

The problems arising from environment pollution, biodiversity loss, ozone layer depletion, climate change etc., emerge on the global scene with all of their gravity. Each country determined to be modern and responsible, pays particular attention to the legislation in the field of environment protection and its improvement. The foundation for development of environmental legislation must be contained in the Constitution of the State.

Strategic goal of the Republic of Macedonia is gaining the status of a full member of the European Union. This means, *inter alia*, observation of the general policy of the Union and approximation of national with the EU legislation in all areas. One of the most demanding chapters is the chapter on environment.

In 1998, the Republic of Macedonia's Parliament adopted Declaration on development of the relations of Macedonia with the European Union. It defines the accession of the Republic of Macedonia to the EU as a strategic objective. In November 2000, Macedonia signed the Stabilization and Association Agreement with the European Union. Since then, efforts to transpose European law in the field of environment in the national legal system have been initiated and intensified in time. In early 2005, the Republic of Macedonia submitted answers to the Questionnaire set by the European Union that contained 87 answers in the field of environment. Having received the answers, the European Union gave a positive evaluation, announced by (in that time) the President of the European Commission, Romano Prodi. In December 2005, the Republic of Macedonia gained the status of candidate country.

The harmonization of national legislation with the European Union's is an instrument for adopting the policies of the Union and effecting the European legal system in the national one. The signing of the Stabilization and Association Agreement was followed by the process of approximation of the national legislation with the EU. In 2006, the National Programme for Acquis Approximation was adopted. It was complemented in 2007 and in 2008. The Program is divided into 34 chapters, including the chapter of environment. That Chapter is divided into the following sub-chapters: horizontal legislation, nature protection management, chemicals management, GMO management, nuclear safety, protection against noise, waste management, water management, soil protection, as well as the part

of legislation that covers industrial pollution, risk management and civil protection against environmental degradation.

Further on, Macedonia's environmental legislation is determined by the international conventions in the field of environment ratified by the Republic of Macedonia: UN Convention for the Protection of the Ozone Layer with the Montreal Protocol, UN Framework Convention on Climate Change with the Kyoto Protocol, UN Convention on Biological Diversity with the Cartagena Protocol, UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, to mention some. Obligations undertaken by ratification of the conventions are implemented in the environmental legislation of the Republic of Macedonia.

Bilateral agreements signed by the Republic of Macedonia with other countries have significant influence on the legislation in the field of environment, too.

Since 2004, many laws in the environment field have been adopted, and modified afterwards: Law on Environment¹, Law on Nature Protection², Law on Ambient Air Quality³, Law on Waste Management⁴, Law on Waters⁵, etc. All of them rely on certain principles.

This paper explores the constitutional basis for environmental protection in the Republic of Macedonia. Furthermore, the paper explores the principles stated in the Framework Law on Environment.

CONSTITUTIONAL FUNDAMENT FOR ENVIRONMENTAL PROTECTION

*"Your successors will pick up your fruits."*⁶

The Constitution⁷ of the Republic of Macedonia underlines the responsibility of present towards future generations to preserve and develop everything worth to

¹ Official Gazette of the Republic of Macedonia nos.53/2005 and 24/2007.

² Official Gazette of the Republic of Macedonia nos.67/2004, 14/2006 and 84/2007.

³ Official Gazette of the Republic of Macedonia no. 67/2004 and 92/2007.

⁴ Official Gazette of the Republic of Macedonia no. 68/2004, 71/2004 and 71/2004.

⁵ Official Gazette of the Republic of Macedonia no. 66/2009.

⁶ Virgil.

be preserved and developed. Thus, the Preamble⁸ of the Constitution of the Republic of Macedonia reads: “Citizens of the Republic of Macedonia,... by undertaking the responsibility for the present and the future of their fatherland,... and responsible towards future generations to preserve and develop everything that is worth...“. In the Preamble of the Constitution it is also stated that “Citizens of the Republic of Macedonia...decided to constitute the Republic of Macedonia as independent, sovereign state, with the intention to...guarantee human rights and civil freedoms, to provide...social justice, economic wellbeing and progress in personal and common life... “.

One of the five elements constituting the necessary minimum of any constitution, by Loewenstein⁹, is human rights. “Human rights guaranteed by the Constitution occur in constitutional texts under the term “basic rights”. Nevertheless, those are not basic because they are in the Constitution, but vice versa – they are constitutionally guaranteed because they are basic! Certain human rights that are of inherent importance and in the interest of all and everyone, get constitutional status.”¹⁰

“The group of elemental human rights (right to life, right to health, right to food, right to safety, right to information, right to decision, right to sovereignty over natural resources, cultural right) also incorporates the right to a healthy environment. Making steps into democracy assumes at the same time building democratic principles and respecting the inviolability of individuals and their rights to a healthy environment.”¹¹

The Constitution of the Republic of Macedonia prescribes the basic rights of man and citizen, including *inter alia* the right to: work and employment¹², social safety and social welfare¹³, as well as the right to healthy environment¹⁴.

⁷ Official Gazette of the Republic of Macedonia no.52/91 and Amendments to the Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia no. 52/91, 1/92, 31/98, 91/01, 84/03).

⁸ This is actually stated in item 1 of Amendment IV to the Constitution of the Republic of Macedonia. Item 2 reads: “Item 1 of this Amendment shall replace the Preamble of the Constitution of the Republic of Macedonia“. Amendment IV was published in the Official Gazette of the Republic of Macedonia no. 91 of 20 November 2001.

⁹ Loewenstein, Karl, “Political Power and the Governmental Process”, 1957, page 127.

¹⁰ “Approximation of the legislation of the Republic of Macedonia in the area of environment with the Acquis of the European Union”, Master Thesis by Elena Temelkovska (unpublished).

¹¹ Risteski, Krste; Davitkovski, Borche; Ekoloshko pravo, NIP Studentski zbor, 1997, page 96.

¹² Article 32.

¹³ Article 34.

¹⁴ Article 43.

With reference to the right to a healthy environment, we will briefly highlight the explanation of the rights' coming to being in general. "Consequently, the time in which a pressure occurs to recognize a given human right depends primarily on the time in which social development indicates its actuality"¹⁵. Or, as Maxim Gorky said: "Every new time will give its law." The best illustrations of this are environmental rights. They become actual at the time when real danger of environmental pollution comes into existence. As, *"It is our task in our time and in our generation to hand down undiminished to those who come after us, as was handed down to us by those who went before, the natural wealth and beauty which is ours."*¹⁶

According to the technique of human rights regulation, the right to a healthy environment is regulated positively due to the formulation: "everyone has the right to..."¹⁷. "The Constitution of the Republic of Macedonia belongs to the category of constitutions where human rights provisions are accommodated in the second part (or chapter) of the constitution, immediately after general provisions. As much as one third of the Macedonian Constitution text contains provisions concerning human rights.

The right to a healthy environment is part of the category of economic, social and cultural freedoms and rights in the Republic of Macedonia's law."¹⁸ They reflect the economic and the social status of man in a given society and are considered "given or awarded by the state authority."¹⁹

"Older constitutions tend to safeguard only the most fundamental political and human rights, such as freedom of personality and ownership, freedom of speech, association, and gathering, while more modern constitutions provide for further safeguard of a whole series of social and economic rights."²⁰

Article 8 of the Constitution of the Republic of Macedonia states the **fundamental values** of the constitutional order of the state: the freedom of the market and entrepreneurship; humanism, social justice and solidarity; as well as protection and improvement of environment and nature.

¹⁵ "Approximation of the legislation of the Republic of Macedonia in the area of environment with the Acquis of the European Union", Master Thesis by Elena Temelkovska (unpublished).

¹⁶ John F. Kennedy.

¹⁷ Set in Article 43 of the Constitution of the Republic of Macedonia.

¹⁸ "Approximation of the legislation of the Republic of Macedonia in the area of environment with the Acquis of the European Union", Master Thesis by Elena Temelkovska (unpublished).

¹⁹ Shkaric, Svetomir, *Ustavno pravo, vtoro kniga*, Union Trade-Skopje, 1995, page 176.

²⁰ Barendt Eric, "An introduction to Constitutional Law", Clarendon Law series, Oxford University Press Inc., New York, 1998, page 9.

Article 43, besides specifying the **right** of everyone to a healthy environment to live in, also stipulates everyone's **obligation** to promote and protect the environment and nature.

The **right** to a healthy environment is the right of every person to a healthy environment to live in, i.e. right to a clean air and authentic natural ambient as an assumption for normal development and social activity of individual.²¹ Thomas Aquinas is regarded the first author who in his 1267 work "On Kingship" advocated for "a city of healthy air and social life with clean air".²² According to him, "... man is by nature a social and political animal living in a community much more than other living beings",²³ and therefore it was logical to take care of the environment they lived in.

As far as the **obligation of citizens** to improve and protect the environment and the nature is concerned, it can be explained through the term 'obligation' itself. Obligation is integral part of basic freedoms and rights of man and citizen, and therefore they are regulated in the constitutional text together with the main freedoms and rights as indispensable whole. Freedoms and rights are of extensive nature and therefore obligations are restrictive. Thomas Paine in his work "Rights of Man" of 1789 said: "Rights reflect the power of individual towards state, government and institutions, while duties – the power of those institutions towards man".²⁴ "According to constitutional theory, duties are accomplished, and freedoms and rights are exercised under the constitution, unless the constitution stipulates that the conditions for certain freedoms and rights exercising are provided for in a law. In comparative constitutional law, the obligation for environment and nature protection is one of the standard obligations of man and citizen.²⁵ "The basic characteristic of liberal constitutions is recognition of the fact that individuals have basic rights that have to be respected by the state."²⁶

Under the 1991 Constitution of the Republic of Macedonia, protection and improvement of environment and nature are not an obligation of the citizen only, but

²¹ Shkaric Svetomir, "Ustavno pravo", vtoro knjiga, Union Trade, 1995, Skopje, page 189.

²² Aquinski Toma, "Drzhava", Globus, Zagreb, 1990, page 115.

²³ Ibidem, page 49.

²⁴ Pejn Tomas, "Prava choveka", Libertas, Beograd, 1978, page 35.

²⁵ Other standard obligations include: respecting the Constitution and laws; honest performance of public functions; participation in removal of dangers of wider scope; provision of assistance in trouble; payment of taxes and other charges; defense of the country; etc.

²⁶ Barendt Eric, "An Introduction to Constitutional Law", Clarendon Law Series, Oxford University Press Inc., New York, 1998, page 46.

also an **obligation of the Republic of Macedonia**.²⁷ It is divided into two levels – obligation to protect environment and nature, and secondly – obligation for permanent improvement of environment and nature. According to this, the Republic is obliged to provide favorable conditions for protection and improvement of environment and nature as whole, as basic assumptions for good health of people, i.e. citizens.”²⁸ The obligation to protect environment and nature derives directly from the human right to a healthy environment. This has to be so if we intend to accomplish change in our attitude towards nature, if we want certain change to prevail and if we wish to respect the maxim expressed by Gandhi: "Be the change you want to see in the World ".

In Article 55 (paragraph 1) “the freedom of the market and entrepreneurship is guaranteed”.

In the same Article, paragraph 3, it is stipulated that “The freedom of the market and entrepreneurship can be restricted by law only for reasons of the defense of the Republic (Republic of Macedonia, author’s note), protection of the natural and living environment or public health”. This Article makes it evident that possible negative impact of market and entrepreneurship on nature and environment is anticipated, and thus even though the freedom of the market and entrepreneurship is specified as fundamental value (Article 8 paragraph 1 indent 7) and it is guaranteed (Article 55 paragraph 1), it can be restricted by law for reasons, *inter alia*, of protection of the natural and living environment. It is interesting to note that this Article positions the protection of natural and living environment immediately after the defense of the country and even before human health.

Further on, Article 56, paragraph 1 reads that “All the natural resources of the Republic of Macedonia, the flora and fauna,.... are goods of common interest for the Republic and enjoy particular protection” and that “manner and conditions under which certain goods of general interest for the Republic can be ceded for use shall be regulated” (paragraph 3 of the same Article).

²⁷ The Constitution of the Republic of Macedonia regulates the obligations together with the rights, without indicating them in the title of the section on freedoms and rights.

²⁸ “Approximation of the legislation of the Republic of Macedonia in the area of environment with the Acquis of the European Union”, Master Thesis by Elena Temelkovska (unpublished).

PRINCIPLES IN THE LAW ON ENVIRONMENT

The new Law on Environment was adopted in July 2005 as the most important law in the area of environment in the Republic of Macedonia. It is the basic law in this area, which assumes that other laws in this area should be aligned with it. In 2007, the Law on Environment was subject to certain amendments.

The Law on Environment is compliant with the requirements of the European Union. Its basic postulate concerns preservation, protection, recovery and improvement of the environment, as one of the fundamental values recognized in the Constitution of the Republic of Macedonia.

In its structure, the Law on Environment contains XXII chapters:

- Chapter I – General provisions
- Chapter II – Principles of environmental protection
- Chapter III – General obligations
- Chapter IV – Special obligations and measures
- Chapter V - Environmental media monitoring
- Chapter VI – Information system
- Chapter VII – Research activity and environmental education
- Chapter VIII – Access to environmental information
- Chapter IX - Environmental protection planning
- Chapter X – Environmental impact assessment of certain strategies, plans and programmes
- Chapter XI – Environmental impact assessment of certain projects
- Chapter XII – Integrated environmental permits for operation of installations with environmental impact
- Chapter XIII – General environmental audit
- Chapter XIV – Adjustment permits with adjustment plans
- Chapter XV – Prevention and control of major accidents involving hazardous substances
- Chapter XVI – Liability for damages caused to environment
- Chapter XVII – Agency of Environment
- Chapter XVIII - Financing
- Chapter XIX - Authorizations

- Chapter XX - Supervision
- Chapter XXI – Penalty provisions
- Chapter XXII – Transitional and final provisions.

Chapter of particular relevance for this paper is the second Chapter of the Law, regarding the principles of environmental protection. They set the frame for further provisions of the Law.

According to the **principle of high level of protection**²⁹, when undertaking activities or while performing activities, everyone is obliged to ensure a high level of protection of the environment and the human life and health.

Principle of integration³⁰ assumes that the basis and objectives of the policy of environmental protection and improvement must be integrated into all development, strategic, planning and programming documents adopted by the bodies of the Republic of Macedonia and the bodies of the municipalities.

In order to ensure that needs for a healthy environment, as well as the social and economic needs of the present generations are satisfied without jeopardising the rights of future generations to satisfy their own needs, **the principle of sustainable development**³¹ requires that whenever an activity is undertaken or performed, care should be taken as to the rational and sustainable use of natural resources.

Article 9 defines the **polluter pays principle**, according to which polluter is obliged to compensate the costs associated with the elimination of the danger of the environment pollution, bear the remedial costs and pay a fair compensation for the damage caused to the environment, as well as restore the environment to as close to the condition before the damage as possible.

The **user pays principle**³² assumes that the user of natural resources is obliged to defray the costs for ensuring sustainable development, as well as for the remedy of the degradation of environmental media and individual environmental areas caused by the use of the natural resources.

The **principle of subsidiarity**³³ comprises the right and the obligation of municipalities to undertake on their territories all measures and activities of

²⁹ Article 6.

³⁰ Article 7.

³¹ Article 8.

³² Article 10.

³³ Article 11.

environmental protection and improvement which are not under the exclusive competence of state authorities.

The principle of proportionality³⁴ ensures that the system of environmental protection is based on adoption and enforcement of laws, plans, programmes and decisions, which provide proportionality between developmental and environmental protection needs.

This Law also includes the **principle of precaution**³⁵, according to which if there is a rational doubt that a certain activity may cause harmful consequences on the environment, necessary measures for protection of the environment shall be undertaken, before available scientific evidence that such consequences could occur becomes available.

According to the **principle of prevention**³⁶, measures and activities of environmental protection shall be taken prior to the occurrence of harmful effects.

In order to reduce risks to people and environment and increase economic and environmental efficiency, the **principle of cleaner production**³⁷ requires that application of comprehensive environmental protection strategy concerning raw materials, production processes, products and services, is encouraged.

The **principle of international cooperation**³⁸ assumes that the Republic of Macedonia takes active part in regional and broader international cooperation in the sphere of environment protection and improvement.

³⁴ Article 12.

³⁵ Article 13.

³⁶ Article 14.

³⁷ Article 15.

³⁸ Article 16.

The Law also incorporates the **public participation and access to information principle**³⁹, according to which the state authorities and the bodies of the municipalities are obliged to take all the necessary measures and prescribe procedures to ensure the right of public to have access to information and participation in the adoption of decisions related to the state of the environment, as well as to ensure that the public expresses their opinion in decision-making processes through such decision making procedures.

The **principle of public environmental awareness rising**⁴⁰ indicates that scientific, educational, health, information, cultural and other institutions, including civil associations, should in the framework of their activities promote and develop the awareness of the public of the importance of the environment and its protection.

This Chapter also hosts the „safeguard clause”, which is not a principle, but enables the state to undertake measures for environment protection in emergency cases. Namely, Article 19 specifies that “For the purposes of protection of human life and health and the environment, the bodies of the central government and the bodies of the municipalities and of the City of Skopje and of the municipalities of the City of Skopje shall, in accordance with the law, have both the right and the obligation to undertake measures and activities related to the temporary or the permanent prohibition of the performance of certain activities, or on the trade in certain products.”

RESULTS

The analysis of the Constitution and the Law on Environment of the Republic of Macedonia may lead to several considerations and conclusions.

The **Constitution of the Republic of Macedonia** stipulates that one of the fundamental values of the constitutional order of the state, besides freedom of the market and entrepreneurship, humanism, social justice and solidarity, is environment and nature protection and improvement.

The Constitution establishes the basic rights of man and citizen, including the right to healthy environment. Article 43, besides of the right of every man to a healthy environment, stipulates their obligation to improve and protect natural and living environment as well.

³⁹ Article 17.

⁴⁰ Article 18.

Under the Constitution of the Republic of Macedonia, protection and improvement of environment and nature are not obligations of the citizen only, but also an obligation of the Republic of Macedonia.

Under the Constitution, although freedom of the market and entrepreneurship is recognized fundamental value, it can be restricted by law for reasons including “protection of nature and environment.”

According to the Constitution, all natural resources, flora and fauna, are goods of common interest to the Republic and enjoy special protection.

The Law on Environment tends to fulfill the requirements of the European Union Directives of relevance for this area and undertakes to sustain traditional values in the protection of the environment and provision of sustainable development. The Law recognizes the need for integrated approach, establishment of system of planning and management and compliance with economic interests.

The Law stipulates that the environment is planned and managed in line with other social areas upon which the overall development of the country is founded.

The Law also defines the basic principles upon which it is built, namely: principle of higher level of protection, principle of integration, principle of sustainable development, polluter pays principle, principle of subsidiarity, principle of proportionality, principle of precaution, principle of prevention, principle of cleaner production, principle of international cooperation, principle of public participation and access to information and principle of public environmental awareness rising. The Law incorporates “safeguarding clause” as well, which is not a principle, but capacitates the state to undertake measures for environment protection in case of emergency. Thus, state and municipal authorities have the right and the obligation to undertake measures and activities involving temporary or permanent prohibition of the performance of certain activities or trade in certain products.

CONCLUSIONS

Based on the results obtained, we may conclude that the Constitution of the Republic of Macedonia is a modern constitution establishing the grounds for building the policy for environment and nature protection and improvement. Under it, healthy environment is recognized as fundamental value of the constitutional order, basic right of man and citizen of the Republic, but also as their obligation to protect it. At the same time, according to the Constitution, it is the obligation of the Republic to

provide favourable conditions for protection and improvement of environment and nature as a whole.

In relation to the Law on Environment, a relevant conclusion would be that it observes the policy of the European Union in this sphere and incorporates the obligations undertaken by way of ratification of some of environmental conventions. The principles upon which the Law is founded enable integrated and comprehensive protection and improvement of environment.

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