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REPORT ON IMPLEMENTED ACTIVITIES

SEPTEMBER 2024

In accordance with the set tasks and goals of the legal research of the implementation of court proceedings and enforcement regarding final verdicts for the criminal offense of environmental pollution that lasted from 2022 - 2024, we submit a report and legal opinion to you after the first-instance court proceedings have been completed in September 2024.

FLOW OF PROCEDURE

The procedure that was started between the Republic of Serbia and the branch of the company Serbia Zijin Copper LTD in front of the basic court in Bor was concluded at first instance after the presentation of the closing arguments of the public prosecutor and the defendant's defense attorney at the main trial on September 3, 2024.

The court process ended after the postponement of the main hearings on several occasions, on December 6, 2022, February 21, 2023, June 15, 2023, and April 17, 2024, as well as with one attempt exclusion of the public from the open search on February 21, 2023. The attempt to exclude the public at the very beginning of the process, and the inability to follow the course of the proceedings in which the public is widely interested due to the very nature of the criminal offense and the consequences it has led to and may still lead to, represented a kind of pressure on the prosecution and an attempt to reduce the problem that communities at the local self-government level have with pollutants to a minimum. Despite such an attempt at pressure and the absence of the public from the main hearing, the proceedings continued with the presence of the public as required by the Convention on the Availability of Information, Public Participation in Decision-Making and the Right to Legal Protection in Environmental Matters.

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At the main hearing held on September 13, 2023, public prosecutor Marina Ćirić withdrew the indictment against the defendant Jiang Si Ming, because the defense, presenting evidence, pointed out that the responsible person in the disputed time period covered by the indictment determined that the responsible person was Boban Todorović, the owner of the exploitation. The accusation also remained that the responsible persons did not comply with Article 132 of the Law on Mining and Geological Surveys and that as a result the amount of pollutants in terms of heavy metals (arsenic, mercury and cadmium) was significantly higher than the permitted limit values, which has led to air, water pollution and human endangerment during 2019 and 2020.

As the indictment in this court proceeding was filed on the basis of the proposal of the Regulatory Institute for Renewable Energy and Environment (RERI), the observations of the representatives of this institute who were present in the capacity of the public in the court proceeding were fully adequate. In this regard, the representative of the institute pointed out to the media that the statement of the defense about the possibility of concluding an agreement is neither logical nor clear. From their point of view, the illogicality is reflected in the fact that the defendants pleaded guilty at the preliminary hearing, especially because the defense lawyers cannot give and emphasize the possibilities and wishes for concluding an agreement of any kind, but it is up to the prosecution to propose such options. Also, it was noted that the defendants' paradoxical statement is that they operate according to the law and that they respect the laws of the Republic of Serbia, and it is known that the company Zijin has a large number of convictions for disobeying various laws of Serbia. Thus, during 2022, the branch of the Zijin company was sentenced as many as 4 times by the Commercial Court in Zaječar in proceedings for economic offenses, and the sentences imposed were below the legal minimum for a multiple returnee, and for example, the sentence was imposed only in the amount of one million dinars, which amount is the convicted legal entity was obliged to pay for humanitarian purposes due to the pollution of the Mali Pek river. The polluter was punished for various forms of pollution, as well as non-compliance with procedures, but all within the scope of misdemeanors, i.e. economic offenses, and due to the lack of necessary consent for the environmental impact assessment study and punishment for working without an integrated permit, i.e. the legal entity was fined in the amount of 200,000.00 dinars each, and the responsible person in the legal entity in the amount of 30,000.00 dinars each.

The importance of the analyzed criminal procedure is reflected in the fact that a large multinational company such as Zijin would have been convicted by a final conviction for the crime of environmental pollution, which would have resonated with the domestic and foreign public, and such a verdict would be important for the entire legislative-legal and judicial system of our country, and also of the region, because it would be the first measure of concrete criminal sanctioning of a large and economically extremely powerful global company that exploits the resources of another poorer country, and represented a form of protection and resistance of the Republic of Serbia to the arbitrariness of multinational companies on which it depends to a certain extent. This is especially important when taking into account the proposals of the public prosecutor's office on the amount and type of punishment in this procedure. Namely, in the closing statement at the trial

if the act referred to in paragraph 1 of this article is committed negligently, the perpetrator will be punished with a fine or imprisonment for up to two years. Paragraph 3 stipulates that if, as a result of the act referred to in paragraph 1 of this article, large-scale destruction or damage to animal or plant life or environmental pollution has occurred to such an extent that it takes a long time or large costs to remove it, the perpetrator will be punishable by imprisonment from one to eight years and a fine. Paragraph 4 stipulates that if, as a result of the act referred to in paragraph 2 of this article, large-scale destruction or damage to animal or plant life or environmental pollution has occurred to the extent that it takes a long time or large costs to eliminate it, the perpetrator will be punishable by imprisonment from six months to five years and a fine. Paragraph 5 stipulates that if he imposes a conditional sentence for the acts from para. 1 and 4 of this article, the court may impose an obligation on the perpetrator to undertake certain prescribed measures for the protection, preservation and improvement of the environment within a certain period.

Article 13 of the Law on Liability of Legal Entities for Criminal Offenses stipulates that the following penalties may be imposed on a legal entity:

- 1) fine;
- 2) termination of the legal entity.

The second paragraph stipulates that a fine and termination of a legal entity can only be imposed as main penalties. Article 14 of the same law prescribes that a fine be imposed in a certain amount within the prescribed minimum and maximum measure of fine. Paragraph two stipulates that the fine cannot be less than one hundred thousand dinars nor greater than five hundred million dinars. Paragraph three stipulates that fines are imposed in the following amounts:

- 1) from one hundred thousand to one million dinars for criminal offenses for which a prison sentence of up to one year or a fine is prescribed;
- 2) from one million to two million dinars for criminal offenses for which a prison sentence of up to three years is prescribed;
- 3) from two million to five million dinars for criminal offenses for which a prison sentence of up to five years is prescribed;
- 4) from five million to ten million dinars for criminal offenses for which a prison sentence of up to eight years is prescribed;
- 5) from ten to twenty million dinars for criminal offenses for which a prison sentence of up to ten years is prescribed;
- 6) at least twenty million dinars for criminal offenses for which a prison sentence of over ten years is prescribed.

In general, for crimes under Chapter 24 of the Criminal Code, the maximum prescribed criminal sanction - imprisonment - is up to 10 years, which means that persons who harm the environment with illegal actions cannot be fined more than 20 million dinars.

The procedure described and its course in this report is the first criminal procedure in the Republic of Serbia related to the environmental conditions of our country in relation to the Zijin company, and as it can be concluded, the state has prescribed laws and provided sanctions for the perpetrators of the crime. Despite the possibility of obstruction in the actions of the judiciary and the prosecution, the difficult conduct of the trial and the possibility of influence by the defense, which large companies such as Zijin have, the procedure was completed (albeit only in the first instance) in a relatively short duration of the process (considering average duration of proceedings before courts in the Republic of Serbia). However, in addition to the court and the prosecution, the involved public was deprived of a series of information about the actions of this branch of Zijin in Serbia by the non-appearance of certain important witnesses who could provide additional explanations about the operations of this legal entity, and by excluding the public from one of the hearings.

The problem we recognize in the application of these legal regulations, on the basis of which the said procedure was conducted, is the extremely large range of punishment that can be assessed for the committed criminal offense in this case, and in others, and in this procedure up to a maximum of 5 or 10 million dinars depending on the qualification of the criminal offense of environmental pollution. As the law prescribes a maximum penalty of 500 million dinars for criminal offenses committed by legal entities, and when it is taken into account that no prison sentence of more than 10 years is prescribed for criminal offenses of environmental pollution, and penalties in this regard for criminal offenses related to protection environment do not fall within the scope of the strictest sanctions.

When it is taken into account that from 2018 to 2024, the cumulative income of the Zijin company in the Republic of Serbia was close to one billion US dollars per year, this is a fine that they would have to bear in the amount of almost 50,000.00 dollars (the dinar equivalent of the proposed fine), extremely low and therefore ineffective in relation to the damage that the company is evidently causing both at this moment and in the future.

It is significant that there is always an unceasing aspiration towards adequate sanctioning of current and potential polluters, all with the aim of forcing them to implement environmental protection measures. As we are witnessing the increasing influence of all forms of industry in people's lives, and especially the presence of mining on an increasing scale in the Republic of Serbia, and which activity can most and most permanently threaten the entire ecosystem, and as this influence becomes more and more important, appropriate forms of control over by protecting and preserving the natural resources of our country.

The question that arises and which is pressing in this case is whether the prescribed fines that the Zijin company will potentially bear in this case will deter this company from continuously polluting the environment in which it operates and force it to comply with environmental protection regulations, and what and how much supervision the Republic of Serbia is able to implement in a real situation.

Supervision over the execution of such certain criminal sanctions in the form of supervision and environmental protection is carried out by the Environmental Protection Inspectorate of the Republic of Serbia, which operates under the auspices of the Ministry of Environmental Protection, and which, as the acting authority, annually adopts a work plan for the following year. In the Work Plan for 2024, published on the website of the competent ministry, it was pointed out that due to the volume of work and in relation to each area of the environment that is subject to control, it is planned to carry out at least one control per year. This type of control also includes control inspection supervision, which is carried out for the purpose of executing administrative and other measures that are proposed or ordered to the supervised entity within the framework of regular or extraordinary inspection supervision. It is unclear whether the inspection bodies have a role in the supervision of the imposed protective measures, and whether the control of a legal entity after the imposition of a suspended sentence falls partly under their jurisdiction.

Protective supervision includes the following obligations: organizing control in order to prevent the further commission of criminal acts, abstaining from business activities, if this can be an opportunity or incentive for committing criminal acts again, eliminating or mitigating the damage caused by a criminal act, performing work in the public interest, submitting periodic reports on operations to the authority responsible for the execution of protective supervision. Supervision over the obligations imposed on a legal entity in this way is carried out by the court. However, it is unclear in what way and by which authorities the court carries out this supervision, and how often it does so.

The Law on Integrated Prevention and Control of Environmental Pollution stipulates that control is carried out by competent inspectors depending on the competence to issue an integrated permit for facilities and activities that may have negative impacts on human health, the environment or material goods.

The inspector has the right and duty to determine:

- 1) whether the new plants have a permit issued in accordance with this law;
- 2) whether the existing plants have applied for a permit in accordance with this law;
- 3) whether the operation of the plant is carried out in accordance with the conditions of the issued permit;
- 4) any change in the operation, that is, the functioning of the plant;

5) implementation of other prescribed environmental protection measures.

From the above, it can be concluded, and from the remaining provisions of the aforementioned law (Articles 28-32), that the control of the implementation of protection is not within the competence of the inspector, as determined by final convictions, but rather regular/extraordinary controls that depend on the work plan and the capabilities of the competent Ministry of action.

From the attached, it can be concluded that the state of Serbia in the existing system does not have its own sufficient capacities to ensure the control of the implementation of the court decision. It is unclear how the controls prescribed by the law function and whether they even refer to the control of the implementation of court decisions, we believe that they should be specified in a separate law or Rulebook. When it comes to controlling this type of criminal sanction, manpower and resources are needed, as well as an independent system that cannot be influenced by the Government of the Republic of Serbia (as an executive body), precisely because the Government of the Republic of Serbia is a contracting party with companies of this type, and they cannot not even the authorities appointed by the polluter himself, bearing in mind the importance of implementing control in such situations. In addition to the fine that they would eventually bear and which would essentially be the least harmful for their company, which can be concluded after multiple punishments for economic crimes, it is necessary to make the polluters aware that the legal regulations, which are more than enough in our country, must respect and that for the same they will be forced to bear responsibility and be punished if they do not respect them.

In order to carry out control and prevent pollution and remediate its consequences in the shortest possible time, it is necessary to form some kind of working group, in order to draw up the Rulebook on the procedure in the prosecution of convictions, which determines the protective supervision and measures that must be taken to eliminate the consequences.

Belgrade, September 6, 2024.


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