

# **CONSTITUTIONAL AND LEGAL BASE FOR SUSTAINABLE DEVELOPMENT IN MACEDONIA**

Conference Topic: Sustainable and Regional Development

## **1. INTRODUCTION**

The mankind is faced with a variety of choices related to quality of life and the condition of the environment. Each choice made will determine the world to be left for the future generations. Some choices will contribute to create a world in which the economic and social needs are balanced with the capacity of natural wealth and eco-systems; while others will lead to creation of a world with devastated environment where the poverty and famine rule.

The direction of global sustainability should be founded on the recognition of the evident connection between the environmental protection and the development.

The concept of sustainable development was institutionalized for the first time at the UN Conference on Environment and Development, held in 1992 in Rio de Janeiro and since then it is a leading concept and global achievement.

Republic of Macedonia, as a member state of the United Nations Organization and candidate country for accession to European Union, is obliged to ascertain durable policy for sustainable development, among all, by its enforcement in the legislation.

## **2. THE FOUNDATIONS OF SUSTAINABLE DEVELOPMENT IN THE CONSTITUTION**

When analyzing the Constitution, the starting point for assessment was the definition for sustainable development given in the Bruntland report by the World Commission on Environment and Development<sup>1</sup>, which clearly indicates the responsibility of present generations towards the future ones and their obligation to create development which will provide possibility for the future generations to satisfy their needs. In our Constitution, the Preamble<sup>2</sup> reads: "The citizens of Republic of Macedonia...taking the responsibility for the present and future of their country... and responsible in front of the future generations for protection and development of everything valuable...".

If we take into consideration that the sustainable development is based on three pillars: economic development, social righteousness and environmental protection, than we will notice that Article 8 states that the fundamental values of the constitutional order of the Republic of Macedonia are:

- the freedom of the market and entrepreneurship (economic dimension)
- humanism, social justice and solidarity (social dimension) and
- protection and promotion of the environment and nature (environmental dimension).

The Constitution of Republic of Macedonia has also determined the basic human rights of the individuals and citizens, among which the right to:

- work and employment<sup>3</sup>
- social security and social insurance<sup>4</sup>

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<sup>1</sup> World Commission on Environment and Development, WCED.

<sup>2</sup> Actually this is given in Paragraph 1 of the Amendment IV of the Constitution of Republic of Macedonia. Paragraph 2 reads: "Paragraph 1 of this Amendment replaces the Preamble of the Constitution of Republic of Macedonia. Amendment IV is published in the Official Gazette of RM, No.91 on November 20<sup>th</sup>, 2001.

<sup>3</sup> Article 32.

<sup>4</sup> Article 34.

- healthy environment<sup>5</sup>.

In the Constitution of Republic of Macedonia, it is stated that the Republic, “in order to provide balanced economic and social development....”<sup>6</sup>, which indicates that the economic and social development should be balanced.

In Article 55 (Paragraph 1) “the freedom of the market and entrepreneurship is guaranteed”. In the same Article, Paragraph 3 specifies that: “the freedom of market and entrepreneurship can be restricted by law only for reasons of the defense of the Republic, protection of the nature, environment or public health”. It is obvious from this article that a possible negative impact of the market and entrepreneurship on the nature and environment has been anticipated, hence, although the freedom of market and entrepreneurship is determined as a fundamental value (Article 8, Paragraph 1, line 7) and the same is guaranteed (Article 55, Paragraph 1), it can be limited by law for the purposes of, among others, protection of nature and environment. In this Article, it is interesting that the protection of nature and environment is listed after the defense of the country (as a principal social interest of the citizens of each country), and even before public health.

Furthermore, in Article 56, Paragraph 1 states that: “All the natural resources of the Republic, the flora and fauna,...are amenities of common interest for the Republic and enjoy particular protection” and that “the law regulates the mode and conditions under which specific items of common interest for the Republic can be ceded for usage” (Paragraph 3 of the same Article).

In Article 57, it is specified that the Republic stimulates the economic progress and provides for a more balanced spatial and regional development, as well as for more rapid development of economically underdeveloped regions.

The Constitution of Republic of Macedonia also stipulates right to education, guarantees the right to healthcare, etc. The Republic “particularly protects the mothers, children and minors” and “provides particular care and protection for the family”, etc.

It is indisputable that the Constitution of Republic of Macedonia contains the fundamentals of sustainable development. Besides taking into consideration the three pillars of sustainable development (economic development, social righteousness and environmental protection), it is also based on the responsibility, justice and righteousness, with maximum respect of the rights and freedoms of the citizens. The Constitution of Republic of Macedonia<sup>7</sup> includes the key principles<sup>8</sup> of sustainable development.

### **3. SUSTAINABLE DEVELOPMENT IN THE LAWS ON ENVIRONMENT**

When discussing the national legislation for protection and promotion of the environment in Republic of Macedonia, it has to be pointed out that it is relatively new and incorporates the principles of the European policy for environment. In addition, significant attention has been paid to the principles of environmental protection with national, regional and local harbinger. The new corpus of environment laws in Macedonia is consist of the Law

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<sup>5</sup> Article 43

<sup>6</sup> Article 41.

<sup>7</sup> Constitution of Republic of Macedonia (“Official Gazette of Republic of Macedonia” No.52/91 and Amendments of the Constitution of Republic of Macedonia (“Official Gazette of Republic of Macedonia” No.52/91, 1/92,31/98,91/01,84/03).

<sup>8</sup> For this purpose, it was assessed if the Constitution of Republic of Macedonia incorporates provisions relating to the economic development, social righteousness and environmental protection.

on Environment<sup>9</sup>, the Law on Nature Protection<sup>10</sup>, the Law on Waste Management<sup>11</sup> and the Law on Ambient Air Quality<sup>12</sup>.

The **Law on Environment** pays attention to meet the requirements of the European Union directives and concurrently cares for maintenance of the traditional values regarding environmental protection and ensures sustainable development. Considering that this is a framework law, we shall pay some more attention to it.

In the law, in Article 4<sup>13</sup>, one of the goals of the law is “rational and sustainable use of natural wealth”; in the same article, the way of achieving the goals is determined as “integrated approach towards environmental protection and economic development”, “establishment of a system for planning the environmental protection, promotion and management”, “synchronization of the economic and other interests with the requirements for protection and promotion of the environment”.

In brief, it has been concluded that it is required to have an integrated approach, to establish a system for planning and management and, what is inevitable, to synchronize it with the economic and other interests.

In the law, in the Chapter<sup>14</sup> determining the key principles on which the legal provisions are founded, the Sustainable development principle is included, which sets the obligation that when taking any action or performing any business activity, special consideration has to be paid to rational and sustainable use of natural wealth, so as to meet the needs for healthy environment as well as the social and economic needs of the future generations, without jeopardizing the rights of the future generations to satisfy their needs.

The sustainable development is also mentioned in the Consumer pays principle, whose objective is to make the user of the resources to reimburse the costs for ensuring sustainable development and rehabilitation of the environment needed because of usage of natural resources.

Particularly important for the sustainable development are also: Integration principle which ensures that the goals of the policy for environmental protection and promotion are integrated in the other sector policies adopted by the institutions in Republic of Macedonia (development agriculture, transport, etc.); the Proportionality principle ensuring proportionality between the needs for development and the needs for environmental protection; the Principle for participation of the public and access to information, which obliges the authorities of Republic of Macedonia (central and local) to provide all necessary measures and lay down procedures to ensure the right to access to environmental information is practiced, as well as to ensure participation of the public and the conditions for expression of the public opinion when making all decisions related to environment, as well as the Principle for raising the public awareness for the importance of the environment, whereby the scientific, educational, health, information, cultural and other institutions, including the associations of citizens, are obliged within their activities, to promote and ensure enhancement of public awareness for the importance of the environment and its protection. The law contains other principles as well and they are all in function of ensuring sustainability of the development.

In Article 65 the obligation is set down that, by suggestion of the state government body competent for the issues in the sphere of environment, the Government of Republic of Macedonia lays down the strategies, plans and programs (planning documents) for which the procedure for determining their impact on the environment, the lives and health of humans is

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<sup>9</sup> The Law was adopted on June 22<sup>nd</sup>, 2005.

<sup>10</sup> Published in “Official Gazette of Republic of Macedonia No. 67/04”.

<sup>11</sup> Published in “Official Gazette of Republic of Macedonia No. 68/2004” and amended in No.71/2004).

<sup>12</sup> Published in “Official Gazette of Republic of Macedonia No. 67/2004”.

<sup>13</sup> In Article 4 (Chapter I - General Provisions) the goals of the Law are listed as well as the way of their achievement.

<sup>14</sup> In Chapter II - Principles of Environmental Protection.

obligatory. In fact, this is a strategic assessment, which indicates a transparent decision-making system in the general planning and promotion of the principle of sustainable development; the same ensures awareness and prediction of the (possible) impact on the environment before the start of implementation of planning documents. In this fashion, preventive actions are taken and the possible negative impacts on the environment are minimized.

Especially significant is the Ninth Chapter “Sustainable Development and Global Issues in the Environmental Sphere” which contains provisions related to development and adoption of National Strategy for Sustainable Development. In this view, particularly important is Article 186. The following conclusions can be drawn after careful analyses of this Article:

- The state administration authorities (central government) and the municipalities (local government) are obliged to take care for the implementation of the sustainable development principles!
- The state administration authorities (central government) and the municipalities (local government) are obliged to promote and support the sustainable development in Republic of Macedonia!
- The Law on Environment is the first law (and according to our perception the only one!) in which the National Strategy for Sustainable Development is mentioned!
- The Law provides the Government of Republic of Macedonia with the opportunity to develop a National Strategy for Sustainable Development!
- The objective of the development of the National Strategy for Sustainable Development is to ensure synchronization of the economic development, social progress and the protection of the environment on national level!
- The Assembly, as a place where the interests of the citizens are represented and defended, should assess the Strategy before its adoption by the Government of Republic of Macedonia!
- The municipalities are given the possibility to develop and adopt Local Agenda 21, as local strategic, planning and program document for sustainable development!
- The objective of the development of the Local Agenda 21 is to ensure synchronization of the economic development, social progress and the protection of the environment on local level!
- Local Agendas 21 have to be designed and developed in accordance with the established methodology to ensure harmonization of their content and the way of their development!

In the Article<sup>15</sup> which refers to the system of planning, the paragraph 1 states that the development of the environmental protection and management is determined and directed in accordance with the entire economical, social and cultural development of Republic of Macedonia, whereby priority is given to the measures for environmental protection and management as it is of mutual interest for present and future generations. The same paragraph further states that this is done “for achievement of the goals” set in the law and “by the use of a system of measures and activities for long-term planning of the environmental protection and promotion”.

In Paragraph 2 of the same article, it is stated that “with the system of planning... the realization of the economical, technical, scientific, educational, organizational measures and activities is directed and synchronized...in order to protect and promote the environment and ensure sustainable development”.

Paragraph 3 lays down the obligation for synchronization of the measures for environment protection and promotion<sup>16</sup> with the measures determined in the strategic,

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<sup>15</sup> Article 59.

<sup>16</sup> Determined in the planning documents for environment.

planning and program documents for regional development, science and education, industries based on exploitation of natural resources and wealth, transport, telecommunications, tourism, spatial and urban planning and use of land”.

It is more than obvious that the environment protection is planned and managed in accordance with the other social fields on which the social development of a country as a whole is based, so as to ensure sustainable development and protect the interests of present and future generations<sup>17</sup>.

In the **Law on Nature Protection**, one of the objectives is to ensure sustainable use of the natural wealth for the benefit of the present and future development<sup>18</sup>.

Article 5<sup>19</sup> clearly emphasizes that the protection of nature is not only beneficial for the current progress but also for the future development (similarly as in the Law on Environment, in this Law we also find the care for the future generations!); the need for incorporation of measures for nature protection in the planning industry documents has been identified and the awareness is raised that the use and management of natural wealth has to be sustainable<sup>20</sup> i.e. rational.

One of the principles on which the protection of nature is founded is Sustainable Development Principle<sup>21</sup>, which will be quoted hereby in its whole, as it formulated the principle for sustainability of the development in a unique, very precise and clear way: “For the purposes of meeting the requirements for nature protection as well as satisfying the social and economic needs of present generations, without compromising the ability of future generations to meet their own needs, the non-renewable natural wealth must be used rationally and the renewable ones in a sustainable manner”.

Three points are of key importance in this definition: first - the economic, the social and the needs for nature protection are considered equal (the three “pillars” of sustainable development); second - the rights of future generations are taken into consideration and they cannot be jeopardized (time dimension of sustainable development); and third - difference is made between the use of renewable and non-renewable natural wealth: the first ones to be used in a sustainable manner, the second ones-rationally.

The obligation for incorporation of the measures and activities for nature protection in all development, strategic, planning and program documents, plans for special management and use, as well as in the plans for use and management of natural wealth is part of the Integration principle<sup>22</sup> and further elaborated in some other articles<sup>23</sup>.

For us, Article 189 is also important which states that the Spatial Plan of Republic of Macedonia, the Specific Spatial Plans as well as the strategies, programs and plans related to development of certain sectors of economic and social fields will be harmonized with the provisions of this Law latest within three years after the day of implementation of this law; which indicates on the integration of the nature protection in the planning documentation of other sectors (industry, spatial management, etc.).

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<sup>17</sup> This approach is based on the Sustainable Development Principle and Integration Principle.

<sup>18</sup> Article 4.

<sup>19</sup> In Article 5, it is stated that the protection of nature is achieved particularly “by taking measures for protection of nature leading to its preservation and rational management”, “by incorporating the conditions and measures for protection of natural wealth in the plans for exploitation of natural resources in certain industries”<sup>19</sup>, as well as with “sustainable and rational use of the natural wealth”.

<sup>20</sup> Other article of the Law on Nature Protection also mention the sustainable usage: of biodiversity (Article 46), of natural wealth (Article 47), resources (Article 81). The Law also contains provisions for sustainable management with wild species (Article 22) and lists the zones for sustainable use of protected areas (in Article 93 and 106).

<sup>21</sup> Article 7.

<sup>22</sup> Article 7.

<sup>23</sup> Such as in Article 74 which reads: “The national park is managed on integral bases on its entire territory in a manner which ensures .... creation of conditions for development of tourism in accordance with the sustainable development principle”.

The law also provides for Assessment of the impact on nature by certain strategies, plans and programs developed on national and local level, which could have significant effects on nature<sup>24</sup>.

It is obvious that the Law on Nature Protection encompasses and includes the principles of sustainable development in a cross-connecting manner.

In the **Law on Waste Management**, Article 3 reads that the objectives of this law are to ensure, among other, sustainable development by preserving and saving natural resources.

It is specified in the same article that one of the goals is prevention of negative impacts from waste on the environment, human lives and health; other goal is to achieve a high level of protection of the environment, human lives and health<sup>25</sup>.

With the Law on **Ambient Air Quality**, it is intended to preserve the best quality of the ambient air in conformity with the sustainable development principles<sup>26</sup>, and its objective is to ‘avoid, prevent and minimize the detrimental effects on human health and the environment as a whole, including the biodiversity, natural wealth, historic and cultural heritage’<sup>27</sup>.

The Law encompasses the approach of integrated protection<sup>28</sup>. Strategic Assessment is also planned for (as required by the Law on Environment). The conformity is used for emissions of pollutants in the air.

For us Article 17<sup>29</sup> is important where it is stipulated that ‘the ambient air quality is managed through ... adoption and implementation of planning documents’, which implies complexity in the approach. The term ‘management’ is used for the ambient air quality, while the planning refers to protection of ambient air quality.

Obviously, this Law is also founded on the sustainable development principles (comprehensiveness, integrated protection, appropriate planning and management, etc.).

#### 4. CONCLUSIONS

The analysis of the Constitution and the normative acts regulating the issues which are vital for sustainable development, enables us to ascertain and make certain conclusions.

In the Preamble of the Constitution of Republic of Macedonia the three key pillars of sustainable development are encompassed - economic progress, social righteousness and environment protection and they are considered as a base when constituting the country. The Constitution also specifies the fundamental values of the constitutional order of the Republic with their economic, social and ecological dimensions.

The Law on Environment identifies the necessity for integrated approach, establishing a system for planning, management and synchronization with the economic interests.

For the purposes of ensuring sustainable development beneficial for present and future generations, this law stipulates that the environment should be planned and managed in accordance with the other social fields on which the social development of a country as a whole is based.

The Law has identified the main principles on which it is based: they are all in function of sustainable development. Pursuant to the law, the Government lays down the strategies, plans and programs for which the procedure for determining their impact on the environment, the lives and health of humans is obligatory; thus making the care for

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<sup>24</sup> Article 15.

<sup>25</sup> The care for human health is included in Articles 1, 4, 5, 9 and others.

<sup>26</sup> Article 35.

<sup>27</sup> Article 3.

<sup>28</sup> Article 31.

<sup>29</sup> This article refers to the modes of management.

environment integral part of all strategic documents, notwithstanding the area they are regulating.

It is of vital importance that this Law provides opportunity for the Government to develop a National Strategy for Sustainable Development which, prior to its final adoption, should be submitted to the Assembly of Republic of Macedonia. This is the only strategy the Assembly of Republic of Macedonia is obliged to give opinion for.

The Law provides the units of local self-government with the possibility to prepare and adopt Local Agenda 21 as local strategic, planning and program document for sustainable development.

With the Law on Nature Protection, sustainable usage of natural wealth is ensured, which is beneficial for the present and future development; the necessity for incorporation of measures for natural wealth protection in the planning economical documents is also stipulated. As in the case of the previously studied law, all principles in this Law are aimed to ensure sustainability of development.

The Law on Waste Management ensures sustainable development by protection and conservation of natural resources; it contains the principles of sustainable development: comprehensiveness, integrated protection, appropriate planning and management of the specified area.

The Law on Ambient Air Quality also calls for integrated protection and suitable planning and management; demands strategic assessment of the impact on the environment. The Law intends to maintain the best air quality in accordance with the principles of sustainable development.

As a general rule, the laws related to environment, are based on the principles of sustainability of the development and their ultimate goal is to achieve sustainability in the specific sector. To this end, the interests of other sectors are also considered, especially the economic one. They also specify two very important instrument for protection of the environment: Environmental Impact Assessment (EIA) and Strategic Environment Assessment (SEA). The implementation of the methodology for SEA shall provide new possibility for further and more efficient integration of the objectives of sustainable development in the strategic plans and programs.

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## **SUMMARY**

The concept of sustainable development, with its own strength and complexity enjoys its position on the global stage of the only concept offering the way out of the devastation threatening the planet. Each country aspiring to be regarded as responsible, has to base its national policy on this concept.

The Republic of Macedonia has laid down the foundations for sustainable development in its Constitution and through the laws in the field of environment protection which indicate the necessity for comprehensiveness, integrated approach, appropriate planning and management builds the policy for sustainability of the development on national level.

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