waste Management ("Official Gazette of the Republika Srpska", No. 111/13, 106/15), which was in force when those decisions were reached, determining who is obliged to pay the fee and the method of its calculation, along with the application of Article 63v. of this law, which stipulates that the coefficient is defined by the Government in its separate regulation.*

.... The lower courts correctly concluded that the non-use of legal remedies prescribed by the Law on the Constitutional Court of the Republika Srpska does not automatically mean that the plaintiff cannot initiate civil proceedings before the competent court, because passive behaviour in relation to the motion to amend the decision or the petition for a renewal of proceedings is not the only legal avenue for a party that is harmed by an act that has been declared unconstitutional, given that the Law on the Constitutional Court of the Republika Srpska or other laws in this field do not prohibit the filing of a lawsuit in proceedings before an ordinary court.

However, in this particular case, the requirements for the application of Article 210 of the LoO are not met because the plaintiff's obligation to pay the fee for environmental pollution by packaging waste is the plaintiff's legal obligation and the amount of that obligation is defined by the defendant's decisions, which means that the legal basis still exists – the decisions on the basis of which the amount of the plaintiff's legal obligation was determined, and accordingly, there is no basis for determining that the legal basis on which the plaintiff's obligation is based ceased to exist. After all, after the Constitutional Court of the Republika Srpska issued on 20 December 2017 a Decision No. U-72/16, the Law on Amendments to the Law on Waste Management ("Official Gazette of the Republika Srpska", No. 16/18) also regulates the issue of the coefficients for the calculation of fee amounts. Due to the above, it cannot be said that the defendant unjustifiably enriched itself at the expense of the plaintiff by making and implementing the aforementioned decisions, when it is taken into account that the plaintiff's obligation to pay the fee for environmental pollution by packaging waste still represents its legal obligation.

The aforementioned judgment is an example of how an ordinary court decided on the obligation to pay (refund) the fee prescribed by the Law on Waste Management, one of the goals of which is to provide and ensure the conditions for waste management in a way that does not threaten human health and the environment. Namely, the court treated the obligation of a legal entity to pay the fee for environmental pollution by packaging waste as its legal obligation, bearing in mind the circumstance that the new regulation adopted after the above-mentioned decision of the Constitutional

Court regulates the issue of the coefficient for calculating that fee. Therefore, the Court concluded that there is no basis for returning the entire amount paid because there was no unjustified enrichment of the defendant.

d. The protection of the environment through administrative law

The laws on administrative procedure in Bosnia and Herzegovina regulate the procedures of administrative bodies when, in administrative matters, they decide, by directly applying regulations, on the rights, obligations or legal interests of citizens, legal entities or other parties.

The laws on administrative disputes in Bosnia and Herzegovina regulate the procedure in which the courts decide on the legality of acts by which administrative bodies with public powers decide on the rights and obligations of individuals and legal entities in individual administrative matters.

The environmental protection in Bosnia and Herzegovina is also achieved in procedures regulated by the aforementioned laws, in accordance with the principle of public participation and access to information, under which the public has the right to participate in procedures originating from the motions filed by operators and investors in accordance with the provisions of these laws or other regulations, the right to protection in administrative and judicial proceedings and the right to equal access to environmental information, regardless of gender, age, religious and racial background.

v. Access to environmental information

In Bosnia and Herzegovina, the right to access to environmental information is regulated by the laws on freedom of access to information and the laws on environmental protection.

Under the laws on freedom of access to information, every individual and every legal entity has the right to access to information held by a public authority, and every public authority has an obligation to release such information. The right of access to information can be limited only in the manner and under the conditions established by that law.

The laws on the environment regulate in more detail the access of individuals and organizations to information related to environmental protection, such as information and education about the environment, access to information about the environment and public participation in the field of environmental protection. The laws guarantee public access to information, participation in decision-making and protection of the rights in the field of environmental protection to every individual, regardless of his or her citizenship, nationality or place of residence, and to every legal entity, regardless of the place of its registered office.

The information supplied to the public after the initiation of an administrative procedure refers to the request for an environmental impact assessment, the application for an environmental permit and the proposed activity and technology of the applicant, the method of public participation (public discussion or public inspection), the place where the documentation can be inspected, the environmental information that is relevant to the proposed activities and the deadline for submitting remarks, proposals, opinions and questions.

vi. Public right to participation in decision-making

Under the Aarhus Convention and the present regulations protecting the right to a healthy environment, "the public" means one or more individuals or legal entities, as well as their

associations, organizations or groups. The "public concerned", for the purpose of these regulations, is the public that is endangered or is likely to be endangered or has an interest in making decisions in the field of the environment, and this includes non-governmental organizations that promote environmental protection, as well as other organizations that meet the requirements prescribed by national regulations. The definition of the public concerned in all three laws on the environment in Bosnia and Herzegovina is similar to that contained in the Aarhus Convention. According to that definition, the public concerned, in the process of exercising the right to a healthy environment, has the right, as a party, to initiate the process of reviewing the decision before the competent authority, i.e. before the court, in accordance with the law.

Public participation in the process of environmental impact assessment and issuance of an environmental permit includes public inspection and public hearing. Public inspection of the document allows the public concerned to submit remarks, information, analyses or opinions that they consider relevant for the approval of a certain activity, and the public hearing provides an appropriate forum for all interested parties to verbally present their opinions and discuss the issues they consider important for decision-making.

vii. Access to justice

Access to justice is exercised through judicial review of the legality of administrative acts. In administrative disputes, courts decide on the legality of acts by which administrative bodies and administration services in the municipalities and cities, that is, businesses and other companies, institutions and other legal entities with public powers, decide on the rights and obligations of individuals and legal entities in individual administrative matters.[41] In an administrative dispute, the court decides on lawsuits against final administrative acts, and the court decisions delivered in administrative disputes are binding.

When considering and evaluating the legality of administrative decisions, the courts have the authority to review the compliance of the decision with procedural and substantive laws. The legality of the disputed administrative act is examined within the limits of the request in the complaint, while the court is bound by the grounds for the complaint, and the dispute is resolved by a judgment by which the complaint may be upheld or dismissed as unfounded. If the complaint is upheld, the judgment annuls the administrative act and resolves the administrative matter, and in that case, the judgment replaces the annulled administrative act in whole.

The cases which are not decided by way of a judgment are decided by a court decision. If the court, in deciding the request in the complaint, determines that the contested administrative act is null and void, it will annul it, and if the reasons for nullity are also contained in the first-instance administrative act, it will annul that act as well. When the court annuls the contested administrative act or the contested first-instance act, the case is restored to the state before the annulled act was adopted.

If, according to the nature of the matter of the dispute, a new administrative act should be adopted instead of the annulled administrative act, the competent authority is obliged to adopt it without delay, and at the latest within 15 days from the date of delivery of the judgment. The competent authority is bound by the legal understanding of the court and the remarks of the court regarding the procedure.

An appeal may not be filed against a decision delivered in an administrative dispute. A party may submit a motion for an extraordinary review of the final decision of the cantonal/district court made in an administrative dispute to the Supreme Court of the BiH Federation or the

41 Article 1, the FBiH Law on Administrative Disputes ("Official Gazette of FBiH", No. 9/05)

Supreme Court of the Republika Srpska.

A motion for an extraordinary review of a court decision in an administrative dispute is filed with the Supreme Court of the Republika Srpska due to a violation of the law, another regulation or a general act or due to a violation of procedural regulations that could have an impact on the resolution of the matter. A party may file a motion with the Supreme Court of the Federation of BiH for an extraordinary review due to a violation of the Federation law or other regulation of the Federation or due to a violation of the rules of procedure of the Federation law that could have an impact on the resolution of the matter through the Cantonal Court. A party may file a motion with the Cantonal Court for an extraordinary review due to a violation of the cantonal law or other cantonal regulations or due to a violation of the rules of procedure of the Federation law that could have an impact on the resolution of the matter.

Within the framework of the protection of the environment through administrative law, the cases that are most often initiated before administrative bodies and courts in Bosnia and Herzegovina are related to inspection and environmental impact assessment.

a) Inspection

Inspection is a special type of administrative supervision, the main goal of which is to control the application of the law by citizens and legal entities, but also by the administrative authorities which examine the implementation of regulations by directly inspecting the work, operations and actions by individuals and legal entities and impose measures under their official mandates.

Inspection, according to the provisions of the Law on Inspections of the BiH Federation, is conducted by the administrative bodies responsible for performing inspections (the Federation Inspection Authority), except for inspections that are organized in a different way in accordance with special laws for the purpose of performing the inspection.

Inspection is carried out by inspectors, who are civil servants with special powers. In addition to the powers defined in the Law on Inspections, the inspector also has rights and obligations under special regulations, under which they can prohibit the performance of actions that may be hazardous to life, health, the environment and may cause material damage, and if in the course of the inspection the inspector determines that the violations noticed in the inspected entity have the characteristics of a criminal offense, the inspector is obliged to inform the competent prosecutor's office about this finding by way of a report. The inspection procedure in the BiH Federation is initiated ex officio and also at the written request by the Government of the BiH Federation, the Federation minister and the director of the Federation Inspection Authority. Also, legal entities and individuals can submit a written request to the competent inspectorate to perform an inspection, and the inspectorate is obliged to inform the applicant of the measures taken in writing, within 15 days from the completion of the inspection.

When it is determined by the inspection that the Law on the Protection of the Environment of the BiH Federation or a regulation made under that law has been violated, the inspector has the right and obligation to, without delay, order, by a decision, measures for their elimination and the deadline; issue a penalty charge notice in accordance with a special law; issue a decision prohibiting the operation of the plants and facilities of the legal entity that performs the activity if the identified irregularities are not eliminated within the set deadline; file a crime report to the competent authority for a criminal offense and take other measures and carry out other actions under its authority.

According to the provisions of the Law on the Protection of the Environment of the FBiH, the inspection of the implementation of the provisions of that law and other regulations made according to that law is carried out by inspectors of the Federation and cantonal inspection authorities. The inspection of compliance with the requirements set in the environmental permit and valid regulations is performed by the competent

inspection body at the level of authority of the institution that issued the permit, while for plants and facilities that do not require an environmental permit, the inspection is carried out by the local inspector responsible for environmental protection and town planning.

b) Environmental impact assessment

According to the European Union Environmental Impact Assessment Directive (2011/92/EU, amended by 2014/52/EU), major construction or development projects in the EU must first be assessed for their impact on the environment, which entails the submission of a report to the authority for project approval containing the following information: project description (location, design, size), potential significant effects, reasonable alternatives, project characteristics and/or measures to avoid, prevent, reduce or compensate for probable significant impacts on the environment. There are also strict rules on how the public is informed about the project and the fact that it is subject to assessment, and how those who may be at risk can participate in the decision-making process. The public must also be informed of the decision made, which can be contested in court.

The purpose of environmental impact assessment is to ensure that decision-makers, when granting permits within their authority, also consider the impact of future projects on the environment. The International Association for Impact Assessment (IAIA) defined environmental impact assessment[42] as "the process of identifying, predicting, evaluating and mitigating the bio-physical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made".

According to the provisions of the FBiH Law on the Protection of the Environment, the environmental impact assessment procedure carried out by the competent entity ministry is carried out in two phases: a preliminary environmental impact assessment and an environmental impact study.

An environmental impact study is an overall evaluation of the impact of an activity and/or its alternatives on the environment. Therefore, every environmental impact study must contain at least a description of the proposed project, a description of the environment that could be threatened by the project, a description of the possible significant effects of the project on the environment, a description of the measures to mitigate negative effects, a draft of basic alternatives, a non-technical summary and indications of possible difficulties in making the study.

The environmental impact study is prepared by the investor, in accordance with the decision on the preparation of the environmental impact study, and then submitted to the Federation Ministry for review and approval.

The public participation in the environmental impact assessment process means that the document must be posted on the Internet, and the competent ministry, together with the investor, compiles a list of interested parties to whom the document is delivered by post and gives a deadline of 30 days for feedback in writing. Then, a public hearing is scheduled at the location closest to the project, and the information about it is published at least 15 days earlier in the daily press.

The review of the environmental impact study implies that the employees of the Federation Ministry, who are responsible for certain projects, carry out the review of the study with the aim of confirming the legality of the procedure, as well as checking whether all the information and suggestions obtained during the public hearing are taken into account.

After that, the Federation Ministry may request the correction of the study and following the correction its final submission, may approve or reject the study if the expert opinion confirms that the project is not in accordance with the environmental protection plans at the state and/or local level, significant pollution of the environment by the project or non-compliance of

42 Environmental Impact Assessment – EIA

the project with the environmental obligations of the state under international law.

Encouraging the public and public participation are an essential part of the process of assessing the impact of a project on the environment and people, which should contribute to determining the need to carry out a full environmental impact assessment procedure, determining the scope of the environmental impact assessment, determining significance of the impact, ensuring a good knowledge of the project location and ensuring that the environmental impact assessment process is objective, reliable and complete. That is why, it is important to enable the involvement of all interested parties, competent authorities, citizens' associations and the public concerned, and especially the professional public, in the impact assessment procedure.

viii. Case law

Review of the case law related to access to information and public participation

1. Judgment of the Cantonal Court in Novi Travnik, number: 06 0 U 011939 18 U of 03 December 2018 - The complaint is upheld, the contested decision is vacated and the case remanded to the defendant for a new proceeding and decision-making.

The subject-matter of the administrative dispute is the decision of the Ministry of Physical Planning, Construction, Environmental Protection, Returns and Housing Affairs of the Central Bosnia Canton, under which the decision approving the construction of the mini hydroelectric power plant "K" on the K River, dated 10 July 2017, remained in effect.

The plaintiffs, members of the council of the Local Community K. and citizens living in that location contested the decision because it had been reached without taking into account the arguments of the plaintiff's attorney presented at the oral public hearing. They stated that in this case the decision on town planning permit is not legally binding, because it is the subject of another administrative dispute which the plaintiffs initiated because they were not allowed to participate in the process of issuing a town planning permit for the construction of a mini hydroelectric power plant. In addition, the plaintiffs initiated the procedure to contest the previously issued environmental permit dated 4 April 2008 and the procedure for determining the nullity of the Concession Agreement, concluded between the investor, "G" Vitez, and the defendant.

They emphasize that it is about 810 residents of the local community "K" who oppose the construction of a mini hydroelectric power plant because they want to save the river from destruction and that in this case the presence of a "broader public interest" in the construction of the facility in question has not been established. They claim that the "K" river is already subject to a concession agreement for a period of around 50 years, and that it is about the water supply that supplies drinking water to the Municipality of V. and the City of Z. As the water supply has already significantly reduced the amount of water in the "K" river, they believe that the water intake for the mini hydroelectric power plant would lead to the complete drying up of the river, especially when hydrological conditions are bad. The location is also disputed because it is a protected environment, which is why the plaintiffs submitted a request to the competent authority to change the physical plan, which would prevent any construction in that area.

Status of the case: The competent administrative body, by a final decision dated 10 July 2017, approved the investor "G" d.o.o. Vitez to begin the construction works on the mini hydroelectric power

plant "K I" with the installed capacity of 662 kW and the possible annual level of power generation of 3,050 GWh. The issuance of this approval for construction was preceded by the issuance of a decision approving a town planning permit, dated 14 January 2015, which became legally binding on 16 March 2015. After the motion for renewal of the procedure submitted by H.R., Z.I. and M. Đ. was dismissed in the administrative procedure, the plaintiffs initiated an administrative dispute. The court upheld the complaint and remanded the case for a new procedure. In the new procedure, an oral hearing was held, after which the defendant issued a contested decision, under which the building permit of 10 July 2017 remained in effect.

Regarding the participation of the residents of the local community "K" in the administrative procedure, under the contested decision, the town planning and technical requirements and the environmental permit prescribe measures to protect the environment and prohibit the harmful effects of the mini hydroelectric power plant during the construction and operation of the facility on the watercourse and real estate adjacent to the land on which the construction of a hydroelectric power plant is planned, and the plaintiffs did not participate in the process of issuing a construction permit because the land in question is located upstream, outside the inhabited place K., in the vicinity of which they have no property in their ownership.

Reasons of the court: The court concluded that regarding the plaintiffs, as interested parties, the provisions of Article 37, paragraph 11 of the Law on the Construction of the Central Bosnia Canton ("Official Gazette of SBK/KSB", number 10/14) were grossly violated. Under those provisions, "a party in the process of issuing a construction permit is considered to be a legal entity and/or an individual that filed an application initiating a procedure for the issuance of a construction permit, the owner or co-owner and the holder of other property rights on the property where construction is undertaken, and other persons who have a legal interest". Namely, the plaintiffs, who are not holders of the property rights, contrary to this legal provision, are not enabled - unlike other persons who have a legal interest in the protection of the rights that is substantively focused on the protection of the environment in which they live, and in whose area the construction of a mini hydroelectric power plant has been approved - to participate in the procedure and review the acts, actions and decision-making by the administrative body.

Although the plaintiffs in the renewed procedure, under the instructions from the earlier decision of the court, were given the opportunity by way of a notice to participate in the public hearing before the administrative body, the court judged that this was done in a formal way, without the real possibility of the plaintiffs to participate in the procedure. Namely, the court established that the defendant had formally scheduled and held an oral public hearing and made it possible for the parties and interested parties to participate in it, but after that, the defendant kept in force its earlier decision, without considering and explaining the proposals and evidence presented by the plaintiffs at the hearing, which referred to the absence of formal prerequisites for making the contested decision, which is why the contested decision does not meet the standard of a reasoned decision from Article 207 of the FBiH Law on Administrative Procedure.

The court assessed that the plaintiffs, as residents of the locality where the construction at issue is approved are the public concerned within the meaning of the Law on Construction of the Central Bosnia Canton ("Official Gazette of the Central Bosnia Canton", number 17/14) and that, therefore, they should have been continuously informed during the entire procedure, which is their right that is guaranteed also by the Aarhus Convention.

2. Judgment of the Cantonal Court in Sarajevo, number: 09 0 U 005987 10 of 11 March 2014 – The complaint is upheld, the contested decision of the defendant is vacated and the case remanded to the defendant for a new procedure.

The subject-matter of the lawsuit is the decision of the defendant, the Federation Ministry of the Environment and Tourism, dated 19 February 2010, to issue an environmental permit to public electric company JP "EP HZ HB" d.d. Mostar, "Neretva Basin" for the Rama Hydroelectric Power Plant, Municipality of Prozor-Rama, with the installed capacity of 160 MW.

The decision was issued because the authority which had issued the contested act failed to ensure the public participation in the procedure that preceded its adoption, and the public is really concerned because the construction of Hydroelectric Power Plant Rama in 1968 was followed by deterioration of the environment and general living conditions in the Prozor-Rama municipality (the settlements around the rim of Lake Ramsko do not yet receive drinking water or have a sewage system), which is why over 4,000 citizens signed a petition to maintain the elevation of Lake Ramsko in the summer months with the aim of reducing the negative impact of the reservoir on the environment. However, the authority that issued the contested act did not take into consideration any request sent by the Municipality of Prozor-Rama nor was a valid explanation provided in the contested decision as to why some of the requests of the parties concerned in this procedure were not accepted, i.e. why all of their requests and proposals were dismissed.

Established facts: The defendant received an application from JP "Elektroprivreda HZ HB" d.d. Mostar on 16 February 2009 for the issuance of an environmental permit for the Rama Hydroelectric Power Plant, which was submitted in accordance with Article 69, paragraph 1 of the Law on the Protection of the Environment. Pursuant to the obligation to obtain an environmental permit for the existing plants and facilities under Article 72 of the Law on the Protection of the Environment and the provisions of the Rulebook on the requirements for the submission of an application for the issuance of an environmental permit for plants and facilities that were issued permits after the entry into force of the Law on the Protection of the Environment, the operator prepared an activity plan with the measures and deadlines for gradual reduction of emissions, i.e. pollution, and for harmonization with the best available technology. The complete legal procedure for consideration and approval of the plan by the Federation Ministry of the Environment and Tourism was carried out, after which the plan was submitted to the departments responsible for the environment at the City Administration in the Municipality of Prozor-Rama and the Ministry of Trade, Tourism and Environmental Protection of the Herzegovina-Neretva Canton for the purpose of giving opinions and suggestions and posted on the website of the Federation Ministry of the Environment and Tourism. The municipality of Prozor-Rama submitted its suggestions and comments on the plan within the legally set deadline. The expert commission, appointed by the Federation Ministry of the Environment and Tourism, assessed that the prescribed measures and requirements established in the activity plan would achieve the appropriate level of environmental protection, prescribed by law. Taking into account the legitimate comments and suggestions of the interested parties, a decision was made to approve the activity plan for Hydroelectric Power Plant Rama, as a prerequisite for submitting an application for the issuance of an environmental permit, after which the environmental permit was issued, in accordance with Article 71 of the Law on the Protection of the Environment.

From the reasoning of the judgment: *The provision of Article 36 of the Law on the Protection of the Environment ("Official Gazette of the Federation of Bosnia and Herzegovina", number 33/03) prescribes public participation in decision-making on special activities, and so, paragraph 1 of Article 36 prescribes the procedures in which the competent ministry will ensure public participation: in the procedures for environmental impact assessment for projects; the procedures for issuing environmental permits for plants*

and facilities under its jurisdiction, and paragraph 2 of Article 36 prescribes that the provisions of paragraph 1 also apply to decisions on activities that are not specified in paragraph 1 of this Article but which may have a significant impact on the environment.

... Bearing in mind the above-mentioned provisions of the Law and the data from the case file, it follows that the defendant, as the competent ministry, failed to ensure the public participation in the procedure that preceded the issuance of the challenged decision, that is, the procedure for approving the final Activity Plan of 16 January 2009, as a prerequisite for obtaining an environmental permit, and neither the public nor the plaintiff was informed in the manner prescribed by Article 36 of the Law on the Protection of the Environment.

.....Namely, there is the data in the file that this final Activity Plan dated 16 January 2009 (which was a prerequisite for submitting an application for an environmental permit) was delivered to the entities concerned (as well as to the plaintiff); however, the defendant failed to act in accordance with the legal provision of Article 36 of the FBiH Law on the Protection of the Environment, because it did not ensure the public participation in the procedure that preceded its issuance, but only stated in the contested decision that the procedure for evaluation of the Activity Plan for the Hydroelectric Power Plant Rama involved also the entities concerned in such a way that the relevant Plan was submitted to the departments responsible for the environment at the City Administration of the Municipality of Prozor-Rama and the Ministry of Trade, Tourism and the Environmental Protection of the Herzegovina-Neretva Canton for their opinions and suggestions and that it was posted on the website of the Federation Ministry the Environment and Tourism. In relation to the above, the court points out that it is true that the Municipality of Prozor-Rama submitted its suggestions and comments on the Activity Plan for the Hydroelectric Power Plant Rama within the legally set deadline; however, the defendant did not take into account any request sent by the Municipality of Prozor-Rama in a letter dated 28 January 2010 nor did it provide a valid explanation in the contested decision as to why some of the requests of the parties concerned that were interested in this procedure were not respected, but instead, it was stated in the explanation of the decision that the prescribed measures and requirements established in the Activity Plan will achieve the appropriate, legally set level of environmental protection, and taking into account the comments and suggestions of the entities concerned (the decision on the approval of the Activity Plan for the Hydroelectric Power Plant Rama No. UPI/05-23-27//07-1 VI dated 16 January 2009, on the basis of which the defendant's decision was made on 19 February 2010), which indicates that the contested decision was not made in a proper and lawful manner.

3. Judgment of the Supreme Court of the BiH Federation, number: 09 0 U 031325 21 Uvp of 6 September 2022 – The application for an extraordinary review is granted, the decision of the Cantonal Court in Sarajevo, number: 09 0 U 031325 18 U of 24 September 2021, is reversed and the case remanded to the Cantonal Court

The case is related to the administrative matter of issuing an environmental permit. The application of the plaintiff, the Banja Luka Centre for the Environment, for an extraordinary review of the court decision was submitted against the decision of the Cantonal Court in Sarajevo, number: 09 0 U 031325 18 U, dated 24 September 2021, by which the plaintiff's complaint was rejected. The plaintiff participated in this procedure as a party concerned. The complaint had been filed against the contested decision of the defendant, the Federation Ministry of the Environment and Tourism, dated 14 March 2018, to issue an environmental permit to the investor for the construction of the mini hydroelectric power plant "D". The plaintiff contested the legality of the challenged decision due to the violation of the Federation law and the violation of the Federation rules of procedure, which could have had an impact on the resolution of the matter.

The application alleged that the plaintiff participated in the procedure that preceded the issuance of the contested decision, provided feedback and comments on the draft environmental impact assessment study for the plant and participated in the public hearing held on 1 May 2017 related to the drafting of that act. Despite this, the defendant did not deliver the contested decision to the plaintiff, and the plaintiff obtained it on 11 June 2018 under the request for access to information. The plaintiff invoked the provisions of Article 64, paragraph 3, Article 58, paragraph 3, as well as those of Article 30, paragraph 2, Article 31, paragraph 1, Article 37, paragraph 3, Article 39, paragraphs 1 and 2 of the Law on the Protection of the Environment of the BiH Federation, emphasizing that under these legal provisions, the plaintiff is entitled to have the status of a person concerned and has the right to initiate an administrative dispute against the contested decision of the defendant, as well as to be considered as a member of the public concerned within the meaning of the provision of Article 9, paragraph 2 of the Aarhus Convention, which BiH ratified and is therefore obliged to apply.

It follows from the reasoning of the contested decision of the first-instance court that the court assessed that according to the provisions of the Law on the Protection of the Environment, the application for the issuance of an environmental permit is submitted to the competent authorities and the entities concerned for opinions and suggestions (Article 58, paragraph 1) and that the term "party concerned" or "body concerned" means an individual or a legal entity or organization that lives or works in the area of impact or an area that is likely to be affected. Considering that the plaintiff's seat is in Banja Luka and the environmental permit was issued to the investor "I" d.o.o. Konjic, the first-instance court finds that the plaintiff does not have the status of the party concerned within the meaning of the law. As the plaintiff, according to the understanding of the first-instance court, is not entitled to this status even under the provisions of Article 15, paragraph 1 of the Law on Administrative Disputes, because the contested decision did not violate the right or legal interest of any of the members of the plaintiff - the first-instance court rejected the complaint.

The Supreme Court noted that the plaintiff is an association, i.e. a non-governmental organization, with its registered office in Banja Luka, and that its goals set in its statute include raising public awareness about the environment, the protection of the environment and improvement of the state of the environment, promotion and advocacy of the principles of sustainable development and advocacy of greater public participation in environmental decision-making. The plaintiff, as a non-governmental organization that deals with environmental protection issues, participated in the procedure that preceded the issuance of the contested decision.

Under the provision of Article 31, paragraph 1 of the Law on the Protection of the Environment, the public has access to information, has the possibility to participate in decision-making and is entitled to the protection of rights before administrative and judicial bodies in matters of environmental protection, without discrimination on grounds of citizenship, nationality or domicile and in the case of legal entities, without discrimination as to where they they have their registered seats or effective centres of activity, while it arises from the provisions of Article 54, paragraph 4, sub-paragraph 3 and Article 54.a, paragraph 2 of the Law on the Protection of the Environment that the discussion about the environmental impact assessment study is an integral part of the environmental permitting procedure.

Given that the plaintiff, as a representative of the public concerned, participated in the administrative environmental permitting procedure conducted by the defendant, in which the plaintiff submitted objections and presented relevant opinions on the impact of the plant on the environment, the plaintiff undoubtedly has the right to be informed of the decision made in that procedure as well as to contest it in an administrative dispute.

From the reasoning: *This broad possibility of participation in procedures related to decision-making on environmental issues, which the legislator gave to non-governmental organizations that promote environmental protection, is fully in accordance with the principles of the Aarhus Convention, ratified by Bosnia and Herzegovina, on access to information, public participation in decision-making and access to justice in environmental issues.*

In accordance with the provisions of Article 2 of the Law on Administrative Disputes, the right to initiate an administrative dispute is given to an individual or a legal entity that participated in the administrative procedure for the protection of their rights or legal interests (the person concerned). As the provisions of a separate law - the Law on Environmental Protection - stipulate that the plaintiff has a legal interest in participating in decision-making on environmental issues, this court considers that the first-instance court, by rejecting the plaintiff's complaint, violated the above-stated provisions of the substantive regulation, as well as the violation of the rules of the Federation law on procedure.

4. Judgment of the Mostar Cantonal Court, number 07 0 U 016140 18 U of 14 October 2022 – The complaint is upheld, the contested decision is vacated and the case remanded to the defendant, the Ministry of Agriculture, Forestry, and Water Management of the Herzegovina-Neretva Canton in Mostar.

The subject-matter of the administrative dispute is the decision denying the plaintiffs' motion (residents of village D., Prozor-Rama Municipality) to re-institute the proceedings against defendant - the Ministry of Agriculture, Forestry and Water Management of the Herzegovina-Neretva Canton in Mostar. The contested decision is the one rendered by the Mayor of the Prozor-Rama Municipality to, through a self-initiated offer, award a concession for the use of the river D. to the legal entity "E.E" d.o.o. Mostar to build a mini hydroelectric power plant that would generate electricity and have capacity below 5 MW. The plaintiffs contested the defendant's decision on the following grounds: erroneous application of the substantive law, disregard for the rules of proceedings in the administrative procedure that preceded the decision, and, in making a decision based on its free assessment, the authority in question went beyond the scope of its legal powers.

Status of the case: By the conclusion of the Mayor of the Prozor-Rama Municipality, the residents of the village D. (total of 51) were not recognized to be the parties in the administrative proceedings, and their motion to re-institute the proceedings, which concluded in a decision of the Mayor of the Prozor-Rama Municipality to grant a concession for the use of the watercourse of the river D, was denied. According to the reasoning of this decision, the locus standi of a party should not be determined solely by applying Article 48 of the Law on Administrative Procedure, where a party is defined as the person against whom or on whose motion the proceedings are being conducted, or as the person who has the right to participate in the procedure for the protection of their rights or legal interests, but also by applying a substantive regulation which gives rise to a right, obligation, or legal interest of a person. In this particular case, the applicable regulation is the Law on Concessions of the Herzegovina-Neretva Canton, which does not provide for the participation of third parties in the procedure, i.e. the obligation to seek the consent of local residents before awarding a concession. Therefore, according to the authority in question, the residents of the village of D. can defend their rights in other procedures (the procedure for issuing water acts, town planning permits, building permits, environmental permits, etc.). The motion to re-institute the proceedings, which concluded in a decision of the Mayor to grant a concession, was denied by the first-instance authority in a renewed procedure. The reasoning of this decision was that the motion was filed by an unauthorized person, given that the residents of village D. were not parties to the concession award procedure.

The defendant granted the plaintiff's appeal, annulling its previous conclusion and ordering the

first-instance authority to provide the case file so that the merits of the motion to re-institute the proceedings may be decided. Following an oral hearing on 12 November 2018, which was attended by representatives of the Prozor-Rama Municipality, the party concerned "E.E." Mostar, and the residents of village D, the defendant rendered a decision that is being contested in the administrative procedure. The decision denied the motion of residents of village D to re-institute the proceedings that concluded with the decision of 27 February 2007. The reasoning of this decision was that the concession award decision does not grant the right to build, and that the participation of the residents of village D. in the procedure preceding the concession award decision, would not, by applying the provisions of the Law on Concessions ("Official Gazette of the Herzegovina-Neretva Canton ", nos. 2/03 and 1/06), lead to a different resolution of the matter. The defendant cited the decision of the Supreme Court of BiH U-221/89 of 1 June 1989, in support of his argument that he did not issue a separate conclusion regarding the locus standi of the residents of village D., as such a conclusion can only be issued during the course of the procedure and up until the rendering of the first-instance decision.

Court decision: When it comes to the decision on the right of residents of village D. to participate in the concession award procedure for the construction of a mini hydroelectric power plant on the river D., the court found that the first-instance authority erred in holding that the residents lacked locus standi in the relevant administrative procedure.

Namely, a party is the person against whom or on whose motion the proceedings are conducted, or as the person who has the right to participate in the procedure for the protection of their rights or legal interests (Article 48 of the Law on Administrative Procedure). Therefore, the law gives persons concerned the opportunity to participate in the procedure to protect their rights or legal interests when the subject of the administrative procedure does not involve a direct decision on their right, but the outcome of the proceedings will affect their rights that are protected by law.

From the reasoning: *Article 3, paragraph 1 of the Law on Concessions of the Herzegovina-Neretva Canton stipulates, among other things, that the concession is granted provided that the rational use of natural resources or goods for general use (point 1) is guaranteed, as well as the protection and improvement of the environment in accordance with environmental protection regulations (point 3 of the same Article). Therefore, concessions by their very nature concern the environment, either directly or indirectly, especially since it is natural resources that are typically granted under concession, as in this specific case (river course).*

The laws that either directly or indirectly protect the environment enable the public to directly decide on environmental matters (Law on Nature Protection of the Herzegovina-Neretva Canton, "Official Gazette of the Herzegovina-Neretva Canton ", No. 3/05), the Law on Environmental Protection ("Official Gazette of the Herzegovina-Neretva Canton ", No. 7/04), as well as the international conventions such as the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

In the case in question, the concession was granted on the basis of a self-initiated offer from Article 30 of the Law on Concessions of the Herzegovina-Neretva Canton (there was no public call for the award of the concession), and it can be concluded that neither the public nor the residents of the village of D., who were interested in the outcome of that procedure since their rights and interests were decided, were involved in the offer or decision-making process.

As all of the above indicates that the defendant has failed to correctly decide the legal matter at hand, thereby violating the Law on Administrative Procedure that he was required to comply with. As a result,

the requirements outlined in Article 12, paragraph 1, point 2 are satisfied, and the contested decision ought to be vacated and the case remanded to the defendant for further proceedings, where the findings of this judgement will be considered before a correct decision based on law is rendered.

5. Judgment of the Sarajevo Cantonal Court number: 09 0 U 032504 18 of 16 July 2021 – The complaint is upheld, the contested decision vacated, and the case is remanded to the FBiH Ministry of Environment and Tourism.

The subject-matter of the administrative dispute is the decision of the FBiH Ministry of the Environment and Tourism, number UP I 05/2-23-11-51/15 FM of 12 July 2017, to issue an environmental permit to the investor "E.-V." d.o.o. Jablanica for the mini hydroelectric power plant "Z." with an installed capacity of 4.52 MW, Doljanka watercourse, Jablanica municipality.

Plaintiff Š.Dž. contests the decision made by the defendant the Federation Ministry of the Environment and Tourism, arguing that as a party concerned, he was not given the opportunity to participate in the decision-making process nor did he receive the decision through the regular procedure, which precluded him from seeking a legal remedy. The plaintiff declared that he was against the construction of the "Z" mini hydroelectric power plant on behalf of himself and all the citizens who signed a petition opposing its construction. This is because the river Doljanka is listed in the Herzegovina-Neretva Canton's Register of Natural Heritage, and no construction is permitted on it. It is a natural spawning ground for the fish, and the construction of a mini hydroelectric power plant there is forbidden by the Law on Freshwater Fisheries.

The defendant refuted the claims from the complaint where the plaintiff invoked the Law on Freedom of Access to Information, arguing that it was inapplicable in this case. He also argued that it was untrue that the public was not informed about the issuance of the environmental permit and that the contested decision violated the FBiH Law on Environmental Protection.

Established facts: A request for the issuance of an environmental permit for the mini hydroelectric power plant "Z" with an installed capacity of 4.52 MW on the Doljanka watercourse, Jablanica Municipality, along with all required documentation was made to the defendant by the company E.V. d.o.o. Jablanica in its capacity as an investor. The defendant sent a letter notifying the Municipality of Jablanica, the Local Community of Doljani in the Municipality of Jablanica, the Association of Citizens "Runolist" Doljani Jablanica, the Local Community of Jablanica II, the Municipality of Jablanica, the public company Adriatic Sea Watershed Agency and the Herzegovina-Neretva Canton's Ministry of Trade, Tourism and Environmental Protection about the intention to build a mini hydroelectric power plant, as well as that this facility belongs to the group of projects that are subject to ex-ante Environmental Impact Assessment based on the verification of the FBiH Ministry of the Environment and Tourism. An invitation to residents as well as to parties concerned and non-governmental organizations to participation in the public hearing on the Environmental Impact Assessment in the process of granting an environmental permit to the investor "E.V." d.o.o. Jablanica for the construction project of mini hydroelectric power plant "Z" was published in a daily newspaper. Participants were asked to submit their comments and suggestions within 30 days. A public hearing was held and the Minister of the FBiH Ministry of the Environment appointed an expert committee for the evaluation of the Environmental Impact Assessment for the mini hydroelectric power plant "Z" of the investor "E.V." and tasked it with verifying the data and evaluating the measures and activities determined in the Environmental Impact Assessment, and proposing conditions and measures to mitigate negative environmental impacts. After evaluating and analyzing the Environmental Impact Assessment in accordance with the relevant primary and secondary legislation, the expert committee submitted its report, in which it stated that the Environmental Impact Assessment should have further clarified

the protection measures after the possible cessation of operations of the facility, that ensuring an environmentally acceptable flow is the most important task of the future operator, that in the further phase of preparation of the design documentation, it is necessary to determine the values of acceptable water flow rates in the water intake profiles for which this has not been done, and that attention should be paid to the part of the facility that is a component of the Blidinje Nature Park, as a protected natural area, while taking into account all applicable regulations specifically protecting the environment in these areas during the construction and operation of the mini hydroelectric power plant in question. The expert committee further noted that while the Environmental Impact Assessment provided a detailed description of the Municipality of Jablanica wider territory, it omitted the information on its narrow area and, in particular, the population living in the close vicinity. Also, different data has been provided on the proximity of planned buildings, settlements, water intakes, pipelines, and machinery, the existence of agricultural land nearby, whether water from the watercourse in question is used for irrigation, mills, or other purposes, whether the local population uses water from watercourses intensively, and that obtaining permission from the institutions in charge of protected areas, material goods, and cultural and historic monuments is required for the construction and operation of the facility in question, among other things. The expert committee further noted that with the proposed additions the Environmental Impact Assessment can be deemed acceptable.

Court decision: The court found that there was a violation of Article 37, paragraph 4 of the Law on Environmental Protection as the competent ministry violated its duty to notify the public of the decision made during the application process for the issuance of an environmental permit The court found that in order for the residents, parties concerned, and non-governmental organizations—including the plaintiff—to be able to defend their legal rights and interests, the defendant had to deliver the contested decision to everyone to whom he had sent the letter informing them about the intention to build a mini hydroelectric power plant. The court also found that Articles 3 and 40 of the Law on Environmental Protection were violated as the defendant failed to act in a way that would have allowed for the right to a healthy environment. The court specifically noted that it was unclear from the reasoning of the contested decision whether the defendant complied with the Report and the numerous conclusions of the expert committee for the evaluation of the Environmental Impact Assessment for the facility in question, i.e., whether the comments made in the Report were actually incorporated into the Environmental Impact Assessment.

In this decision, the court also reflected on the possibility of applying the Law on Freedom of Access to Information in the FBiH in the specific case: *The defendant's argument that the Law on Freedom of Access to Information in the FBiH is inapplicable in this case is completely unfounded ("Official Gazette of the FBiH", nos. 32/01 and 6/11) as its provisions require the authority that disposes of the information to provide the applicant with it, and in this case it is the decision of the defendant dated 12 July 2017, all the more so because the defendant is required to do so by the aforementioned provision of the Law on Environmental Protection.*

6. Judgment of the Novi Travnik Cantonal Court, number 06 0 U 011940 18 U of 7 December 2018 – The complaint is upheld, the decision of the Ministry of Physical Planning, Construction, Environmental Protection, Returns and Housing Affairs of the Central Bosnia Canton is vacated and the case is remanded.

The plaintiffs, residents of the town of K. (members of the Community Council) claim that the contested decision was made without taking into account the remarks of the plaintiffs' attorney made at the public hearing about the negative impact of the construction of the mini hydroelectric power plant on the environment, particularly on the river K. and the living and working conditions of the residents of town K.

Established facts: The plaintiffs were not informed of the procedures for issuing construction permits, nor did they participate in those procedures. In the renewed proceedings, the defendant, acting in accordance with the court decision, scheduled and held an oral hearing thus enabling the parties and entities concerned to participate in the proceedings, but when making the contested decision, the defendant neglected to consider all reasonable options to protect the plaintiffs' rights, as well as all of the plaintiffs' objections, and it also failed to provide well-reasoned and comprehensive justifications for leaving the contested decision in effect.

Court decision: The persons having a legal interest in defending their right to a healthy environment may seek a review of the decision. The mere participation without meaningful inquiry is formalism. Public involvement and participation entail not only the imposition of certain independent and procedural regulations by the state, but also the duty on the side of state authorities to notify the relevant parties and facilitate their participation from the outset of the procedure.

In this decision, the Court referred to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) and maintained that participation in environmental decision-making procedures should not be interpreted only as a formal requirement that should be prescribed by procedural laws, but rather should represent an opportunity to essentially contribute to making a correct and lawful decision.

7. Judgment of the Supreme Court of the Republika Srpska, number 15 0 U 004076 19 Uvp of 3 March 2021 - Application for extraordinary review of the decisions of the Trebinje District Court, number 15 0 U 004076 18 U of 12 November 2018 and number 15 0 U 004076 18 U 2 of 12 November 2018 is granted, the decisions are set aside and the case remanded.

The complaint filed by the plaintiff against the contested act of the defendant granting the request of the company "B." d.o.o. Š for the issuance of a building permit for the construction of a mini hydroelectric power plant "G." on the river P was rejected by the first contested decision. The plaintiff's motion to postpone the enforcement of the disputed act was denied by the second contested decision. As the contested act did not infringe upon the plaintiff's rights or its immediate personal interest, the court held that the plaintiff lacked locus standi to file a complaint against it.

The Supreme Court concluded that the District Court that rendered the contested decision did not take into consideration the fact that the plaintiff is an association of citizens that promotes environmental protection, and that precisely on these grounds, at its request and based on the defendant's conclusion, the plaintiff was granted the status of an intervenor in the process of obtaining a permit for the construction of the HPP "G" on the river P, in accordance with Article 18 of the Rulebook on Issuance of Permits, that it was allowed to participate in the formal hearing and present objections in accordance with Article 19 of the Rulebook, and that the contested act by which its objections were rejected was delivered to it in accordance with Article 21, paragraph 4 of the Rulebook, with an instruction that it may be appealed against to the District Court in T.

From the reasoning of the decision: *The right to file a complaint in an administrative dispute is based on the Article 11, point h) of the Law on Nature Protection, Article 5, paragraphs 1 and 2 of the Law on Environmental Protection, and, in particular, Article 14, point k) of the Law on Environmental Protection, which prescribes that in proceedings of this type the associations and foundations that promote environmental protection will be considered to have an interest in participating in court proceedings. It also stems from the provisions of Articles 33 to 42 of the Law on Environmental Protection, which prescribe the right of representatives of the public concerned to contest decisions made in this type of administrative matters*

(Article 42), the provisions of which are fully in line with the provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter: the Aarhus Convention) ratified by Bosnia and Herzegovina. The aforementioned decision and the text of the Aarhus Convention were published in the "Official Gazette of Bosnia and Herzegovina - International Agreements", number 8/08, with which Bosnia and Herzegovina, and thus the Republika Srpska, committed to apply its provisions. Specifically, the Article 3, point 9 of the Aarhus Convention stipulates that within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

By acting in the described manner and rejecting the complaint, as well as the motion for postponement of enforcement of the contested act, where these proceedings form a legal unity in accordance with Article 14 of the Law on Administrative Disputes, the lower court acted illegally and violated the plaintiff's rights, which is why this this court finds that the grounds from Article 35, paragraph 2 of the Law on Administrative Disputes have been satisfied by the contested decisions, so based on Article 40, paragraphs 1 and 3 of the same law, the plaintiff's motion is granted, the decisions are vacated and the case is remanded to the lower court..

In the repeated proceedings, the lower court will rule on the merits of the complaint filed against the contested act and the plaintiff's motion to postpose the enforcement of the contested act, which also entails the participation of the company B. d.o.o. Š., which applied for a permit to build a mini hydroelectric power plant.

8. Judgment of the Supreme Court of the BiH Federation, number: 09 0 U 027237 19 Uvp of 11 November 2021 - Application for extraordinary review is granted, decision of the Sarajevo Cantonal Court number: 09 0 U 027237 16 U of 14 October 2019 is set aside and the case remanded.

The plaintiff's complaint against the decision of the defendant was rejected by the decision of the Sarajevo Cantonal Court number 09 0 U 027237 16 U of 14 October 2019. The plaintiff filed the complaint against the defendant's decision to issue a renewed environmental permit to public company JP Elektroprivreda BiH for the combustion plant - unit 7 of the Tuzla thermal power plant with an installed capacity of 450 MW, and establish the location for the plant and facilities, basic auxiliary raw materials and description of activities, measures to mitigate negative impacts during the construction phase of unit 7, measures to mitigate negative impacts during operation of unit 7, limit values for water and noise, monitoring system, emergency measures, reporting and permit validity period.

The plaintiff - the Association for the Protection and Improvement of the Environment, Nature and Health "EKOTIM" Sarajevo – filed an application for extraordinary review of the said decision for a violation of the FBiH law or other FBiH regulation or for a violation of the rules of the BiH law on procedure that could affect the decision in the matter, alleging that the court's conclusion that the plaintiff lacked the status of a person concerned is contravening Article 30, paragraph 2 and Article 31, paragraph 1 of the FBiH Law on Environmental Protection.

The stance taken by the Supreme Court is as follows: *The locus standi of a non-governmental organization that promotes environmental protection to contest the environmental permit for the combustion plant in the Thermal Power Plant stems from Article 30, paragraph 2 and Article 31, paragraph 1 of the Law on Environmental Protection of the BiH Federation, as well as from the Aarhus Convention, without any discrimination as to where it has its registered seat or an effective centre of its activities.*

The plaintiff's complaint against the decision of the defendant was rejected by the decision of the Sarajevo Cantonal Court number 09 0 U 027237 16 U of 14 October 2019. The plaintiff filed the complaint against the defendant's decision to issue a renewed environmental permit to public company JP Elektroprivreda BiH for the combustion plant - unit 7 of the Tuzla thermal power plant with an installed capacity of 450 MW, and establish the location for the plant and facilities, basic auxiliary raw materials and description of activities, measures to mitigate negative impacts during the construction phase of unit 7, measures to mitigate negative impacts during operation of unit 7, limit values for water and noise, monitoring system, emergency situation measures, reporting and permit validity period.

In its decision the court found that the plaintiff, an association with its registered seat in Sarajevo, lacked the status of a party concerned under the Law on Environmental Protection or Article 15, Paragraph 1 of the Law on Administrative Dispute as the complaint offered no evidence in support the plaintiff's claim that the contested decision violated the rights or legal interests of any of its members or that the plaintiff was authorized to file a complaint and represent any member in the administrative dispute based on his/her written authorization.

From the reasoning of the decision of the Supreme Court: *Article 30, paragraph 2 of the Law on Environmental Protection of the BiH Federation ("Official Gazette of FBiH", nos. 33/03 and 38/09) stipulates that, within the meaning of this law, the public concerned shall mean the public which has the interest in the environmental decision-making either because of the project site or nature of the given activity, the public which is under the impact or is likely to be under the impact of the planned activity in the environment and non-governmental organizations which promote the environmental protection, while Article 31, paragraph 1 of the same Law prescribes that the public has access to information, possibility to participate in the decision-making process and access to justice relative to environment protection issues without being discriminated against on grounds of citizenship, ethnicity or domicile, and in case of a legal entity, without discrimination as to where it has its registered seat or an effective centre of its activities.*

Additionally, Article 36 of the same law governs the participation of the public in decisions on special activities, and Article 37 the information provided upon request of the public concerned, where paragraph 4 expressly prescribes that the relevant ministry will inform the public about the decision in accordance with the Law on Administrative Procedure. Article 39, paragraph 1 stipulates that representatives of the public concerned that participated in the first-instance procedure shall have the right to file an appeal against the decision in whole or in part, and Article 64, paragraph 3, that the decision on the environmental permit shall be delivered to the applicant and the parties concerned referred to in Article 58, paragraph 3 of this law.

Also, Article 2, paragraph 5 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), ratified by Bosnia and Herzegovina, provides the following definition of the public: "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest; while public participation in making decisions on specific activities is governed by Article 6, paragraph 8 of the Convention reading that each Party shall ensure that in the decision due account is taken of the outcome of the public participation, and paragraph 9 reading that each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures and make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

Article 9 of the Aarhus Convention governing access to justice, where its paragraph stipulates that each Party shall, within the framework of its national legislation, ensure that members of the public concerned (a) having a sufficient interest or, alternatively, (b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition (b) have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6, and ...what constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

Article 9 in its paragraph 3 stipulates that in addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment, while paragraph 4 stipulates that in addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies.

Considering the previously mentioned provisions of the FBiH Law on Environmental Protection, it follows that the first instance court erred in determining whether the plaintiff was authorized to file a complaint in the administrative dispute in question by deriving the definition of a party concerned or authority from this law, which is not contained in the provisions of the law in the form above), because the locus standi of the plaintiff derives from the provisions of Article 30, paragraph 2 of the aforementioned law (which defines the public concerned is represented by non-governmental organizations that promote environmental protection), and pursuant to Article 31, paragraph, the public has the possibility to participate in the decision-making process and access to administrative and judicial bodies relative to environmental protection issues without being discriminated against on grounds of the place of registration or an effective centre of activities...

In addition to the above, the locus standi of the plaintiff as a non-governmental organization stems from the Aarhus Convention, which gives the status of public concerned to non-governmental organizations that promote environmental protection (Article 2, paragraph 5), and, in accordance with the provisions of Convention, with the objective of giving the public concerned wide access to justice within the scope of this Convention, the interest of any non-governmental organization meeting the requirements referred to in Article 2, paragraph 5 (promoting environmental protection), shall be deemed sufficient for the purpose of subparagraph (a) of Article 9, meaning that they have sufficient interest allowing them access to a review procedure before a court of law and/or another independent and impartial body established by law. These organizations are also deemed to have rights that may be impaired within the meaning of subparagraph (b) of Article 9, and in addition and without prejudice to all these requirements, in accordance with paragraph 3 of Article 9 of the Convention each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment, meaning that adequate and effective remedies shall be provided as provided for in paragraph 4.

This judgement is an example of a thorough legal analysis and application of the relevant provisions of an international treaty and national legislation harmonized with it, which governs the right to

public participation and the right to access to justice in environment protection cases in Bosnia and Herzegovina. It unequivocally demonstrates how seriously the courts in BiH take the rights guaranteed under the Aarhus Convention and the obligation undertaken by the State under Article 3, paragraph 1 of the Aarhus Convention, to take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the access-to-information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

9. Judgment of the Supreme Court of the Federation of Bosnia and Herzegovina, number 09 0 U 027991 20 Uvp of 9 December 2021 – Application for extraordinary review is granted, decision of the Sarajevo Cantonal Court number 09 0 U 027991 17 U of 18 May 2020 is set aside and the case remanded.

The plaintiff - the Association for the Protection and Improvement of the Environment, Nature and Health "EKOTIM" from Sarajevo – filed a complaint, but the court of first instance rejected it, finding that the plaintiff lacked the capacity as a party concerned within the meaning of Article 58 of the Law on Environmental Protection, which the plaintiff invoked in the complaint. According to the reasoning of the decision, the amended provision of Article 58, paragraphs 1 and 2 of the Law on Environmental Protection ("Official Gazette of BiH Federation", nos. 33/03 and 38/09) provides the following: "With regard to installations and facilities that are subject to the preliminary environmental impact assessment, the relevant Ministry shall send an application for issuance of the environmental permit along with the attachments to the relevant bodies and entities concerned in order to get their opinion and suggestions". In accordance with Article 4 of the Law, interested party/body means a natural or legal person or an organization which lives and operates in the impact area or the area likely to be under the impact.

As the plaintiff is a legal entity with its registered seat in Sarajevo, and the environmental permit is issued for the area of Banovići Municipality, the Cantonal Court concluded that the plaintiff cannot have the status of an interested party either on these, or on the grounds of Article 15, paragraph 1 of the Law on Administrative Disputes, which stipulates that an association of citizens may, with the written consent of its member, file a complaint on his/her behalf and litigate in an administrative dispute against an administrative act by which the right or legal interest of an individual member of the association has been violated if the association, according to its rules (Articles of Incorporation) is tasked with protecting certain rights and interests of its members, as the complaint offered no evidence in support the plaintiff's claim that the contested decision violated any such right or interest or that the plaintiff was authorized in writing by any of its members to file a complaint and represent them in the administrative dispute.

The stance taken by the Supreme Court is as follows: "*As a non-governmental organization, the association of citizens that promotes environmental protection has locus standi to file a complaint in an administrative dispute where environmental matters are decided, without any discrimination as to where it is registered.*"

From the reasoning of the decision: *Article 30, paragraph 2 of the Law on Environmental Protection of the BiH Federation ("Official Gazette of FBiH", no. 33/03 and 38/09) stipulates that, within the meaning of this law, the public concerned shall mean the public which has the interest in the environmental decision-making either because of the project site or nature of the given activity, the public which is under the impact or is likely to be under the impact of the planned activity in the environment and non-governmental organizations which promote the environmental protection, while Article 31, paragraph 1 of the same Law*

prescribes that the public has access to information, possibility to participate in the decision-making process and access to justice relative to environment protection issues without being discriminated against on grounds of citizenship, ethnicity or domicile, and in case of legal entities, without being discriminated against on grounds of the place of registration or an effective centre of activities.

Considering that, within the meaning of Article 30, paragraph 2 of the Law, the plaintiff has the capacity of a public concerned and is registered as an association of citizens that promotes environmental protection (Decision on registration of the FBiH Ministry of Justice number: 04-05-2- 159/02 of 13 February 2002), meaning that the plaintiff, within the meaning of Article 31, paragraph 1 of the Law, is authorized to participate in proceedings on environmental matters before administrative and judicial bodies, thus the plaintiff has locus standi to file a complaint in an administrative dispute, regardless of its place of registration.

In this case, the Supreme Court was determining the locus standi of the plaintiff - a legal entity registered as association of citizens that promotes environmental protection- based on the provisions of a lex specialis, which provides for the possibility for the public (concerned) to participate in the procedure for the protection of the rights stemming from that law, and stipulating that every person has the right to a healthy and ecologically sound environment as the fundamental constitutional right (Article 3 of the Law on Environmental Protection), without being discriminated against on grounds of the place of registration or centre of activities. Although it did not invoke the relevant provisions of the Aarhus Convention, the court interpreted the relevant provisions of domestic law precisely in accordance with its goals and the provision of Article 2, paragraph 5, which provides that non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest in participating in decision-making on environmental issues.

Overview of case law in the field of inspections

1. Decision of the Sarajevo Cantonal Court number: 09 0 U 032748 18 U of 20 January 2019 - The complaint is dismissed as unfounded

The subject-matter of the administrative dispute is the annulment of the decision issued by the FBiH Ministry of the Environment in the inspection procedure, ordering the plaintiff "G" (a legal entity) and the director (the plaintiff's responsible person) to suspend operations until they obtain an environmental permit and to identify and dispose of all types of waste within 30 days.

In the complaint initiating the administrative dispute, the plaintiff argued that the inspector's measure was excessively severe and could result in an even worse ecological disaster and enormous material damage.

Established facts: On 3 August 2018, there was an environmental incident when a tank carrying ammonia water exploded, releasing contaminated liquid. Following this incident, on 6 August 2018, the inspector issued the decision ordering the plaintiffs to take measures to dispose of hazardous and other types of waste. On 15 August 2018, an inspection was conducted during which the plaintiff was found to have failed to clean up and dispose of environmentally hazardous waste, properly dispose of polluted storm water, reduce air pollution, or construct a warehouse to hold hazardous waste until it was permanently disposed of by an authorized operator (as instructed through the environmental permit measures). The plaintiff also failed to present contracts with the operator for the management of hazardous waste during the inspection, and even within the time frame for comments on the record. The plaintiff did not even possess a valid environmental permit at the time of the inspection.

Court decision: The court found that the BiH Federation environmental protection inspector acted in accordance with Article 92 of the Law on Environmental Protection ("Official Gazette of FBiH", numbers 33/03 and 38/09), which stipulates that following the inspection oversight, the environmental protection inspector shall render the decision ordering the following: the deadline for removal of irregularities, implementation of necessary measures including the closure of installations and facilities in case the irregularities are not removed in the given deadline, and undertaking of restoration measures. As the operator (the plaintiff) did not possess a valid environmental permit at the time of the inspection, which is contrary to Article 68 of the Law on Environmental Protection, it did not reduce air pollution, or construct a warehouse to hold hazardous waste until it was permanently disposed of by an authorized operator, as ordered in the earlier environmental permit measures and also failed to present contracts with the operator for the management of hazardous waste to the inspector, the court concluded that the plaintiff improperly managed hazardous waste, therefore the requirements for making a decision under Article 92 of the Law on Environmental Protection were satisfied, so the first-instance authority acted correctly when it ordered the plaintiff to suspend work until obtaining an environmental permit.

The court also found that the first-instance authority correctly applied Article 34 of the Law on Air Protection ("Official Gazette of the FBiH", no. 33/03 and 4/10), which stipulates that in case the inspector finds that the action was not in line with this Law or requirements of the permit, the inspector shall render the decision ordering the operator to suspend activities which pose a direct threat to human health or environment until such threat is eliminated and the requirements of the permit satisfied. The court concluded that the plaintiff had not complied with the requirements of the law as it established that the operator had not taken any action to reduce the emission values of harmful pollutants from its emission sources to the permitted limit value until the day of the inspection, as instructed in the environmental permit that was in effect at the time and the decision of the second-instance authority, so the inspector acted correctly when ordering the operator to cease its operations, and so did the defendant when dismissing the plaintiff's appeal as unfounded.

The court also applied the provision of Article 51 of the Law on Environmental Protection stipulating that following the inspection oversight, the environmental protection inspector shall render the decision ordering the closure of facilities in the event that the activities cannot be carried out without harming nature and human health, the removal of the cause of the damage and the restoration of the environment to its original state.

It is also important to note that the plaintiff's claims that the closure of its operations harms the BiH Federation's economy, disrupts revenue streams in the Municipality of Lukavac, Tuzla Canton, the BiH Federation, and harms the owners and staff of "G" d.o.o. were noted by the court in this case. However, the court concluded that these claims cannot result in a different outcome in this administrative matter, precisely because *the plaintiff was required to act in accordance with the environmental permit from 2012 and make an effort not to pollute the environment or the air. Also, it is clear from the case file that the plaintiff disregarded all inspection orders and did not even have an environmental permit, which it cannot work without, and therefore the plaintiff's claims are unfounded.*

Regarding the aforementioned, it is important to stress that the professional community has long been interested in how economic activity relates to human rights because of the frequent human rights violations associated with the operations of businesses and other economic entities, especially after the United Nations Human Rights Council through its Resolution No. 17/4 of 16 June 2011, adopted the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Despite not being legally binding, this soft- law instrument significantly altered the way states and corporations interact with one another, and

contributed to the development of new standards and guidelines in the field of business and human rights, specifically corporate responsibility to respect human rights. (*Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. The responsibility to respect human rights requires that business enterprises avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur*.[43])

In view of the above-mentioned principles of international law, which state that the performance of the company's activities must not in any way jeopardize citizens' rights to a healthy environment-that is, their fundamental human right to life-we can conclude that the obligations governed by the Law on Environmental Protection and the Law on Air Protection for operators in this case were interpreted by the court in accordance with these principles. While there is no doubt that industrial activity benefits society in general by providing jobs for people and revenue for the government, this does not absolve society from the responsibility to strike a fair balance between the necessity of achieving these objectives and the potential harm they may cause to human rights.

2. Judgement of the Sarajevo Cantonal Court, number: 09 0 U 028878 17 U of 22 January 2019 – The complaint is upheld, the contested decision is set aside and the case remanded

The subject-matter of the administrative dispute is the decision of the FBiH Inspection Authority, ordering plaintiff JP "EP" d.d. Sarajevo to start and continuously implement appropriate short-term measures to reduce SO2 from emission sites until a permanent solution is found.

Relevant regulations: Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and the National Emission Reduction Plan (NERP) for Bosnia and Herzegovina, adopted on 30 December 2015, the Rulebook on limit values of air emissions from combustion plants and the Rulebook on pollutant emission monitoring.

Within the framework of the inspection conducted, the BiH Federation Inspection Authority issued a decision ordering the plaintiff to start and continuously implement appropriate short-term measures to reduce SO2 from emission sites until a permanent solution is found. The plaintiff contended that this decision contravened the one made when the plaintiff's environmental permit was renewed, in which the limit values of SO2 were not explicitly set, that these values were adopted with deadlines for reducing emissions in the NERP, and that the NERP emissions from point 7.1.1. allow for flexibility in implementation, while requiring that the funds be secured by the specified deadline. Thus, as an operator, the plaintiff is required to secure dedicated funds for the implementation of emission-reduction measures by 1 January 2018, and have a dynamic plan for their implementation by that date. By the end of the implementation period, all emissions must be below the levels specified by the Industrial Emissions Directive.

In this case, the court found that on 23 January 2017, the BiH Federation environmental protection inspector conducted an inspection and prepared minutes of the inspection, to which the inspected entity did not object. Following that, the plaintiff "EP," a legal entity, and director Dž. I., acting as the responsible party within the legal entity, were instructed by a decision of first-instance authority

43 UNITED NATIONS, (2011), Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework
(https:// www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf, 28 March 2019)

of 7 February 2017 to start and continuously implement appropriate short-term measures to reduce SO2 from emission sites until a permanent solution is found. This was to be done in the manner and within the time frame specified in points 2, 3, 4, 5 and 6 of the operative part of the decision. The defendant dismissed the appeal of the plaintiff "EP" against that decision as unfounded, stating in the reasoning that the decision of the FBiH Ministry of Environment and Tourism of 30 June 2016, on the basis of which the inspected entity was issued an environmental permit, was rendered on the basis of the Rulebook on limit values of air emissions from combustion plants ("Official Gazette of FBiH", number 3/13). Given this, along with the fact that Decisions D/2013/05/MC-EMC and D/2013/06 MC-EMC BiH of the Ministerial Council of the Energy Community established the obligation to harmonize the Rulebook on pollutant emissions monitoring and the Rulebook on limit values of air emissions from combustion plants ("Official Gazette of the FBiH", No. 9/14) by 31 December 2017, the defendant concluded that the first-instance authority made a legally valid decision based on fully and correctly established facts and correctly applied substantive law, based on which the defendant dismissed the plaintiff's appeal.

However, the court found that the contested decision was not adopted in accordance with Article 207, paragraph 2 of the Law on Administrative Procedure ("Official Gazette of the FBiH", numbers 2/98 and 48/99), which stipulates that, in addition to a brief presentation of the parties' requests, the reasoning should contain the following: the furnished evidence and the established facts, the reasons which were decisive in the assessment of evidence, the reasons due to which any of the parties' requests were not granted, the reasons which, given the established facts, lead to the decision as being given in the declaration of the decision and to the legal provisions on the basis of which the administrative matter was resolved. Also, the court found that the decision of the FBiH Ministry of Environment and Tourism, which forms an integral part of the case file, was missing from the defendant's case file. This suggests that the first-instance authority violated Article 235 of the Law on Administrative Procedure by failing to notify the defendant of the violation before resolving the administrative matter in question, which renders the contested decision unlawful.

The aforementioned decision of the court was rendered as a result of the established violation of procedural due process, which is why the court the refrained from evaluating the merits, or whether the substantive law was applied correctly. However, the court reiterated the requirements for formulating written reasoning for decisions rendered in administrative proceedings. This means that authorities are required by law to provide reasoning for their decision-making, including grounds for granting or denying a party's motion, which is one from the aspects of the right of access to the court from Article 6 of the European Convention.

Overview of case law in the field of environmental impact assessments

1. Judgment of the Sarajevo Cantonal Court, number: 09 0 U 031781 18 U of 10 June 2022 – The complaint is dismissed.

The case concerns the revocation of the decision of the Federation Ministry of the Environment and Tourism to approve the Environmental Impact Assessment (EIA) of the investor the Federation Roads Authority JP Ceste Federacije BiH for the construction of the Goražde bypass. The EIA identified the environmental impacts of the project and recommended mitigating measures as well as monitoring measures.

The plaintiffs - residents of the local community Hubjeri, K.N. and K.E., invoked in their complaint Article 48 of the Law on Administrative Procedure, claiming that the defendant – an administrative body- failed to notice or acknowledge the legal interest of local community residents in taking part

in the procedure. The defendant was required to enable the residents to participate in the procedure as parties so that they could protect their rights or legal interests. Instead, the procedure was carried out solely with the participation of those who requested it, in violation of Articles 8, 133, 140, and 141 of the Law on Administrative Procedure. In their complaint they further stated that the public, including residents of local community Hubjeri, Ms. E. K., and the Sava River Basin Agency, objected to the Environmental Assessment Study, the Waste Management Plan, and the granting of an environmental permit for the construction of the Goražde bypass. Also, a large number of citizens, residents of local community Hubjeri, submitted a petition opposing the construction of a section of the M20 main road around Goražde through the settlements K. and H. The residents of local community Hubjeri explained in detail why they believe that the construction of that portion of the road would violate their rights and interests and why they were seeking protection.

The defendant refuted the plaintiff's claims, asserting that the procedure was carried out both in line with the Law on Environmental Protection and the Law on Administrative Procedure, that the plaintiffs actively participated in every stage of the procedure, that the expert committee determined that the project would not significantly harm the environment, and that the decision took into account the input of the public concerned. Additionally, the defendant claimed that the Environmental Impact Assessment was positively evaluated not only by the procedure lead, but also by a number of impartial experts who submitted their own assessments of the Environmental Impact Assessment.

The defendant also received a response from the City of Goražde regarding the objections of the public to the Environmental Impact Assessment, stating that building the aforementioned bypass around Goražde is the top priority because it is the only way to move the M20 road out of the city centre, and that "H" is primarily a suburban local community where residents engage in intensive agricultural production. The City of Goražde believes that the objections raised by the public against the construction because of the harmful effects of exhaust gases and other environmental effects (noise, etc.) are unfounded because the bypass would only expand the road's connectivity through the local community. Also, it is not true that all citizens oppose the construction of the bypass because a new petition requesting its construction has been submitted to the Ministry, subject to the application of contemporary building standards for this kind of facility and protective measures against adverse effects.

Established facts: In the evaluation of the Environmental Impact Assessment, the defendant held a public hearing in accordance with Article 61 of the Law on Environmental Protection, stipulating that in the process of evaluating the Environmental Impact Assessment, the competent ministry informs and invites the public to discuss the EIA through the press available within the territory of the BiH Federation. Suggestions and comments from the public are submitted to the competent ministry within 30 days from the day of public notification. The public hearing was held in the premises of the City of Goražde, and the public invitation to public hearing was published in the daily newspaper "Avaz" on 9 January 2018. The documentation was available to the public for inspection at the defendant's premises and on its website, and the Environmental Impact Assessment was submitted for evaluation to the competent authorities in the field of environmental protection and entities concerned from the cited Article 58, paragraph 1 of the Law on Environmental Protection, stipulating that with regard to installations and facilities that are subject to the preliminary environmental impact assessment, the relevant Ministry shall send an application for issuance of the environmental permit along with the attachments to the relevant bodies and entities concerned in order to get their opinion and suggestions. The public hearing was attended by 28 participants, and minutes were taken on the evaluation of the Environmental Impact Assessment, the Environmental Management Plan and the Waste Management Plan in the process of issuing an environmental permit to the investor JP C.F. BiH for the construction of the Goražde bypass. The participants in public hearing were

given the opportunity to voice their opinions, suggestions, and comments. Following this, the City of Goražde responded to the residents of local community Hubjeri regarding the EIA in question. The investor JP C.F. BiH also responded to the public's objection regarding the environmental impact of the project and information regarding the status of the construction were provided. Following the procedure, the defendant noted that the investor JP C.F. BiH had amended the Environmental Impact Assessment, which essentially covered all of the sections specified in the cited Rulebook on plants and facilities that require an environmental impact assessment and those that may be constructed and operated only with an environmental permit.

Court decision: The court determined that Articles 61 and 62 of the Law on Environmental Protection clearly prescribe the procedure for receiving applications for environmental permits and the procedure for conducting an environmental impact assessment, as well as the evaluation of the Environmental Impact Assessment. It was also determined that the plaintiffs, as members of the public, actively participated in every step of the process. Also, those in attendance were given the opportunity to protect their rights and interests by declaring orally about all the facts in the procedure, and the parties concerned (including plaintiffs) also had the opportunity to declare both orally at the public hearing and in writing on all facts within 15 days of the public hearing date. It is not supported by any evidence that the plaintiffs asked to be recognized as parties in this case.

The court found that the defendant acted in accordance with the findings of the appointed Expert Committee, which particularly emphasized the objections submitted by the public concerned, as well as the objections that were made through the evaluation of the Environmental Impact Assessment, and concluded that the project would not significantly harm the environment. The Environmental Impact Assessment was also positively evaluated by a number of impartial experts who submitted their own objective evaluations of the EIA. This was followed by the conclusion that incorporated the opinion of the public concerned. The Environmental Impact Assessment Study for the construction of the bypass in question received feedback and recommendations from the Sava River Basin Agency as well. Particular attention will be given to any potential collision between the construction of the Goražde bypass and the planned works on the improvement of the Drina River bed in the area in question, which are carried out as part of the World Bank project and co-funded by this agency.

Taking into account the cited provisions of the Law, the Rulebook, and the information from the administrative case file, the court concluded that the defendant acted correctly within the meaning of Article 64 of the Law on Environmental Protection and approved the Environmental Impact Assessment for the investor JP Ceste Federacije BiH foe the construction of the Goražde bypass. The Environmental Impact Assessment identified the environmental impacts of the project and recommended mitigating measures as well as monitoring measures.

2. Judgment of the Sarajevo Cantonal Court, number: 09 0 U 033311 19 U of 25 June 2021 – The complaint is upheld, the contested decision vacated and the case remanded to the defendant

The case concerns the approval of the Environmental Impact Assessment (EIA), the amount of fees, charges and other costs incurred in the environmental impact assessment procedure.

The contested conclusion approved the Environmental Impact Assessment for the investor JP ACF-BiH for the construction of the highway on Corridor Vc, Konjic section (Ovčari loop) - Mostar North from km 228 + 000.00 to km 263 + 000.00 in accordance with the Physical Plan for the area of special importance for BiH Federation ""Corridor Vc Motorway " for a period of 20 years, published in the "Official Gazette of the FBiH", number 100/17.

The plaintiff claimed that the defendant made the disputed decision citing Article 64 of the Law on Environmental Protection ("Official Gazette of the FBiH", number 33/03) and Articles 23 and 24 of the Law on Amendments to the Law on Environmental Protection ("Official Gazette of the FBiH", number 39/09), but failed to take into account that Article 23 of the Law on Amendments to the Law on Environmental Protection amended Article 59 of the Law on Environmental Protection, which stipulates that the preparation of the EIA will be a subject to the conclusion, and not the approval, as the defendant decided in the contested decision. Consequently, the defendant should not approve the EIA, which essentially did not provide enough information about how the areas of the environment that will undoubtedly be impacted by the development and exploitation of the section in question, particularly the underground water, which are vital for all of the residents of Konjic, Jablanica, and Mostar, will be affected. This is corroborated by the finding of the Expert Committee that the EIA that was submitted primarily covered all the sections outlined in the Rulebook on installations and facilities that are subject to the environmental impact assessment, which can be constructed or operated only with an environmental permit, but it did not include the key statement that the proposed intervention in the area will negatively affect the environment. The dissenting opinion of the third member of the Expert Committee, who stated that the Supplemented EIA was "unacceptable," further supports the unacceptability of the approved study. The defendant failed to follow the procedure for the approval of the Study either, since the Supplemented EIA was not submitted to the Municipality of Jablanica, while also disregarding Article 53 of the FBiH Law on Principles of Local Self-Government and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which is ratified by the Decision of the BiH Presidency ("Official Gazette of BiH", number 8/08), as well as the provision of Article 4, paragraph 6 of the European Charter of Local Self-Government.

Court decision: The court found that the defendant made the contested decision citing Article 64, paragraph 1 of the Law on Environmental Protection, which stipulates that the EIA shall be approved by the decision of the relevant ministry within 30 days of the completion of the environmental impact assessment procedure. However, Article 24 of the Law on Amendments to the Law on Environmental Protection amended Article 64, Paragraph 1 of the said Law, by stipulating that the relevant ministry, will issue a decision on the environmental permit within 30 days of the EIA being submitted, based on the evaluation of the EIA, and paragraph 2 of that article stipulates, if the findings of the EIA indicate that the project would cause significant environmental pollution or significantly endanger the environment, no environmental permit will be granted. Paragraph 3 of that Article of the Law stipulates that the words: "decision approving or rejecting an environmental impact study" are replaced by the words "decision on environmental permit", from which it follows that the defendant violated the aforementioned provisions of the Law as, in the operative part of the contested decision, the defendant approved the EIA, even though the defendant was only required by the aforementioned legal provisions to evaluate the EIA and, on the basis of that evaluation, issue a decision on the environmental permit within 30 days of the EIA being submitted.

Taking into consideration Article 52, paragraph 3, in conjunction with Article 48 of the Law on Administrative Procedure, and the fact that the Municipality of Jablanica was a participant in the administrative procedure of adoption contested decision through the mayor of that municipality, the court dismissed the objections raised by the defendant claiming that the complaint was filed by an unauthorized person. Article 3, paragraph 1 of the Law on Environmental Protection stipulates that every person shall have the right to live in the environment suitable for health and well-being, hence the personal and general responsibility to protect and enhance the environment for the sake of well-being of present and future generations.

3. Judgment of the Sarajevo Cantonal Court number: 09 0 U 018236 13 U of 14 June 2016 – The complaint is upheld, the contested decision vacated and the case remanded to the defendant.

With the contested decision of the defendant, an environmental permit was issued to the investor "T" d.d. Ljubljana, Slovenia, for the mini hydroelectric power plant "D", with an installed capacity of 5.7 MW, Ljuta stream, Konjic municipality.

Plaintiffs M.K., P.L., A.V, S.M. and M.T., as members of the Association "Željezničar", the Mountaineering Association "Željezničar" Sarajevo and the Association of Citizens for the Protection of the Environment "Zeleni" from Konjic claim that the defendant issued an environmental permit without holding a public hearing in accordance with the law, considering that the hydroelectric power plants are planned to be constructed within the boundaries of the future National Park "Bjelašnica - Igman - Treskavica - Rakitnica Canyon", it is important to keep in mind that this area has been designated as an area of importance for the FBiH and the state of BiH in 2005 in order to preserve the its biological, landscape, and geomorphological values; that the consequences of the decision contained in the contested decision of the defendant are devastating for the living world, because the conditions for mountain streams and populations adapted to these conditions disappear, as well as for the landscape, because the limestone canyon as a distinctive feature of that area will be permanently destroyed, while the quality of the water will be significantly reduced , and there will be a permanent disruption of water streams, whereby the defendant went beyond the scope of its legal powers.

The complaint also stated that the parties to the proceedings were not given a 30-day deadline to submit suggestions and objections to the documentation that the FBiH Ministry had submitted to all entities concerned in order for them to participate in the proceedings. The plaintiffs further claimed that they were notified less than two days prior to the scheduled date of the public hearing for ten mini hydroelectric power plants in the river basin, despite the law requiring a minimum of 15-day notice. The plaintiffs attended the public hearing and argued that, due to the lengthy documentation (roughly 1500 pages long complex document) that was received with significant delay, they were unable to provide a quality opinion on the Environmental Impact Assessment in a timely manner. The Ministry disregarded this argument. The plaintiffs did, however, briefly presented their views, emphasizing their disagreement with the subsequently modified concept design that envisaged the construction of three high dams with water storage capacities. Many non-governmental organizations also provided feedback on the EIA, but these was not taken into consideration, which is a violation of Article 10 of the Law on Environmental Protection. The concessionaire focused on intensive negotiations with the local population, without the presence of other parties concerned, and insisted on written consent, and this interference with the procedure had a major impact on the course of the public hearing about the project. The alleged subsequent changes to the EIA and the concept design ordered by the expert committee were not made available to the public or the parties to the proceedings. The decision was made five months after the deadline specified by Article 71 of the FBiH Law on Environmental Protection, without providing an explanation as to why the procedure was not repeated. The section related to the monitoring provided for in the EIA of the contested decision covers only the technical segment of the process, which is unacceptable in light of Article 5 of the Law on Environmental Protection, which states that continuous monitoring of the state of biological diversity, human health, and the quality of the air, water, and soil in accordance with applicable standards is required for this development project to be sustainable.....Technical objections have also been raised against the concept design for which an environmental permit was granted. Additionally, there have been complaints that the contested decision disregarded a very important documents, such as the Strategy for the Protection of Biological Landscape Diversity of BiH, which is required by the United Nations Convention on Biological Diversity. In the area where the defendant

approved the construction of a hydroelectric power project, there is a distinct ecosystem of flora and fauna that is exclusive to this area. Owing to the aforementioned factors, the plaintiffs contend that the implementation of the contested decision could seriously jeopardize the environment because it conflicts with both the international environmental protection obligations of the State and Article 64 of the Law on Environmental Protection, as well as the FBiH Environmental Protection Strategy.

From the reasoning: *The contested decision violated the right of the plaintiff under Article 3 of the lex specials Law on Environmental Protection ("Official Gazette of the FBiH", number 33/03), which stipulates that every person has the right to healthy and ecologically sound environment as the fundamental constitutional right, hence it is the personal and general responsibility to protect and enhance the environment for the sake of the well-being of present and future generations, as It was not conclusively determined in the proceedings that the consequences of the environmental permit, as claimed in the complaint, are devastating for the living things, because the conditions for mountain streams and populations adapted to these conditions disappear, as well as for the landscape, because the limestone canyon as a distinctive feature of that area will be permanently destroyed, while the quality of the water will be significantly reduced, and there will be a permanent disruption of water streams... The contested decision violated the rights of the plaintiff under Article 10, paragraphs 3 and 4, Article 30, paragraph 2, Article 58 and Article 62 of the same Law as the information contained in the case file did not offer any evidence that the parties to the proceedings or the parties concerned were given a 30-day deadline to submit suggestions and objections to the documentation that the sued Ministry had submitted to all entities concerned in order for them to participate in the proceedings (which is stated in the reasoning of the contested decision) or that the plaintiff and the parties concerned were notified about the public hearing scheduled on 4 October 2012 (along with documentation and the EIA) with a minimum 15-day notice. It follows from the reasoning of the contested decision that the expert committee ordered that some items of the EIA be modified in the evaluation procedure, and that these modifications were subsequently made during the procedure. It, however, does not appear from the case file that these modifications were presented to the parties to the proceedings or to the public or whether the conceptual design, which was the basis for the preparation of the EIA, was modified as well, to which the complaint rightly objects. The court further notes that this substantive regulation, the Law on Environmental Protection, primarily seeks to enable all parties in the process of issuing environmental permits to participate in it, and as the defendant in the procedure that preceded the adoption of the contested decision also committed the aforementioned procedural violations of the Law on Administrative Procedure, all of that contributed to rendering an unlawful decision that is now being contested.*

Although the court in this case did not consider the merits of the dispute, in its decision it did stress that in the process of issuing an environmental permit, it is necessary to determine whether the consequences of issuing a permit for the operation of a plant or facility can burden the environment through the emission of substances or energy, and thus directly or indirectly affect the people, flora and fauna, soil, water, air, climate and landscape, material goods and cultural heritage, as well as their interaction. The importance of public participation in the decision making, and the obligation of administrative authorities to properly apply both substantive and procedural law in environmental matters, were also highlighted.

4. Judgment of the Supreme Court of the Republika Srpska, number 11 U 010359 14 Uvp of 24 March 2016 – Application for extraordinary review of the decisions of the Banja Luka District Court, number: 11 U 010359 12 U of 13 October 2014 is dismissed.

The plaintiff, the Federation Ministry, contests the act of the defendant, the RS Ministry, in the matter concerning the approval of the Environmental Impact Study for the HPP D project.

The contested complaint filed against the decision of the defendant approving the Environmental Impact Study for the HPP D. project in the basin of the river Z., in the territory of the municipalities B., N. and B.1, with a designed capacity of 159.15 MW, to the investor of the project HE D. d.o.o. T. was dismissed as unfounded by the contested judgment. The decision declared that the contractor of the Study was A.D. P. B.2, an institution authorized by that Ministry, and that the study was prepared in compliance with the Law on Environmental Protection and the secondary legislation issued on the basis of that law. In the construction and exploitation of the HPP, the investor is required to, in accordance with the solutions presented in the environmental impact study, apply measures to prevent, reduce or mitigate harmful effects on the environment, as described in more detail in the operative part of the decision, concerning water protection, waste management, land protection, protection from noise, protection of air, flora and fauna, landscape, ecosystem, ichthyofauna, cultural heritage and archaeological sites, measures taken in case of major accidents, measures involving monitoring and evaluation of climate change, prevention of sedimentation, protection of existing facilities and communal infrastructure, human health, infrastructure and monitoring, as well as other measures as determined in the final version of the environmental impact study. It was determined that the final environmental impact study for the HPP D. project was completed in July 2012 and that it is an integral part of that decision, as well as that the contested act expires after three years if the project owner does not secure a construction permit, starting from the date the decision was received. The investor is required to submit to the defendant an application for an environmental permit, in accordance with Article 80 of the Law on Environmental Protection ("Official Gazette of RS", number 28/07 – consolidated version, number 41/08 and 29/10, hereinafter: the Law) and Article 2 of the Decree on plants that may be constructed and operated only with an environmental permit ("Official Gazette of the RS", numbers 7/06 and 21/10, hereinafter: Decree). The plaintiff's motion to stay the enforcement of the contested act was dismissed in paragraph 2 of the operative part of the judgement.

Governing law: The 2007 Law on Environmental Protection, the 2006 Decree on plants that may be constructed and operated only with an environmental permit.

The contested act requires that the investor, during the construction and exploitation of the HPP, apply measures to prevent, reduce or mitigate harmful effects on the environment, as well as other measures in accordance with the solutions presented in the environmental impact study, and submit to the defendant an application for an environmental permit.

The plaintiff argues that the lower court failed to take into account that the contested act has flaws that render it void because the environmental impact study that was evaluated through the contested act lacked a key segment concerning the cross-border impact on the other entity in compliance with Articles 70, 71, and 75 of the Law. Additionally, the representatives of the plaintiff brought up the shortcomings that render the study incomplete during the public hearing on the environmental impact of the hydroelectric power plant in question. They also submitted all of their objections to the defendant in writing, but the defendant failed to take them into consideration in preparing the environmental impact study or provide an explanation for disregarding them. The plaintiff contends that

the environmental impact study does not mention the consequences for the environment that the implementation of the project will have on the territory of the BiH Federation, and that these outweigh the benefits that the Republika Srpska would have from the project, and the disregard for the remarks made by the international organization WWF (World Wildlife Fund) and the Section for the Mediterranean Programme, which indicated that the construction of the HPP will significantly affect the water regime in the environment, constitute a violation of the Convention on Environmental Impact Assessment in a Transboundary Context, and the denial of the opportunity for hearing in the decision-making process.

Established facts: The environmental impact study was prepared in accordance with the primary and secondary legislation, the investor complied with the procedure, including the procedure that precedes the adoption of a decision on the approval of the environmental impact study, the contractor of which is an authorized institution. All parties concerned, including the plaintiffs, were notified of the time and place of the public hearing, which was also published in daily newspapers, and the Request and the environmental impact study were made available free of charge. The representative of the plaintiff attended the public hearing and stated that he agreed with the project, and at his request, he was also provided with an addendum to the environmental impact study related to the waters segment. All participants, except the plaintiff, submitted to the investor their opinions and remarks on the environmental impact study, which related to the protection of the environment, human health, historical heritage, the impact on the waters in the T. river basin, as well as the impact of the transfer of waters N, D and F.p. to reservoir B. The investor was instructed to supplement the environmental impact study in line with the remarks make, which he did, and most of the remarks and suggestions were taken into account, the environmental impact study was supplemented, and other deficiencies will be further addressed in the process of issuing the environmental permit. The plaintiff submitted the remarks to the environmental impact study to the defendant after the adoption of the contested act. The lack of analysis of the impact on the waters of the other entity was eliminated in the final version of the environmental impact study.

Court decision: The court concluded that the contested act was legal, and that the reasoning of the contested judgement offered comprehensive and reasonable grounds for dismissing the complaint as unfounded. The facts were established correctly, and the court provided the reasons as to why the approval of the environmental impact study was justified. The study gave an assessment of potential adverse effects of building the hydroelectric power plant and ordered the investor take steps to prevent, lessen, or mitigate environmental harm. The Supreme Court concluded that the requirements for approving the final version of the environmental impact study were met because, aside from the fact that the plaintiff's objections were addressed, they were unfounded. This conclusion is supported by the fact that no other participants—not even those who had objected to the draft environmental impact study —had any objections to its final version. The Court did not specifically refer to the Aarhus Convention.

Other decisions

1. Judgment of the Supreme Court of the BiH Federation number: 08 0 U 002437 15 Uvp of 17 May 2019

Judgment dismissing the application for extraordinary review of the judgment of the Široki Brijeg Cantonal Court, number: 08 0 U 002437 15 U, of 13 October 2015, by which the complaint against the decision dismissing the appeal against the decision of the Environmental Protection Fund of the FBiH, ordering the plaintiff to pay a waste equipment management fee, was dismissed.

The plaintiff contested the legality of the judgment rendered by the first-instance court due to the violation of the FBiH law and other FBiH regulation and the violation of procedural due process. He contested both the obligation to pay the waste equipment management fee and its amount, claiming that the way the disputed sum was calculated went against the goals of Articles 2 and 3 of the Law on Waste Management, and the violation of the provisions of that Law and the Rulebook on management of waste from electrical and electronic equipment ("Official Gazette of FBiH", number 87/12), which entered into force on 20 October 2012.

The court found that the contested judgment did not violate the law to the detriment of the plaintiff, given that the court correctly concluded, based on the facts established in the administrative procedure, that the administrative authorities acted correctly when they obliged the plaintiff to pay the general fee and the fee for the management of waste equipment in the determined amounts. The court determined that the claims are unfounded and would not affect the outcome of this administrative matter because the Rulebook on management of waste from electrical and electronic equipment from 2003 stipulates that the manufacturer and importer are required to pay a fee when putting the equipment on the BiH market for the first time, and that the manufacturer and importer who have not transferred their obligations to the system operator are required to pay the general fee and the fee for the management of electrical equipment to the Environmental Protection Fund.

From the reasoning of the decision: *Rulebook on management of waste from electrical and electronic equipment was adopted on the basis of Article 58 of the of the Law on Waste Management ("Official Gazette of the FBiH", numbers 33/03 and 72/09). Article 1, paragraph 1 of the Rulebook on management of waste from electrical and electronic equipment stipulates that the manufacturer and importer shall pay a fee when putting the equipment on the BiH market for the first time. The obligation to pay a fee for the equipment arises: if the equipment is manufactured and put on the market for the first time in BiH; if the equipment is manufactured in BiH, and the manufacturer is its end user; if the equipment imported from another country is put on the market in BiH for the first time; and if the equipment is imported from another country, and the importer is its end user (paragraph 2). The calculation of the fee and the report on the quantity, weight, and type of equipment placed on the market on the fee calculation form must be sent by the manufacturer and importer to the Fund and the Federation Ministry by July 20 of the current calendar year for the first half of the year (January–June), and by January 20 of the following year for the second half (July–December) (paragraph 3). In addition to the general fee from paragraph 3 of this article, producers and importers who have not transferred their obligations to the system operator are required to pay a fee to the Environmental Protection Fund for the management of waste equipment. These fees are used specifically for the management of electrical and electronic waste. The quantity of equipment placed on the territory of the country multiplied by the fee coefficient determines the amount of the waste equipment management fee (paragraph 5).The fee calculation from paragraph 3 of this article in particular contains the following: the period for which the fee is calculated, the quantity and mass of equipment by type of equipment placed on the market, the amount of fee calculated by type of equipment, the final amount for*

payment of the fee in the period for which the fee is paid, number of the waste equipment management plan and the name of the system operator to whom the obligee has transferred his responsibility for managing waste equipment. The accuracy with the seal and signature is verified by the system operator. The calculated fee from paragraphs 4 and 5 are paid to the Environmental Protection Fund (paragraphs 6 and 7).

... The first-instance court correctly invoked Articles 21 and 22 of the Law on Waste Management, which it cited in the reasoning of the contested judgment, and the aforementioned provisions of the Rulebook on management of waste from electrical and electronic equipment, and as it is evident from the case file that the plaintiff did not transfer his obligation to manage waste equipment for the first half of the calendar year 2013 (January–June) to the system operator, he is required to pay the management fee in addition to the general fee from paragraph 3 of Article 11 of the Rulebook on management of waste from electrical and electronic equipment to the Environmental Protection Fund.

2. Judgment of the Mostar Cantonal Court, number: 07 0 U 015163 18 U of 25 February 2021

The complaint is upheld, the decisions of the Federation Ministry of Agriculture, Water Management and Forestry of 16 February 2018 and of the Adriatic Sea Watershed Agency of 8 January 2018 annulled, and the case remanded to the first-instance authority (the Agency).

The contested decision of the defendant dismissed the plaintiff's appeal against the decision of the Adriatic Sea Watershed Agency of 8 January 2018, rejecting the appeal of the environmental association "M.C" against the decision of this Agency of 13 November 2017, issuing a preliminary water permit to the company "H" d.o.o. Mostar for the purpose of preparation of project documentation for the construction of the mini HPP "Buna I" on the N. river, in the area of the City of M.

In deciding the appeal of the environmental association "M.C." filed against the decision of 13 November 2017, the first-instance authority concluded that it was filed by an unauthorized person, as the appellant, the current plaintiff, was not granted the status of a party in the procedure of issuing the preliminary water permit, nor did the environmental association prove its legal interest within the meaning of Article 49 of the Law on Administrative Procedure ("Official Gazette of FBiH" nos. 2/98 and 48/99). The environmental association appealed the first-instance decision, but the defendant rejected it with the contested decision, citing as a reason that the appeal against the first-instance decision was untimely.

From the reasoning of the decision: *In the case at hand, and as it follows from the reasoning of the first-instance decision, the authority examined whether the plaintiff, the Eco association "M.C.", had the procedural right to be a party in the process of issuing a water permit to an investor for the construction of a mini HPP, and concluded that this association failed to prove its legal interest within the meaning of Article 49, paragraph 3 of the Law on Administrative Procedure. The first-instance authority disregarded Article 50, paragraph 1 of the law when deciding whether the eco association could be considered an interested party in the procedure, according to which, in addition to businesses, organizations, and other legal entities, civic associations—whose general act assigns them the responsibility of safeguarding certain rights and interests of their members—may, upon their members' consent, make a request on behalf of themselves that relates to those rights and interests and participate in an already-started procedure with all rights as a party. Therefore, as in the process of examining the legal interest of the Eco Association in the administrative procedure in question, the authority took a formalistic approach, and left it unexplained what were the tasks of this Eco Association as determined by its general act in order to protect*

certain rights and interests of its members, the facts of the case remained incompletely determined. Also, when examining whether an Eco association could hold the status of a person concerned, the authority was required to, in addition to the Law on Waters, which it invoked in its decision, take into account the laws on environmental protection of Herzegovina-Neretva Canton and BiH Federation.

The defendant dismissed the appeal giving as a reason that the appeal examined by the first-instance authority was untimely, as a party not involved in the proceedings may only file an appeal within the timeframe set by the party involved in the proceedings. This court cannot concur with the decision of the defendant for the following reasons: by giving such reasoning the authority disregarded the obligation from Article 242, paragraph 2 of the Law on Administrative Procedure, which stipulates that the relevant authority must provide the reasoning for the decision it made in response to the appeal and evaluate all of the claims made in the appeal. It must also clearly and understandably communicate its findings after reviewing all of the claims of the appeal. The defendant took a correct stance, and such stance is widely accepted in administrative justice matters, that a party not involved in the proceedings may only file an appeal within the timeframe set by the party involved in the proceedings. However, the defendant failed to acknowledge that in such a case, a party that did not participate in the administrative procedure, may, in order to protect its rights and interests, do so through the repeated procedure (Article 246, point 9 of the FBiH Law on Administrative Procedure). So, in the light of the above, the appropriate course of action for the relevant authority in this particular situation would be to contact the appellant, inform him/her know about this possibility, and give him/her an opportunity to say whether the appeal should be treated as a motion to repeat the procedure or to prepare the appeal as a motion for renewal of procedure.

Due to all of the aforementioned irregularities in the first-instance administrative procedure, this Court is of the opinion that the defendant should have decided the appeal as requested in order to eliminate all violations made in the first-instance administrative procedure. By failing to do so and rendering the disputed decision, the defendant violated the procedural due process, which was relevant for the outcome of the case.

In this case, the court interpreted the right to access to court in a way that is fully consistent with the Aarhus Convention and applicable national law, according to which the parties must be enabled to exhaust all legal remedies available to them to exercise their protected rights.

CONCLUSION

The rules of environmental law are incorporated in a large number of substantive and procedural regulations in all countries, and international standards for the protection of this right are found in numerous international treaties and increasingly often in the case law of international courts. With the development of modern technologies and communication, the case law has become much more accessible, not only to practitioners and broader professional and academic communities, but also to the entire public concerned for which further development and improvement of these standards has enormous, and, in fact, existential importance.

Any legal responsibility implies the obligation of the entity subject to it to suffer a legal sanction, and thus also the responsibility to preserve and improve the environment. For this reason, the laws that regulate the obligations to respect environmental rights and define measures for the protection of the environment also provide for the legal sanctions for those who do not discharge their obligations and thus threaten the rights of others.

The Constitution of Bosnia and Herzegovina, the Constitutions of the entities and the Brčko District of BiH, the laws on environmental protection and other laws related to the environment and the numerous pieces of secondary legislation governing this area, as well as the provisions of the criminal and civil laws pertaining to the environment represent a solid legal framework which is largely harmonized with the existing international standards for the protection of the right to access to information, public participation in decision-making and the right to access to justice in environmental cases.

However, the reality in which we live is constantly warning us of the need to develop further the environmental law, especially to increase its effectiveness in preventing the harmful effects of human activity on health and the environment.

The overview of court decisions shows that cases from all areas of environmental law are resolved before administrative bodies and courts in Bosnia and Herzegovina.

The presented case law shows that in those cases the courts often refer to the legal understanding of the European Court of Human Rights, which they are familiar with, and that in interpreting the principles of environmental law and applying international legal standards, they apply the domestic laws in a way that does not contradict the understanding or the European values. Likewise, the courts interpret domestic regulations in a manner that is in accordance with the UN Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, which, by doing so, they promote, especially its sections that guarantee public participation in decision-making and access to justice.

All decisions of administrative bodies and courts pertaining to environmental protection, which were found in the judicial review of administrative proceedings to have violated the rights guaranteed to citizens by the Constitution and laws, were set aside as unlawful, with the aim of ensuring effective protection of those rights. This is particularly noticeable in administrative disputes related to environmental impact assessment and administrative oversight over the performance of industrial activities that pose a potential hazard to human health and the environment, because most administrative cases are related precisely to those issues. Although the case law is not diverse, since the cases are similar, it is important to emphasize that the approach of the courts to such cases is consistent, a good knowledge of principles and the creative application of law.

There are significantly fewer examples in the fields of criminal law and civil law, and the case law is modest and even less diverse than it is in the field of administrative law, but still it can

be concluded that behaviours that are contrary to environmental protection regulations are sanctioned as negative phenomena. Although imposed penalties and the amounts of rarely awarded damages are negligible in terms of severity, which can be attributed to the mild penal policy and the poor economic situation in the country, the court decisions still show the attitude that proven cases of endangering the right to a healthy environment will not go unpunished.

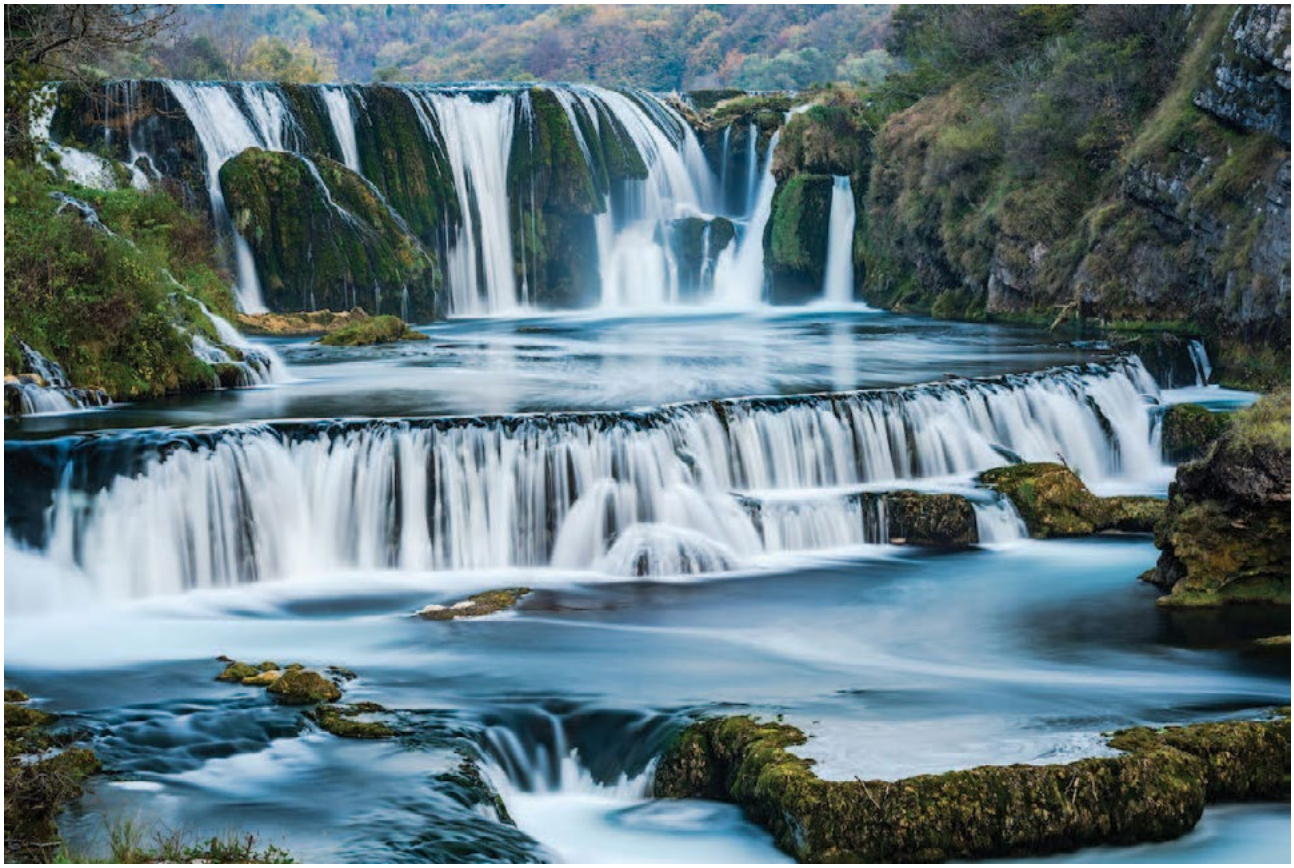
In view of the above, it is clear that there is a need for greater involvement of all factors that affect the exercise of the right to a clean and healthy environment, especially of those who initiate proceedings and file motions seeking the protection of that right with the courts. The task of the courts is to conduct the proceedings in accordance with the law and reach correct and lawful decisions which will have an impact on changing the awareness of the importance of environmental law and the possibility of its effective protection.

In the end, it would be very good if the creation of this publication would at least somewhat contribute to improving knowledge of the situation in the state of Bosnia and Herzegovina in relation to environmental protection, and especially to promoting and further developing the existing legal standards.

It will not be possible to achieve this goal without the continuous creation and monitoring of the case law in the field of environmental protection, especially the case law of the highest courts in Bosnia and Herzegovina whose case law departments regularly collect stances from selected court decisions, record and systematize them according to established criteria and post them on the Case Law Portal in Bosnia and Herzegovina https://sudskapraksa.pravosudje.ba/.

For this reason, in order to achieve greater transparency and to inform the public of the case law, it is recommended to use the aforementioned electronic and other available case law databases with the sentences and selected court decisions, and for the purpose of gaining a full insight into the situation in this specific legal field, it would be useful to consider the possibility of recording and publishing important environmental decisions reached by the courts in Bosnia and Herzegovina.

REVIEW OF THE PUBLICATION



"OVERVIEW OF THE CASE LAW IN BOSNIA AND HERZEGOVINA IN THE FIELD OF ENVIRONMENTAL PROTECTION"

As a longtime judge, I recommend this publication with full and complete satisfaction to all the parties concerned that deal with the issues covered by this publication.

I believe that the publication is well written both in terms of theory and specific examples from the case law at all levels (in Bosnia and Herzegovina and beyond) and that it should be available to all courts in Bosnia and Herzegovina and beyond.

I am pleased to recommend it to all those interested for reading and application.

Mustafa Šabić
Judge
Supreme Court of the BiH Federation
Member of the BiH HJPC

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