---------- **Association „Za česme“**

Boban Pogarčić
Dositejeva 11
19000 Zaječar

REPORT ON IMPLEMENTED ACTIVITIES
JULY 2022

In accordance with the Agreement dated March 30, 2022 and the planned work plan for July 2022, we are submitting a report on the carried out activities, a legal analysis of the problem of recultivation of Lake Rgot and a legal analysis of possible actions based on a final conviction for the criminal offense of damage to natural property and an analysis of the application of local regulations based on the example of Artesian fountains.

PART 1

Legal analysis of the reclamation of the sunken surface mine of the Jugo kaolin company – Lake Rgot

Analysis of legal regulations:

- Law on Soil Protection ("Official Gazette of RS" No. 112/2015, entered into force on January 7, 2016)

The Law on Soil Protection regulates soil protection, systematic monitoring of soil condition and quality, remediation measures, remediation, recultivation, inspection supervision and other matters of importance for the protection and preservation of soil as a natural resource of national interest. The provisions of this law apply to all types of land in the Republic of Serbia as a natural resource, regardless of the form of ownership, its purpose and use. The goal of this law is to preserve the surface and functions of the soil as a natural resource and to prevent or eliminate harmful changes in the soil that may occur as a result of the exploitation of mineral and organic raw materials.

Land protection is based on the application of the principle: "the user pays", which implies the obligation of the user of the land to pay compensation for its use in accordance with the law and, in case of need, bear the costs of rehabilitation, that is, remediation and recultivation.

Soil protection is carried out based on the provisions of this law, adopted international agreements, prescribed measures and activities, and in particular: the application of rehabilitation, remediation and soil recultivation procedures.

In accordance with the aforementioned law, land reclamation is carried out on polluted and degraded areas for the purpose of re-forming the soil layer and establishing plant communities on areas where mineral raw materials were exploited, failed afforestation, as well as in the case of natural disasters, fires and other anthropogenic influences. The responsible person is obliged to carry out remediation, i.e. recultivation of the land under the conditions prescribed by this law, except in the case of land on which mineral raw materials are exploited when it is carried out according to special regulations in the field of mining. Remediation and recultivation works are carried out according to the approved project. Land remediation and reclamation projects are approved by the Ministry. A remediation project and a recultivation project can be prepared by a company, that is, an enterprise, that is, another legal entity that meets the requirements for design work in the field of soil protection. The Minister prescribes the content of remediation and recultivation projects. The funds required for the realization of the remediation project and the recultivation project are provided by the responsible person. In the event that the responsible person is unknown, unavailable or does not act according to the inspector's order, the project is implemented by the local self-government unit and/or autonomous province, i.e. the Republic in accordance with the budget through an authorized legal entity that meets the requirements for carrying out remediation and reclamation work. The person who is found to be responsible for the realization of the remediation project and the recultivation project is obliged to pay the funds equal to the costs spent for the realization of these measures to the budget account of the local self-government unit, the autonomous province or the Republic.

- Law on Mining and Geological Research ("Official Gazette of RS" no. 101/2015 and 95/2018 - second law 40/2021)

The Law on Mining and Geological Research regulates the measures and activities of the mineral policy and the way of its realization, the policy of development of geological research and mining, the conditions and the way of conducting geological research of mineral and other geological resources, research of the geological environment, as well as geological research for the purpose of spatial and urban planning, design, construction of facilities and rehabilitation and reclamation of terrain, method of classification of resources and reserves of mineral, raw materials and underground water and geothermal resources, exploitation of reserves of mineral raw materials and other geological resources, construction, use and maintenance of mining facilities, plants, machines and devices, performance of mining works, management of mining waste, rehabilitation and recultivation procedures of abandoned mining facilities, as well as supervision of the implementation of this law.

Mineral resources, underground water resources, geothermal resources, as well as other geological resources are natural resources owned by the Republic of Serbia and may be used under the conditions and in the manner established by this law. Geological research and exploitation of mineral resources are in the public interest. Mineral resources/raw materials of strategic importance are: oil, natural gas, coal, ores: gold, copper, lead, zinc, boron, lithium, oil

alumina, and other mineral raw materials determined by a special act of the Government on the proposal of the competent Ministry.

Expropriation of immovable property can be carried out for the needs of a business entity, in private or public property, which is the carrier of research and/or the carrier of exploitation of mineral raw materials, which are determined as mineral raw materials/resources. In that case, the business entity has the rights and obligations of the beneficiary of the expropriation. Expropriation of real estate in that case is carried out in accordance with the regulations governing expropriation.

The Ministry will cancel the approval for exploitation and/or exploitation field if the recultivation procedure is not carried out in accordance with the approved project documentation and annual operational plans. The authorization for exploitation and/or exploitation field ceases to be valid **with the permanent suspension of the performance of mining works on the exploitation of resources and reserves of mineral raw materials**, on the day of delivery of the decision on the termination of validity of the decision for exploitation and/or exploitation field to the holder of the approval. The decision on the termination of the validity of the authorization for exploitation and/or the exploitation field is made by the Ministry, i.e. the competent authority of the autonomous province, if it is previously established that the obligations of the company that carried out the exploitation regarding the compensation for the use of mineral raw materials have been settled and that the inspection report has confirmed that they have been fulfilled recultivation in accordance with the project documentation. The decision issued by the Ministry is final and an administrative dispute can be initiated against it.

Abandoned mines and mining facilities are facilities that were created before the date of entry into force of this law, as a result of improper suspension of mining operations and abandonment of mining facilities, without applied technical and technological procedures for rehabilitation and recultivation, and for which there is no known or no longer exists the holder of approval for exploitation and/or exploitation field and the ownership of the area in question cannot be established. The government will determine the conditions, criteria, programming, procedure and method of rehabilitation and recultivation of abandoned mines and mining facilities from paragraph 1 of this article. The funds required for the rehabilitation and recultivation of abandoned mines and mining facilities are provided from the budget of the Republic of Serbia.

If for any reason there is a complete and permanent suspension of exploitation in pits or certain areas or parts of pits, surface mines or in fields for oil and gas exploitation, the holder of the exploitation and/or authorization for the exploitation field is obliged to inform the authority that issued the authorization for exploitation and/or approval for the exploitation field, i.e. approval for the performance of mining works, no later than 30 days before the suspension of works. **In the case of permanent suspension of works, the holder of exploitation is obliged to take all measures to protect the mining facility and the land on which the works were carried out, as well as measures to protect and rehabilitate the environment in order to ensure the life and health of people and property, in everything according to the main mining project of permanent suspension of works.** Mining projects, plans and sketches, measurement books and other documentation on the state of mining works and the state of resources and reserves of

mineral raw materials at the time of suspension of work, a company with majority state capital as the holder of exploitation is obliged to hand over for safekeeping to the authority that issued the authorization for exploitation, that is, approval for the performance of mining works. This documentation is available to any business entity that is interested in the restoration of works on an abandoned exploitation field.

The holder of the exploitation is obliged to recultivate the land in all aspects according to the technical project of technical and biological reclamation, which is integral part of the main or supplementary mining project. These measures are reported to the Ministry, i.e. the competent authority of the autonomous province and the ministry responsible for agriculture and water management, i.e. the ministry responsible for environmental protection. If liquidation or bankruptcy proceedings are opened against the holder of the exploitation, the costs of rehabilitation and recultivation of the land on which the exploitation was carried out will be covered as a matter of priority from the liquidation or bankruptcy estate.

Insight into the archives of the registers of the Agency for Business Registers for:

State enterprise "Srbokvarc" Rgotina; "Srbokvarc" L.L.C. Rgotina; "Jugo Kaolin" L.L.C. Belgrade

Insight into the documentation of the Agency for Business Registers

By inspecting the registry of the Agency for Business Registers, it was established that the Commercial Court in Zaječar concluded the bankruptcy proceedings in case St 272/02 against the bankruptcy debtor Social enterprise "Srbokvarc" Rgotina on July 17, 2006 which decision became legally binding on August 21, 2006. It was stated that the entire movable and immovable property as well as the rights of the social enterprise were sold in bankruptcy proceedings to the company - Company for production and trade Jugo-kaolin L.L.C. Valjevo.

Production and distribution company Jugo-kaolin L.L.C. Belgrade with registration number 17528483 has since its establishment operated at various headquarters in the territory of the Republic of Serbia, so it had its headquarters in Valjevo, Zaječar, and then in Belgrade, where it still operates to this day at the adress Uroš Martinović Street, no. 17, Belgrade.

Production and distribution company Jugo-kaolin L.L.C. Zaječar on December 04, 2007 made a decision on the establishment of the Limited Liability Company "Srbokvarc" Rgotin. Founder of the company "Srbokvarc" L.L.C. Rgotina on October 10, 2008 made a decision to change the main activity of the company so that the new activity of the company "Srbokvarc" L.L.C. Rgotina - 14500 extraction of asbestos, quartz sand and other ores and stones, not mentioned elsewhere. Jugo-kaolin L.L.C. Zaječar as the founder of the company "Srbokvarc" L.L.C. Rgotina and as the only member of the Company in the capacity of the assembly of the company, brought on Februarz 01, 2008 of the Decision on the increase of the basic capital by entering a non-monetary contribution, which contribution in monetary value amounts to 1,139,884.89 euros. The non-monetary stake consisted of immovable property, the value of which was

estimated at a total of 476,792.28 euros at the middle exchange rate of the NBS on the day of the decision, and consists of the right of use, the right of ownership and other rights on land, and the right of ownership and use of buildings and other construction facilities, all in accordance with specification no. 1 - List of immovable properties representing that non-monetary capital. Jugo-kaolin L.L.C. Belgrade, by decision of the assembly on May 29, 2011 made a decision on the merger of "Srbokvarc" L.L.C. Rgotina with the assumption of all rights, obligations, property and assets of the subsidiary company. In this way, "Srbokvarc" L.L.C. Rgotina ceases to exist. In this way, the immovable properties that he brought to "Srbokvarc" L.L.C. Rgotina, as its only member and founder, once again became the property of Jugo - kaolina L.L.C. Belgrade.

By looking at the specification no. 1, it was established that the listed immovable properties are owned by Jugo-kaolin L.L.C. Belgrade and in the ownership of the "Kvarc" Rgotin quartz sand mine and separation. The cadastral municipalities and parcels listed in the specification include, among others, Velika Poljana, Oblaka, Pivnište, village Carina, Ključ, Gradište, on the territory of Rgotina and Vražogrnce.

Request sent to the Ministry of Mining and Energy for access to information of public importance

On July 05, 2022 we submitted a request for access to information of public importance, and that is to enable insight into the permits for the exploitation of mineral raw materials (quartz), the conditions and duration of exploitation for the "Quartz" Rgotina Quartz Sand Mine and Speration and the "Srbokvarc" Rgotina DP, which were issued at the end of 1970 and the beginning of the 1980s.

Conclusion:

Based on the aforementioned legal provisions, it was determined that the competent Ministry in the field of mining issues a permit for exploitation. The authorization for exploitation ceases to be valid upon the permanent suspension of the performance of mining works on the exploitation of resources and reserves of mineral raw materials, on the day of delivery of the decision on the termination of validity of the decision for exploitation of the holder of the authorization. The aforementioned decision on the termination of the validity of the decision for exploitation is made by the Ministry if it has previously determined that the company that carried out the exploitation has settled its obligations and that, based on the inspection report, it has been established that reclamation has been carried out. Reclamation is carried out on the basis of existing project documentation, according to the technical project of technical and biological reclamation, which is an integral part of the main or supplementary mining project.

Mineral resources/raw materials are natural wealth owned by the Republic of Serbia and are of strategic importance for the Republic of Serbia. Exploitation of mineral resources is in the public interest. Expropriation of immovable property can be carried out for the needs of a business entity, in private or public property, which is the carrier of research and the carrier of

exploitation of mineral raw materials, which represent mineral raw materials of strategic importance. Such a business entity has all the rights and obligations of the beneficiary of expropriation. Expropriation is carried out in accordance with the law regulating expropriation.

Following the request for access to information of public importance, the Ministry of Mining and Energy sent letter number 011-00-106/2022-02 dated July 18, 2022 with an attachment in the form of copies of two decisions approving exploitation. Decision No. 310-382/78 dated December 11, 1978 the Republican Secretariat for the Economy of the Socialist Republic of Serbia approved the Industry and Mines of Nonmetals "Nemetali" R.O. Quartz sand mine "Kvarc" Rgotina exploitation of quartz sand mineral raw material - sandstone at the location "Oblaci" near Rgotina. The decision specifies the coordinates where excavation can be carried out and the exploitation field in the shape of a polygon is registered in the cadastre of exploitation fields under the number 314 Point 6 of the decision stipulates that: all property relations, especially if it concerns compensation for damage, should be cleared beforehand with the owners of the land, that is, with the competent political-administrative bodies if it is about land in social ownership. Decision no. 310-225/82 of September 2, 1982 of the Republican Committee for Energy, Industry and Construction of the Socialist Republic of Serbia, SOUR "Nemetali" RO Quartz Sand Mine "Kvarc" Rgotina approves the expansion of the previously allocated quartz sand exploitation field at the locations of Velika Poljana 1 and 2 Rgotina, all based on decision 04 number 2335/ 64 of May 12, 1964 on the basis of which the exploitation was carried out.

In order to establish and resolve property legal relations and approach the solution of the problem, it is necessary:

1. Review the bankruptcy case of the Commercial Court in Zaječar number St 272/02 in order to determine which rights have been transferred to Jugo kaolin L.L.C. Belgrade during the purchase of Social enterprise "Srbokvarc" Rgotina from bankruptcy and to what extent they were transferred.

2. Determine by looking into the bankruptcy case number St 272/02 whether the Republic of Serbia filed a claim in the bankruptcy proceedings for the costs of rehabilitation and recultivation of the land on which the exploitation was carried out.

3. Review the judgment of the Appellate Court Gž 1551/22, which rejected Jugo Kaolin's request to determine the property rights on plots owned by the Republic of Serbia and awarded in the process of mine expropriation.

4. Send a new request to the Ministry of Mining and Energy and review decision number 2335/64 of May 12, 1964 based on the Law on Access to Information of Public Importance.

5. It is necessary to determine the area of the exploitation field that is included in the subject decisions on expropriation in order to determine the total area of land for which the user of the expropriation was obliged to carry out the rehabilitation and recultivation

procedure based on the coordinates given in the decisions on expropriation drawn on the topographic map R = L:2.500 (cyrillic: P = л:2.500)

Objective: Determining the obligations and duties of the user of the expropriation that he must carry out the rehabilitation and recultivation procedure, and which obligations and duties are not related to the existence of property rights of Jugo - kaolina L.L.C. Belgrade on the land on which it is necessary to carry out rehabilitation and recultivation.

PART 2

Legal analysis of possible actions based on a final conviction for the criminal offense of damage to natural property and analysis of the application of local regulations based on the example of the Artesian chesem.

In the first part, of the second part of this report, the consequences after the finality of the criminal verdict for the crime of environmental damage and the legal effect of such a verdict on the further economic activity of the convicted person are analyzed.

By the judgment of the Basic Court in Zaječar 3K 237/2019 of November 29, 2019 the accused Mitrović Toplica from Zaječar was found guilty of the prolonged criminal offense of environmental damage under Art. 264 paragraph 1 in relation to Article 61 of the CC RS, and he was given a criminal sanction - a suspended sentence, which determined imprisonment for 6 months, which will not be carried out if he does not commit a new criminal offense within a period of 2 years. By the same verdict, the defendant is obliged to pay the costs of the criminal proceedings, in the name of a lump sum of 5,000.00 dinars and in the name of the costs of the Public Prosecutors office of Zaječar in the amount of 245,006.00 dinars. The judgment is final from June 23, 2020.

Although the court found the defendant guilty and sentenced him to a suspended sentence, the court did not impose an obligation on the perpetrator to take measures aimed at eliminating harmful consequences for the environment, in the sense of Article 264 paragraph 3 of the RS CC (if it imposes a conditional sentence 1 and 2 of this article, the court may impose an obligation on the perpetrator to take certain measures within a certain period with the aim of eliminating harmful consequences for the environment), justifying its decision by stating that "*BPPO Zaječar did not specify what measures they want the defendants to carry out, and the determination these measures may or may not be determined by the court, and in the case of insufficiently clear request of BPPO Zaječar, the court did not accept the proposal of BPPO Zaječar.*"

Therefore, in the criminal proceedings, it was omitted that the harming party (a person convicted of the criminal offense of environmental damage) is required to compensate for the damage in order to eliminate the damage that was undeniably done to the environment, specifically to artesian waters and public fountains in Zaječar, and which damage is suffered by the entire community. It is indisputable that Public Prosecutors office had to propose measures necessary to eliminate the harmful consequences, and since Public Prosecutors office itself does not have

professional knowledge in that area, it had to cooperate with inspection or communal services at the local self-government level or competent ministries and request an assessment of the damage, i.e. necessary works on removing the damage and returning it to the previous state, and if that is not possible, compensation for the damage in the form of payment of money for the permanent destruction of the environment. If that cooperation did exist, but did not produce results for any reason, Pubic Prosecutors office Zaječar could have proposed supplementing the expertise within the criminal proceedings, and the finding and opinion would have answered these questions, and therefore the parameters for the correct and complete setting of that part of the request, that is, the proposal to the court for the determination of those measures.

Also, during the disputed period of the extended criminal offense, the Decision on the protection of artesian and subartesian springs in the territory of the city of Zaječar (Official Gazette of the city of Zaječar no. 47 of 12/24/2015) was in force, which regulated the protection, improvement and use artesian and subartesian taps on public areas in the territory of the city of Zaječar, while Article 4 prescribes the competence of specific public companies to undertake work in the execution and compliance with the provisions of this Decision. Therefore, the prosecution could, on the basis of this decision, request concrete measures from the competent authorities and public companies determined by the Decision and thus have a basis for forming a request.

Although the opportunity to remove the harmful consequences due to the effect of the criminal court verdict was missed, there is still the possibility of starting a civil procedure for damages in accordance with the provisions of the Law on Environmental Protection, as well as the Law on Obligations.

Namely, the Law on Environmental Protection, as a law regulating the integral system of environmental protection, which ensures the realization of the human right to life and development in a healthy environment and a balanced relationship between economic development and the environment in the Republic of Serbia, in Article 107 prescribes the following:

- "Anyone who suffers damage has the right to compensation.
- "Claims for damages can be submitted directly to the polluter or the insurer, or financial guarantor of the polluter where the accident occurred, if such an insurer, or financial guarantor exists."
- "If several polluters are responsible for the damage caused to the environment, and the share of individual polluters cannot be determined, they bear the costs jointly and severally."
- **"Initiation of the procedure for compensation of damages expires three years after the injured party became aware of the damage and the perpetrator of the damage."**

In any case, this claim expires 20 years after the damage occurred.

- "Proceedings before the court for damages are urgent."

- **"The Republic of Serbia reserves the right to compensation for damages if there are no other persons who have that right."**

The basis of civil liability for compensation of this type (environmental damage) in the Law on Obligations and in Article 103 of the Law on Environmental Protection:

- "The polluter who causes environmental pollution is responsible for the resulting damage according to the principle of objective responsibility."

- "For environmental pollution, both a legal entity and a natural person who, through illegal or improper actions, enabled or allowed environmental pollution, are responsible."

Applying Article 103 paragraph 2 of the Law on Environmental Protection, we come to the conclusion that the defendant could be the City of Zaječar, i.e. Public utility company "Vodovod" Zaječar, in accordance with Article 185 of the Law on Obligations, but also the Law on Local Self-Government, especially considering the amendments to the Decision on the protection of artesian and sub-artesian springs in the territory of the city of Zaječar from 2020, to which Article 7a was added, which attributes:

"If a legal or natural person damages, pollutes, or otherwise degrades artesian and sub-artesian fountains, the City of Zaječar is obliged to determine the resulting damage, to adopt remedial measures and, if necessary, create a remediation project, and to demand from the legal or natural person that caused the damage to repair it at his own expense in the amount of the value of the destroyed property if the property was permanently destroyed, i.e. in the amount of the repair and restoration of the damaged property if it was not permanently destroyed.

If the damager refuses to repair the damage at his own expense, the City of Zaječar is obliged to repair the damage and, in accordance with the law (Law on Obligations - Article 185; Law on Environmental Protection - Articles 103, 104, 105 and 107), initiate compensation procedure in the amount of the value of the destroyed property if the property is permanently destroyed, i.e. in the amount of the repair and restoration of the damaged property if it is not permanently destroyed.

The City of Zaječar is obliged to supervise the execution of works in the process of repairing the damage caused to the aforementioned assets.

The city of Zaječar can transfer the obligations from the previous paragraphs of this article to Public utility company "Vodovod", Zaječar as a competent public company for the maintenance, reconstruction and revitalization of artesian taps in accordance with art. 2. of this Decision."

Article 105 of the Law on Environmental Protection prescribes the following:

„The polluter is responsible for the damage caused to the environment and space and bears the costs of assessing the damage and its removal, in particular:

1) The costs of emergency interventions undertaken at the time of damage, and necessary to limit and prevent the effects of damage to the environment, space and health of the population;

2) Direct and indirect costs of remediation, establishment of a new state or restoration of the previous state of the environment and space, as well as monitoring the effects of remediation and the effects of damage to the environment;

3) Costs of preventing the same or similar damage to the environment and space;

4) Compensation costs for persons directly threatened by damage to the environment and space."

Therefore, the City of Zaječar, according to the amendments to the Decision, would have the right to initiate litigation for damages against the harming party - the natural person Tomica Mitrović for damages caused by the criminal act of environmental damage **within 3 years from the finality of the criminal verdict** (according to Article 107 of the Law on Environmental Protection), which expires in July 2023. However, I believe that the plaintiff in an environmental dispute under the provisions of the Law on Environmental Protection can also be the citizens' association - ZA ČESME, against the defendant Mitrović as a polluter, with the fact that the question arises as to whether the city, by failing to act by its services, enabled or allowed damage to the environment, i.e. enabled the damage to be greater, which was stated in the explanation of the criminal verdict in the specific case, in which it was stated that the City of Zaječar did not undertake measures or use the powers from the Decision on the Protection of Artesian and Subartesian Waters in the Territory of the City of Zaječar (Official Gazette of the city of Zaječar no. 47 of 24/12/2015), in order to protect and improve public taps in the territory of the city of Zaječar, which would contribute to avoiding or reducing the damage caused. Also, in this sense, the question arises as to whether the City of Zaječar has acted according to Article 7a of the Decision on the protection of artesian and subartesian springs on the territory of the city of Zaječar and whether it has determined the damage, adopted remedial measures and developed a remediation project, and on the basis of this data, he demanded compensation from the harming party. In this sense, I believe that there is a basis for suing the City of Zaječar as responsible for the repair of damage in accordance with the provisions of the amended Decision on the protection of artesian and sub-artesian springs in the territory of the City of Zaječar.

The legal team had the task of analyzing the scope of the finality of the criminal conviction for the criminal offense of damage to the environment, on the possibility of the convicted person Toplica Mitrović, as a member of the limited liability company TIS-MITROVIĆ L.L.C. Zaječar, continuing to engage in economic activity, and the company itself he is the owner, after being convicted of an environmental crime. In this regard, the lawyers received the Agency for

Business Registers's response on the rejection of the request to delete the bidder TIS-MITROVIĆ L.L.C. Zaječar, from the Register of Bidders of the Agency for Business Registers, BPN 15831/2020 dated 12/16/2020. APR states in its response to the request that there is no basis for excluding the bidder from the register ex officio, in accordance with Article 111 of the Law on Public Procurement, because a conviction for the aforementioned criminal offense of damage to the environment is not grounds for exclusion, i.e. deletion from the register of bidders of economic entities. bidders of business entities.

In the analysis of the regularity of the Agency for Business Registers's response from 12/16/2020, we started from the interpretation of the current Law on Public Procurement (published in the "Official Gazette of RS", No. 91/2019 of 12/24/2019, entered into force on 1/1/2020 , and applies from 1.7.2020), which in Article 111 prescribes the following:

Grounds for exclusion

The contracting authority may waive the exclusion of a business entity from the public procurement procedure for the reasons stated in paragraph 1 of this article due to prevailing reasons related to the public interest, such as public health or environmental protection. The contracting authority is obliged to exclude the business entity from the public procurement procedure if:

1. The business entity does not prove that he and his legal representative have not been legally convicted in the period of the previous five years from the date of the deadline for submission of bids, i.e. the application, unless a legally binding judgment has established a second period of prohibition to participate in the public procurement procedure, for:

1) Criminal offense committed as a member of an organized criminal group and criminal association for the purpose of committing criminal offences;

2) The criminal offense of abuse of the position of a responsible person, the criminal offense of abuse in connection with public procurement, the criminal offense of accepting bribes in the performance of economic activity, the criminal offense of giving bribes in the performance of economic activity, the criminal offense of abuse of official position, the criminal offense of trading in influence, criminal the crime of accepting a bribe and the criminal crime of giving a bribe, the criminal crime of fraud, the criminal crime of unjustified obtaining and using loans and other benefits, the criminal crime of fraud in the performance of economic activity and the criminal crime of tax evasion, the criminal crime of terrorism, the criminal crime of public incitement to commit terrorist acts, the criminal offense of recruiting and training to commit terrorist acts and the criminal offense of terrorist association, the criminal offense of money laundering, the criminal offense of terrorist financing, the criminal offense of human trafficking and the criminal offense of establishing a slave relationship and transporting persons in a slave relationship.

2. The business entity fails to prove that it has paid the due taxes and contributions for mandatory social insurance or that it has been granted a binding agreement or decision, in accordance with a special regulation, to postpone the payment of the debt, including all accrued interest and fines;

3. **Determines that in the period of the previous two years from the date of expiry of the deadline for submission of bids, i.e. applications, the business entity has violated obligations in the field of environmental protection**, social and labor law, including collective agreements, and in particular the obligation to pay contracted wages or other mandatory payments, including obligations in accordance with the provisions of international conventions listed in Annex 8 of this law;

4. There is a conflict of interest, within the meaning of this law, which cannot be removed by other measures;

5. Determine that the business entity tried to exert undue influence on the decision-making process of the contracting authority or to obtain confidential data that could enable it to have an advantage in the public procurement procedure or submitted misleading data that could influence the decisions regarding the exclusion of the economic entity entity, the selection of a business entity or the award of a contract.

- The contracting authority is obliged to exclude a business entity from the public procurement procedure if, in the public procurement procedure, it determines that there are grounds for exclusion from paragraph 1 of this article.

- The contracting authority may waive the exclusion of a business entity from the public procurement procedure for the reasons stated in paragraph 1 of this article due to prevailing reasons related to the public interest, such as public health or environmental protection.

Therefore, these provisions introduce criteria for the selection of bidders by the contracting authority in public procurement procedures that are carried out under the Law on Public Procurement. Thus, **Article 111 paragraph 1 point 3 refers to violations of obligations in the field of environmental protection, by a business entity within a period of two years from the expiration of the deadline for submitting bids in a specific public procurement.** In that situation, the contracting authority **would have to exclude the business entity from the specific procurement**, unless it can prove that there is an overriding interest - public health or environmental protection that still allows for its exclusion despite the grounds for exclusion.

However, Article 113 of the Law on Public Procurement stipulates that a business entity for which there are grounds for exclusion from Article 111, paragraph 1, point. 1), 3) and 4) and Article 112 of this law can provide the client with evidence that he has taken measures to prove his reliability regardless of the existence of grounds for exclusion, and to that end he proves:

1) that he has paid or undertaken to pay compensation in respect of any damage caused by a criminal offense or unprofessional conduct

2) that he fully clarified the facts and circumstances by actively cooperating with the investigative authorities

3) that he has taken specific technical, organizational and personnel measures that are appropriate for preventing the commission of criminal acts or unprofessional behavior.

- The measures taken by the business entity are assessed taking into account the severity and specific circumstances of the criminal offense or unprofessional conduct, with the contracting party having to explain the reasons for accepting or not accepting the measures.

- The contracting authority will not exclude a business entity from the public procurement procedure if it has assessed that the measures taken are appropriate.

- Business entity that has been banned from participating in public procurement procedures or concession awarding procedures by a final judgment has no right to use the opportunities from paragraph 1 of this article until the ban expires.

It is, therefore, about the selection of the bidder by the ordering party and the evaluation of his offer (application) and the selection of the bidder with whom the ordering party will conclude the contract on public procurement.

Article 118, paragraph 1 of the PPL stipulates that a business entity submits a statement on the fulfillment of the criteria for the qualitative selection of a business entity on a standard form, confirming that there are no grounds for exclusion and that it meets the required criteria for the selection of a business entity.

Article 119 of the Public Procurement Law stipulates that before making a decision in the public procurement procedure, the contracting authority is required to request from the bidder who submitted the most economically advantageous offer to submit evidence of the fulfillment of the criteria for the qualitative selection of the business entity within a reasonable period of time, not shorter than five working days. in uncertified copies. Therefore, the provisions of the PPL stipulate, as a rule, the obligation to request the aforementioned evidence only from the bidder who submitted the most economically advantageous offer, with the fact that the PPL prescribes in which cases the contracting authority is not obliged to request the same, namely: if the estimated value of the public procurement is equal to or lower than 5,000,000 dinars or if, based on the data specified in the statement of fulfillment of the criteria, he can obtain evidence, i.e. inspect the evidence of the fulfillment of the criteria for the qualitative selection of the business entity, or if the client already has valid relevant evidence.

Furthermore, the grounds for exclusion of a bidder from a specific public procurement according to Article 111 paragraph 1 point 3 of the Law on Public Procurement if the contracting authority determines that the business entity in the period of the previous two years from the date of expiry of the deadline for submission of bids, i.e. applications, violated its obligations in in the area of environmental protection, it is insufficiently clear, that is, it creates problems for interpretation.

In this regard, the RS Public Procurement Commission published the following opinion (on the Commission's website):

„With the statement of fulfillment of the criteria for the qualitative selection of the economic entity, which is submitted with the offer, each bidder confirms, among other things, the absence of all defined grounds for exclusion, while the ordering party can ask the most favorable bidder to submit only the evidence prescribed by Article 112. paragraph 1 of the PPL, i.e. evidence that proves the absence of grounds for exclusion from Article 111, paragraph 1, item 1) and 2) and Article 112, paragraph 1, item 1) of the Law on public procurement."

From the above, it can be concluded that the grounds for exclusion related to the absence of a violation of obligations in the field of environmental protection, social and labor law are proven exclusively through the STATEMENT of fulfillment of the conditions for the qualitative selection of the business entity, which is submitted with the offer, and that the customer cannot require additional evidence from the most favorable bidder, i.e. evidence of the absence of grounds for exclusion from Article 111 paragraph 1 point 3 of the Law on Public Procurement.

It is particularly indicative that Article 128 of the Law on Public Procurement stipulates that it is considered that a business entity entered in the register of bidders does not have grounds for exclusion pursuant to Article 111, paragraph 1, points 1 and 2, as well as to submit data on punishment to the registry ex officio only for offenses from article 111, paragraph 1, points 1 and 2.

Also, it is important to say that if the bidder were to make a statement that there are no grounds for exclusion pursuant to Article 111, paragraph 1, point 3 of the Law on Public Procurement, and it is indisputable that in the period of 2 years before the submission of the bid, the bidder committed a violation of the obligation in the field of environmental protection, as a reason for exclusion from Art. 111, paragraph 1, item 3 of the Law on Public Procurement, only the contracting authority or other bidders would have the right to challenge such a contract, i.e. the decision to conclude a contract with that bidder. The law does not allow other persons to initiate proceedings for the protection of the bidder's rights. Eventually, information about these evidences could be submitted to the contracting authority, who, after learning about these grounds, should not conclude a contract with such a bidder.

However, since Toplica Mitrović was convicted as a natural person for the criminal offense of environmental damage, this reason could not be used as a basis for exclusion, because Article 111 paragraph 1 point 3 of the Law on Public Procurement applies only to economic entities and not to a natural person as the founder of a business entity, and not a legal representative of the company, especially since Toplica is no longer one, because the director of the company is his son.

We must note that the previous Law on Public Procurement (published in the "Official Gazette of RS", no. 124/2012, 14/2015 and 68/2015) in art. 75 paragraph 1 point 2 prescribed that the bidder in the public procurement procedure must prove that he and his legal representative have not been convicted of any of the criminal offenses as a member of an organized criminal group, that he has not been convicted of criminal offenses against the economy, **criminal offenses against the environment,** criminal offenses of receiving or giving a bribe, a criminal offense of

fraud, and in the same article, paragraph 2 stipulated that the contracting authority is obliged to require the bidders or candidates to explicitly state that they have complied with the obligations arising from the valid regulations on labor protection, employment and working conditions, **environmental protection**, and that they do not have a ban on the performance of activities that is in force at the time of submission of the offer.

In this sense, and since in Article 111 paragraphs 1 and 2 of the currently valid Law on Public Procurement, none of the crimes against ecology are prescribed (provided by the CC RS or the Law on Environmental Protection, the Law on Waters, the Law on Forests, the Law on planning and construction, etc...), it is clear that the legislator did not consider that criminal acts that protect the environment are more than crucial for the mandatory exclusion of bidders from public procurement, which is inexplicable in the era of increased awareness of protection of the environment, which can provide a basis for the conclusion that today's protected bidders in Serbia are companies that have a history of environmental incidents.

The registration of business entities in the register of bidders maintained by the Agency for Business Registers and the fulfillment of the conditions for registration or deletion is a completely different matter. Namely, in Article 8 of the Rulebook on the Content of the Register of Bidders and the Documentation Submitted with the Bidder Registration Application (Official Gazette of RS, No. 17/2020 and 94/2020), the conditions and reasons for deleting a bidder from the register are prescribed:

„Deletion of bidders from the Register ex officio is carried out on the basis of the submission of evidence by the competent authority that the bidder has ceased to fulfill the requirements of the documentation prescribed in Article 6, paragraph 1, item 3)–5) and Article 6, paragraph 2 of this rulebook."

Article 6 paragraph 1 points 3-5 and article 6 paragraph 2 of the Rulebook regulate the documentation required for entry in the register, and point 3) prescribes the obligation to submit a certificate from the competent court, i.e. the competent police department in accordance with Article 111 paragraph 1, point 1) subpoint. (1) and (2) of the Law on Public Procurement.

Therefore, the basis for deletion from the register of APR bidders is not the cessation of fulfillment of the requirements from the documentation prescribed in Article 6 paragraph 3 of the Rulebook, which refers to Article 111 paragraph 1 point 3 of the Law on Public Procurement, - **violation of obligations in the field of environmental protection, but only refers to the criminal acts listed in Article 111 paragraph 1 points 1 and 2 of the Law on Public Procurement, among which there are no criminal acts in the field of ecology.**

Therefore, the Agency for Business Registers refused to ex officio delete TIS-MITROVIĆ L.L.C. Zaječar from the Register of Bidders, because there was no basis for such a decision in the regulations.

As for the comparative legislation of the members of the European Union, specifically the Republic of Croatia, in the Law on Public Procurement from 2017, we note a great similarity with the legal solutions from the Law on Public Procurement of the RS from 2019. Namely, the Croatian law in Article 254 prescribes only optional grounds for the exclusion of bidders if:

„can adequately prove the violation of applicable obligations in the field of environmental, social and labor law, including collective agreements, and in particular the obligation to pay the contracted salary, or the provisions of international environmental, social and labor law listed in Annex XI." of this Act",

Taking into account the fact that Article 255 of the Law on Public Procurement prescribes the following:

„An economic entity in which the grounds for exclusion from Article 251, paragraph 1 and Article 254, paragraph 1 of this Act have been met can provide the public contracting authority with evidence of the measures it has taken to prove its reliability, regardless of the existence of relevant grounds for exclusion."

So, obviously, the Croatian law served as an example for the Serbian legislator when adopting the new Law on Public Procurement from 2019, that is, that all legislation is guided by solutions from EU regulations.

Based on all of the above, the legal team will act in accordance with the stated goal highlighted in the first part of the report and the following tasks and necessary analyses.

Belgrade,
August 01, 2022