ENVIRONMENTAL LAW AND POLICY IN EU

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- „A law is valuable not because it is law, but because there is right in it“
- -Henry Ward Beecher

MEĐUNARODNOPRAVNI ASPEKTI ZAŠTITE I OČUVANJA OKOLIŠA

Razvoj međunarodnog prava okoliša

Razvoj do Rimskog ugovora

- Prvim međunarodnim ugovorima o zaštiti i očuvanju okoliša bile su obuhvaćene međunarodne rijeke i jezera.
- Nakon Bečkog kongresa 1815, u skladu s načelima utvrđenim na tom kongresu zaključen je niz međunarodnih ugovora o podjeli ribolovnih prava na rijekama, nadziranju plovidbe i o uređenju drugih načina upotrebe i iskorištavanja međunarodnih rijeka, u kojima se zalazi i u pitanja zaštite okoliša.

- Kasnije su u međunarodne ugovore o rijekama unijete i izričite klauzule koje se izravno odnose na onečišćenje i zabranjuje se izbacivanje otpada u granične vodene tokove.
- To su, primjerice, ugovori Velikog vojvodstva Badena i Švicarske iz 1869. i 1875., te Francuske i Švicarske iz 1880., i Italije i Francuske iz 1882., itd.

- Prvim međunarodnim ugovorom koji je sadržavao pravila o očuvanju ribljih vrsta u moru smatra se britansko-francuski ugovor iz 1839. o definiranju granica isključivih ribolovnih prava u Engleskom kanalu.
- U skladu s tim ugovorom usvojena su, na širem međunarodnom planu, detaljnija pravila o očuvanju ribljih vrsta.

- Prvi pokušaj da se međunarodnim mjerama zaštite kopnene divlje životinje bila je Deklaracija o zaštiti ptica korisnih za poljodjeljstvo, koju su 1875. potpisale Austro-Ugarska i Italija.

- Within the last few decades, the politics and economy of Europe have changed significantly in many respects, with the introduction and progression of the EU.
- Officially founded in 1957 after member states created and signed the Treaty of Rome, the EU has evolved into what is today: one of the most influential political and economical institutions in the world.

- The evolution of the EU has led to a complex agreement between the 15 original member states, which gave up their control over specific policy areas to create a common body of law.
- Among those policy areas that the EU has recently begun to emphasize is the environment; the majority of policy focusing on environmental standards in the member states is controlled by EU law. Since the creation of the Treaty of Rome, in which no mention of environmental policy was made, the union turned its focus toward the important role the environment, among other factors, plays in the economy.

- No reference to environment policy was made in the Treaty of Rome; therefore early environmental actions were based on creative interpretation of Articles 100 and 235 of the Treaty.

- Article 100, related to the common market allows the EU to engage in actions that *„directly affect the establishment or functioning of the common market“*;
- Article 235 is more general statement that applies when *„action by the community should prove necessary….and this treaty has not provided the necessary powers“*.

- Despite the lack of a solid foundation for environmental actions, the EU created and estimated 150 pieces of legislation between 1967 and 1987, when the Single European Act introduced a specific environmental section into the Treaty.
- During this period, European countries attempts to recover from war drove them to create environmental legislation that focused on making progress with the common market. However, it eventually became clear that broader environmental protection was an important part of economic growth, and the emphasis began to shift toward a genuine concern for the environment.

- The new attitude toward environmental protection led to the 1972 Paris Summit, which took place following both encouragement from environmentally conscious member states and the EU,s participation in the United Nations Conference on the Human Environment in Stockholm.
- The Paris Summit focused on the development of the first Environmental Action Program (EAP), with the goal of harmonizing national politics between member states.

- The publication of the first EAP in 1973 was an important step in environmental policy and led to a series of five more programs, the sixth of which is still in progress today.
- However, the first three programs, which lasted from 1973 to 1976, 1977 to 1991, and 1982 to 1986 respectively, stil relied on Articles 100 and 235 of the Treaty of Rome as their legal basis.

The 1986 The Single European Act (SEA) gave EU environmental policy a new face by providing a legal basis for making environmental decisions.

The basic environmental objectives addressed in Article 130 (r-t) were as follows:

- to preserve, protect, and improve the quality of the environment,
- to protect human health, and
- to ensure a prudent and rational utilization of natural resources.

- The Treaty focused on the idea of „polluter-pays“.

After the creation of the SEA, there was a flurry of policy produced, with more legislation created between 1989 and 1991 than has been created in the last 20 years of policy making.

- Tha Maastricht Treaty (formally the Treaty of the European Union) was created simultaneously with the Fifth Environmental Action Program „ Towards Sustainability“.
- This Treaty brought about a more defined goal for environmental policy in the EC by creating s new environmental act, Act 130, which created a more ambitious environmental policy then the SEA. More notably, the Act extended qualified majority voting to most environmental issues and introduced subsidiarity, which proposes that collective solutions be made in the EU only when the member states cannot achieve them on their own.

- The main ambitions of the Treaty (Article 130R 1 and 2) included prioriziting environmental quality, human health, resource use, and international cooperation, as well as stating that:
- „*Community policy on the environment shall aim at a high level of protection, taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principle that preventive action shall be taken, that environmental damage should as a priority be rectified at the source and that the* ***polluter should pay.***“

During years after Maastricht, another conference was held in Amsterdam in 1999, which was focused on a more thorough integration of the environment into other EU policy areas. Particular focus was put on a campaign to sustain economic and social development, which sought to fight poverty and foster integration of the developing countries in the world. As the EU continues to develop its goals in relation to the environment, it is clear that it holds the environment as a main focus of discussion and law, rather then a policy area considred only in relation to other „more important“ issues.

Economy and Environment in EU policy

- . Often the criticism directed toward the environmental policy in Europe is aimed at the community,s tendency to put economic development and trade before environmental considerations. The history of this problem was prominent previous to the Maastricht Treaty and was seen in two general areas

- First was the intertwinement of environmental policy with economic policy. Environmental policies were intended to improve the building of the single market and, as a side note, to contribute to the environment.
- Second was the specialization in technical standards, which concerned the uniformity of standards to ensure the absence of unfair competion advantages. The fear of countries losing their competitive advantage due to environmental regulations made them hesitant to accept unilateral action and unwilling to give power to international environmental organizations.

The Union versus Member States

- There is an intricate system of policymaking in the EU, which leaves room for member states to encourage or discourage the creation of environmental policy based on their own national needs and attitudes. Overall, the relationship between the Union and national interests when creating environmental policy can be described as reciprocal.

- Although the EU is a voluntary arrangement, it is unlikely that any country would leave, because the economic ties within the Union would make it extremely costly.
- However, member states are protected by certain legal provisions, including unanimity voting. The introduction of subsidiarity after the Treaty of Amsterdam also allows the member states to guard their sovereignity in specific categories of environmental policy, including fiscal provisions, measures concerning land use, planning of towns and country and management of water sources, as well as measures regarding the member state,s choice about energy sources.

- Over the years, some countries have earned reputations for beeing „greener“ while others are considered laggards in their views and motivation on environmental policy. Among the „green“ countries, German, Denmark, and the Netherlands have been recognized for their pioneering role in the Union.

- In the 1980s, Germany earned a reputation for beeing the „engine“ of EU environmental policy and, with the rise of the Green Party in national policy, proposed a combination of extreme and relatively harmonized solutions to EU problems. Germany is committed to beeing a part of the EU and has a strong position economically and politically in the Union.

- Denmark,s presence in the EU has been somewhat reluctant, but their concern for environment is seen specifically in their desire to maintain extremely high standards. Denmark is responsible for the introduction of Article 100A(4) which allows member states to maintain high levels of environmental protection even when EU regulations are less stringent. Recently, as the EU standards have risen, Denmark has taken a more active role in policymaking and has allowed the European Environmental Agency to be located in Copenhagen.

- The Netherlands, although small, has had a significant amount of influence through its development of ambitious domestic policies, known as National Environmental Policy Plans (NEPP). The Netherlands has recognized that its own desires to maintain high standards must balanced by a need to get Union agreement, a distinct contrast with the typical Danish view.

- More recently, Finland, Sweeden, and Austria have become the leaders in environmental policy and protection since they joined the Union in 1995.
- Finland has not always maintained an active environmental policy in the past, and it was consideredmore of a follower in environmental issues until it created Ministry of the Environment in 1983. However, Finland was the first country to enforce a tax on CO2 emissions, despite the Finns often humble attitude toward taking initiative.

- Sweeden has always played an important role in international environmental policy; it hosted UN,s Stockholm conference in 1972, which encouraged the EU to create their own environmental regulations. Sweeden is also involved in other international environmental organizations and supports the Stockholm Enviromental Institute – an international network of independent institutes that work to find enviromental solutions. Since joining the EU, Sweeden had been able to (a) promote its ambitious environmental goals im a more formal manner and (b) positively improve the status of environmental policy at an international level.

- Austria, the third country to join in 1995, consilidated its environmental laws in the 1980s. Most notable has been Austria,s concern about the ozone layer, which led to the 1985 Vienna Convention and has made Austria a leader in the area of EU transport law and the goals to reduce NOx emissions from trucks by 60%.

- The other states within the EU find themselves in a position to either (a) follow in the footsteps of the mentioned leaders or (b) oppose their high environmental standards.
- The most resistance has come from countries such as Greece, Portugal, and Spain, none of whome had an environmental ministry when they joined the EU in the 1980s.

- These and other less environmentally orientated countries tend to have varying positions on ~~enviromental topics, opposing those policies that~~ they feel harm their domestic economies while only only occasionally making the enviroment a priority. Hoever, since the introduction of majority voting on environmental policy and the addition of the environmental conscious member states, the tendency for laggard and middle states to be brought along environmentally has significantly increased.

The making of environmental policy

- The EU represents one of the best models for environmental policymaking, considering that international cooperation is the most logical and potentially effective way to address the problem, like environmental quality, that does not respect national borders.

- The Union places three parties –
- the Directorate of the European Commission,
- the Council of Ministers, and
- the European Parliament – in charge of the bulk of the policymaking, with fourth for enforcement.

- The Directorate of the European Commission is responsible for the early stages of legislation, with commissioners drafting legislation and proposing it to the Council of Ministers.
- However, the Commission is admittedly weakened by the Directorate's lack of control over the administrations, combined with the general absence of a single authority in the decision-making process. Such lack of definitive power in an environment of diverse opinions creates problems when the goal is to spread a single environmental policy across the EU.

- The Council of Ministers is a body of elected ministers from each member state, which works with a permanent body of representatives to ake decisions. Presidents of the Council hold office for six months and generally approach the office from a nationalist perspective, as a chance to move their national interests to the top of the EC agenda. The Council is important to the European public because it helps them recognize their ability to influence decisions within the EU.

- The European Parliament became more significant after the SEA and the Maastricht Treatycame into play. Although the Parliament has the power to reject legislation, it now tends not to do so, for fear that such rejection prevent any legislation from being adopted. Despite its tendency not to reject legislation, as a general rule the Parliament is considered to be a „greener“ institution then the Council. Made up of hundreds of Members of the European Parliament, it has fair representation from Green Groups, with 30 current members belonging to a Green Party.

- Considered the „judicial branch“ of the EU, the European Court of Justice still plays an important role in policymaking. The court, made up of 14 judges, ensures that member states follow policy, gives judgments on cases involving the member states and community, and gives opinions as to the compatibility of international agreements with the EU Treaty. Although environmental policy now has a stable place within the EU treaties, the Court,s role in strengthening and expanding its status should not be underestimated.

- Europe uses three main legal instruments to enforce policies.
- The first and most common instrument in the area of environment is the *directive*.
- Directives are proposed by the Commission and approved by the Council and the Parliament. Teh member states must achieve the required result of each directive, and the directive must be transposed into national legislation within each member state, although the method of implementation is left up to the individual countries.

- The second type of instrument is the *regulatory act*, which must be directly implemented by each member state.
- The third and the weakest form of policy instrument is the *recommendation*, which is simply a proposal by the Commission or the Council and is nonbinding. The promotion of paper recycling, for example, was done through a recommnendation.

- Recently, there has been an increase in the use of „voluntary agreements“ in the EU, in which a firm or group of firms commits to operate in a certain way to achieve specific operating goals that improve environmental performance. The idea is that firms participate in these agreements to avoid the threat of regulation that they believe could be more costly to implement. Within the EU, the more environmentally advanced countries, such as Germany and the Netherlands, have created such agreements at a national and subnational level. However, these agreements are probably most effective as complements to more formal instruments; despite the rise of such agreements, the role of the political institutions within the EU is still very apparent.

Zakonska hijerarhija Europske unije temelji se na tri stupnja:

- Prvi stupanj temelji se na osnivačkim ugovorima i pravnim načelima.
- Osnivački ugovori su sveobuhvatni ugovori koji predstavljaju temeljne odredbe i imaju obvezujući učinak na države koje pristupaju Europskoj uniji.
- Pravna načela su obvezujuća, predstavljaju dio temeljnih prava, te su sastavni dio pravnih instrumenata EU.
- Osnivačke ugovori i pravna načela su pravno jači od nacionalnih ustava/ zakona, te svi zakonski akti EU moraju biti usklađeni s njima i pozivati se na njih. Prvi stupanj EU zakonodavstva služi kao zamjena ustavu Eu koji još nije donesen.

- Drugi stupanj čine Uredbe (Regulation), Direktive (Directive) i Odluke (Decision).
- Uredba ima obvezujuće ciljeve i načine primjene te kada je objavljena u službenom listu postaje odmah primjenjiva.
- Direktiva ima obvezujuće ciljeve no način primjene ostavljen je državama članicama koje obično imaju vremenski rok do kada je moraju unije ti u svoje zakonodavstva i primijeniti.
- Odluka je upućena određenoj grupi (države članice ili pravne osobe) i ima obvezujući učinak.

- Treći stupanja predstavljaju razni politički pripremni akti koja čine uputstva, smjernice, mišljenja, akcijski planovi, priopćenja, radni programi koji nemaju obvezujući učinak te su zapravo priprema za drugi stupanj.
- Treći stupanja čine službeni ili neslužbeni dokumenti koji se koriste u postupcima donošenja odluka prije usvajanja konačnog pravnog akta.

Existing Environmental Policy

- The first effective step toward an environmental conscious European Union occurred with the creation of the first Environmental Action Program (1972), which was followed by a series of five more plans. The sixth remains in progress today.

- Titled „Towards sustainability“ the fifth EAP (created in accordance with the Maastricht Treaty) was considered much more ambitious then the previous four plans, and it concentrated on sustainable developement. Rather then focusing on a command –and- control style of regulation, the fifth EAP hoped to involve all the major groups – goverment, enterprise, public, and industry, - when considering new policy. It also encouraged the use of a wider range of instruments, including voluntary approaches and market incentives.

- The goals proposed in the fifth EAP, along with the 1998 Treaty of Amsterdam, which encouraged the integration of the environment into a policy areas, has led to a „horizontal“ approach to environmental regulation. This approach takes into account all the causes of pollution and environmental problems: industry, energy, tourism, transport, agriculture, and so on. The main areas of environmental concern, however, remain the same, and there is an abundance of policy in the areas of waste management, noise pollution, water pollution, air pollution, nature conservation, and natural and technological hazards.

The Future of Environmental Policy

- The European Union is currently involved in the sixth European Action Program, in place from 2001 to 2010, and titled „Our Future, Our Choice“
- The goals of the sixth EAP are very similar to those of the recently completed fifth EAP, but the sixth EAP takes a more strategic approach to finding solutions to environmental problems.

- The new EAP has a focused plan that includes four priority areas as well as five key approaches to their solutions. The priority areas are:
- climate changes,
- nature and biodiversity,
- environment and health, and
- natural resources and wastes.

But the new innovative aspects of sixth EAP appear in its method, which include:

- ensuring the implementation of existing environmental legislation,
- integrating environmental concerns into all relevant policy areas,
- working closely with business and consumers to identify solutions,
- developing a more environmentally conscious attitude toward land use.

The Sixth Action Programme is based on seven thematic strategies. These address the need for rationalisation and modernisation and the gradual replacement of numerous, individual legal acts by legal frameworks and flexible strategies. The areas covered are:

- air pollution,
- the marine environment,
- the sustainable use of resources,
- waste, prevention and recycling,
- pesticides,
- soil quality, and
- the urban environment

The implementation of Community environmental legislation

- The implementation of Community environmental legislation continues to improve. This is shown by the lower numbers of complaints received and infringement proceedings regarding the environment initiated by the Commission in 2004.

- In 2004 the Commission received 336 new complaints and launched 583 new infringement proceedings, which is significantly fewer than the figures for 2003 which were 505 and 693 respectively.
- Despite this decrease the environment remains the sector with the most ongoing infringement proceedings.

- In total, the study revealed 173 cases in which the Directives on the environment had not been transposed on time (non-communication), 103 cases in which Directives had been transposed incorrectly (non-conformity) and 294 cases in which Member States had failed to comply with obligations under the Directives (incorrect application), for example through failing to comply with the deadlines for presenting certain plans, submitting data or designating protected areas.

As in the previous year, the areas in which most infringement proceedings were launched are nature, waste, water and impact assessments. The breakdown is as follows:

- * cases of non-communication of information occur most frequently in the air and waste sectors;
- * cases of non-conformity with Community legislation mainly concern impact assessments, waste, water and nature;
- * cases of incorrect horizontal application arise particularly in the water, waste and nature sectors.

- In addition to actions for non-conformity, non-communication or incorrect application, the Commission has used other approaches in dealing with the Member States in order to ensure that Community environmental legislation is correctly implemented. These are mainly proactive initiatives such as guidelines and interpretative texts, measures to monitor conformity with legislation such as annual reports and collecting key data, as well as research into the most appropriate (strategic, efficient and coordinated) solutions to achieve the environmental targets laid down in legislation.

Case C-313/06, Commission v. Italy

- On 19 April 2007, the ECJ ruled that Italy had failed to implement EU rules on air pollution from non-road engines, as laid down in Directive 2004/26/EC. The deadline for transposition was 20 May 2005. Consequently the ECJ orders Italy to pay the costs.

Case C-219/05, Commission v. Spain

- On 19 April 2007, the ECJ ruled that Spain failed to comply with Directive 91/271/EEC on urban waste water treatment. It stated that Spain failed the secure treatment of its waste water at several different locations, and should therefore pay the costs.

Case C-135/05 Commission v. Italy

- In a judgment of 26 April 2007 the Court has ruled in favour of the Commission, which had lodged a complaint against Italy over EU waste legislation. The Court punished Italy for generally and persistently failing to enforce a number of three waste Directives. The Directives cover landfills, hazardous waste and waste. The fact that in Italy some 700 illegal waste tips are still operating allowed the Court to deduct that control and enforcement measures are not in place in this country.

Protection of the environment through criminal law

- The proposal would require Member States to ensure the proper application of Community law on protection of the environment by providing for criminal penalties for serious environmental offences.
- *Proposal of 13 March 2001 for a European Parliament and Council Directive on the protection of the environment through criminal law.*

- the unauthorised discharge of hydrocarbons, waste oils or sewage sludge into water and the emission of a certain quantity of dangerous substances into the air, soil or water;
- * the treatment, transport, storage and elimination of hazardous waste;
- * the discharge of waste on or into land or into water, including the improper operation of a landfill site;
- * the possession and taking of, or trading in protected wild fauna and flora species;
- * the deterioration of a protected habitat;
- * trade in ozone-depleting substances.

- The Council and the Commission have both recognised the need to establish Community rules to combat environmental crime.
- The aim of this Commission proposal is to lay down minimum rules on penalties for environmental offences in accordance with Article 175 of the Treaty establishing the European Community.
- Member States will have to ensure that any act committed intentionally or out of serious negligence which breaches the Community rules protecting the environment is treated as a criminal offence. An exhaustive list of the relevant Community legislation is attached to the
- proposal and includes provisions on the following:

- Criminal penalties must be effective, proportionate and dissuasive.They will be applied to persons convicted of breaching Community law as well as persons involved in such offences or inciting others to commit them. Serious cases may be punishable by imprisonment.
- 5. Member States will be required to make provision for a range of penalties applicable to natural and legal persons, including fines, disqualification from public benefits or aid, temporary or permanent disqualification from exercising business activities or winding up orders.
- 6. Every three years, Member States will submit a report on implementation of the Directive to the Commission. The Commission will then send a report to the Council and the European Parliament.

Access to information, public participation and access to justice in environmental matters

- *The European Union wishes to keep citizens informed about and involved in environmental matters and to improve the application of environmental legislation by approving the Convention on access to information, public participation and access to justice in environmental matters (Aarhus Convention).*

- The Convention, in force since 30 October 2001, is based on the premise that greater public awareness of and involvement in environmental matters will improve environmental protection. It is designed to help protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. To
- this end, the Convention provides for action in three areas:

- * ensuring public access to environmental information held by the public authorities;
- * fostering public participation in decision-making which affects the environment;
- * extending the conditions of access to justice in environmental matters.

- The parties to the Convention undertake to apply the listed provisions, and must therefore:
- * take the necessary legislative, regulatory and other measures;
- * enable public officials and authorities to help and advise the public on access to information, participation in decision-making and access to justice;
- * promote environmental education and environmental awareness among the public;
- * provide for recognition of and support to associations, organisations or groups promoting environmental protection.
- *Public access to environmental information*

- The Convention lays down precise rights and duties regarding access to information, including deadlines for providing information and the grounds on which public authorities may refuse access to certain types of information.

Access may be refused in three cases:

- * the public authority does not hold the requested information;
- * the request is manifestly unreasonable or formulated in too general a manner;
- * the request concerns material in the course of completion.

- Requests may also be refused on grounds of confidentiality of the proceedings of public authorities, national defence and public security, to further the course of justice or to respect the confidentiality of commercial and industrial information, intellectual property rights, the
- confidentiality of personal data and the interests of a third party who has volunteered the information, though all these grounds for refusal must be interpreted in a restrictive way, taking into account the public interest served by disclosure of the information.

The public must be informed, early in the decision-making procedure, of the following:

- * the matter on which the decision is to be taken;
- * the nature of the decision;
- * the authority responsible;
- * the procedure to be used, including the practical details of the consultation procedure;
- * the procedure for an environmental impact assessment (if any).

VRSTE ZAŠTITE OKOLIŠA

- U vezi s pojmovnim određenjem zaštite okoliša postavljaju se dva pitanja :
- tko ili što mora biti zaštićeno (zaštićeni objekt)? i
- od čega se valja zaštiti?

- Razlikujemo :

5) ***Medijalnu,***
6) ***Kauzalnu,***
7) ***Vitalnu, i***
8) ***Integriranu zaštitu okoliša.***

Za svaku pojedinu vrstu zaštite karakterističan je, u pravilu, i poseban regulativan princip

1) Medijalna zaštita okoliša

- usmjerena je na sredstva (medije) okoliša – voda, zrak, zemljište (tlo) i biota.Svaki od postojećih medija zahtijeva posebnu i cjelovitu regulaciju.
- Poredbenim pregledom europskih zakonodavstva, međutim, može se zaključiti da samostojno zakonodavstvo o zaštiti zemljišta i biote, za razliku od zakona o zaštiti voda i zraka, još uvijek ne postoje; time se trenutno bave zakoni o zaštiti prirode, prostornom uređenju i građenju.

1) Kauzalna zaštita okoliša

- usmjerena je na sprečavanje opasnosti kao što su unos opasnih tvari u okoliš i postupanje s takvim tvarima.
- Predmetom zakonodavčevih intervencija danas su najrazličitija područja : kemikalije, zaštita od ionizirajućeg i neionizirajućeg zračenja, gospodarenje otpadom, zaštita biljaka i životinja,….

1) Vitalna zaštita okoliša

- usmjerena je prema neposrednoj zaštiti životinja i biljaka, što uređuju zakoni o zaštiti prirode.
- Posebni su propisi pak namijenjeni zaštiti rijetkih životinjskih i biljnih vrsta, lovu i ribolovu.

1) Integrirana zaštita okoliša

- obuhvaća cjelokupnu zaštitu nekog ekosustava.

U tim okvirima razlikuju se

e) konvergentni propisi.

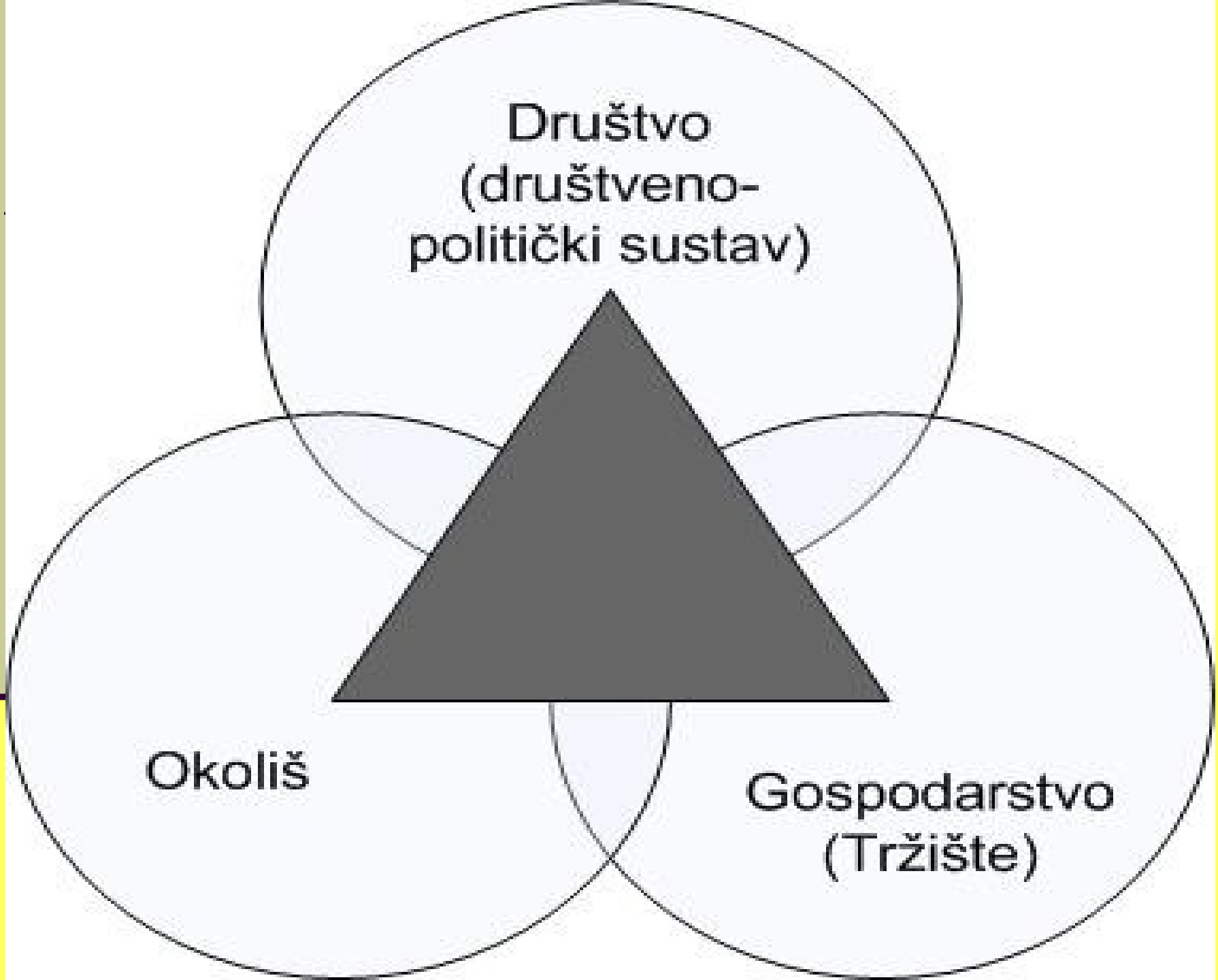
f) konkurentni i,

- Konkurentni propisu su poglavito oni koji uređuju prostor, a osobito njegovo planiranje. Budući da se u području zaštite okoliša susreću i isprepliću mnogi takvi propisi, potrebito je među njima postići optimalnu ravnotežu.
- Konvergentni se propisi, naprotiv, ne sukobljavaju, nego se međusobno nadopunjuju. To su pretežito propisi o tehničkoj zaštiti, zaštiti pri radu i zaštiti zdravlja.

Pregled postojećih teorija o zaštiti okoliša

- Danas prevladavaju tri teorije o zaštiti okoliša, koje istodobno ocrtavaju i različite etičke stavove čovjeka prema prirodi, odnosno okolišu koji ga okružuju. To su :

2) ***Antropocentrična teorija,***
3) ***Ekocentrična teorija, i***
4) ***Resursno ekonomska teorija.***


Društvo
(društveno-
politički sustav)
Okoliš
Gospodarstvo
(Tržište)

Antropocentrična teorija

- temelji se na skrbi za prirodne životne odnose kao osnovi čovjekova blagostanja, osobito za buduće generacije.
- Po toj teoriji zaštita okoliša namijenjena je životu i zdravlju ljudi, općem blagostanju i gospodarskim interesima čovječanstva.

Antropocentrična teorija -nastavak

- Ta se teorija temelji na instrumentalnom (pragmatičnom) filozofskom utemeljenju ekološke etike, po kojem bi čovjek trebao imati dužnost spram zaštite kvalitete i raznovrsnosti prirodnih entiteta u onoj mjeri u kojoj bi se to moglo ticati njegovih interesa.
- Ono se zaustavlja na svijetu koji ima samo vrijednost predmeta ljudskih interesa.
- Čovjek (anthropos) stoji i središtu svijeta, a sve oko njega stoji mu na raspolaganju za zadovoljenje njegovih potreba.

Teorija o ekocentričnoj zaštiti okoliša

- prirodu shvaća kao vrijednost za sebe, a njezinu zaštitu kao “pravo same prirode”.
- Priroda ima svoje vlastito stanje, neovisno o njenim funkcijama za čovjeka, vlastite “vrijednosti” i vlastito pravo egzistencije.

Teorija o ekocentričnoj zaštiti okoliša -nastavak

- Ova se teorija temelji na autonomnom (intrizičnom) filozofskom utemeljenju ekološke etike, koja proizlazi pretpostavke da prirodni entiteti imaju vrijednost po seb a ne samo u odnosu spram čovjekovih potreba i koristi.
- Njezin je krajnji domet sveobuhvatna etička pozicija – nazvana holistička- koja drži da sve na svijetu (ljudi, životinje, biljke i sva četiri elementa anorganskog svijeta posjeduju vrijednost u cjelini prirode i da nijedno od njih ne postoji samo zbog nekog drugog, nego je svako od njih u interesu cjeline.

Resursno-ekonomska teorija

- Razmatra zaštitu prirodnih izvora, osobito koji su obnovljivi, s aspekta gospodarske koristi, uvažavajući pri tom i potrebe budućih generacija.
- Radi se koncepciji gospodarenja zaštitom okoliša (“environmental economy”), koja se oslanja na sustav tržišne zaštite okoliša, suprostavljajući ga istovremeno regulativnom modelu zaštite okoliša koji se oslanja na centralizirani državni aparat.

Resursno-ekonomska teorija nastavak

- Sustav tržišne zaštite okoliša postavlja dva važna zahtjeva :

2. Za definiranjem vlasništva nad prirodnim resursima i
3. za određivanje tržišne cijene onečišćavanja okoliša kao ekonomskim preduvjetima sustavne i učinkovite zaštite okoliša sukladne koncepciji održivog razvoja.

- Unatoč tome što se radi o cjelovitoj i zasebnoj teoriji zaštite okoliša, etičke dimenzije resursno-ekonomske teorije ne mogu se jednoznačno vrednovati.
- Ovisno o okolnostima konkretnog slučaja u kojem se provodi, valorizacija karaktera takve ekološke etike može biti različita.

Načela prava okoliša

Pojam i značenje načela u pravu

- Načela (maksime, principi) jesu direktive, smjernice, misli vodilje, putokazi, osnovna pravila i postulati za rad usmjeren određenom cilju.
- Načela su kriteriji za djelovanje i prosuđivanje.
- Oni determiniraju metodu pristupa stvarnosti koja je objekt promatranja ili obrade.
- Osnovna načela determiniraju karakter određene institucije. Tako i osnovna načela prava okoliša daju osnovni pečat svakoj pojedinoj instituciji prava.

- Za pravo okoliša određene zemlje važna su ona načela koja proizlaze iz njezina ustava, uz nužno uvažavanje općevažećih načela prirodnih znanosti.
- Zakonodavstvo mora ta načela prihvatiti i razraditi.

- Ponajčešće se u pravnoj literaturi ističu četiri osnovna (primarna, bitna) načela prava okoliša:

2) Načelo preventivnosti,
3) Načelo uzročnosti
4) Načelo kooperacije, i
5) Načelo opće naknade ili načelo zajedničkih tereta (u povijesnom smislu najmlađe načelo)

- Ako se navedena četiri osnovna načela detaljno analiziraju moguće je iz njih izdvojiti još i sljedeća pomoćna (sekundarna, akcendentalna) načela prava okoliša :

1) Načelo statusa quo, koje zahtijeva očuvanje ili zabranu pogoršanja postojećeg stanja,
2) Načelo opreza (“precautionary principle”), koji se iskazuje latinskom maksimom “in dubio pro securitate”
3) Načelo zaštite,
4) Načelo trajnosti uređenja okoliša,
5) Načelo zabrane izbjegavanja ekoloških pravila,
6) Načelo kontroliranja osobne odgovornosti, i,
7) tzv. “Cradle–to-grave Princip

Načelo preventivnosti

- Parlament Savezne Republike Njemačke prihvatio je 1976. godine izvješće o okolišu u kojem se naglašava da se :
- “očuvanje okoliša ne ograničava tek na obranu od prijetećih opasnosti i odstranjivanja nastalih šteta. Preventivna politika zahtjeva da se zaštite temelji prirodne datosti, a za to su potrebne planske mjere za budućnost”
- Nakon tog vremena načelo je preventivnosti ušlo i u zakonodavstva drugih zemalja koji su tretirali zakonodavstvo zaštite okoliša

- Neprijeporno se ne radi o postupcima nakon pojave štete u okolišu, nego, prije svega, o sprečavanju novih šteta.
- Zato se u svim zakonodavstvima, prije postavljanja zahtjeva o njihovom smanjivanju, obavezno utvrđuje zabrana emisija.
- Ne radi se o pasivnoj zaštiti okoliša niti o jednostavnoj razdiobi opterećenosti okoliša, nego prije svega o planiranom postupanju za budućnost.

- Tumačenje tog načela znači preventivu prije rizika, opasnosti, onečišćavanja i ugrožavanja prirodnih izvora.
- Od opasnošću za okoliš u pravnoj se teoriji razumijeva stanje u kojem bi nesprečavani tijek događanja doveo do štete, dakle do protupravnog stanja s umanjivanjem pravno zaštićenih dobara – radi se o spoznajno, objektivno neuklonjenoj mogućnosti pojave štete.

- Zato zakonodavstvo , osim što razmatra slučajeve kad šteta već nastane, zabranjuje i one postupke koji bi mogli dovesti do štete. Radi se o uvažavanju (sekundarnog) načela zaštite, koje se odnosi na stanja dok još nema opasnosti.
- Načelo preventivnosti obuhvaća vremenski i prostorno udaljene opasnosti, slučajeve manje vjerojatnosti pojave štete – sve do sumnje u postojanje opasnosti.
- Pravodobna preventiva djeluje dugoročno, za buduće generacije i ne smije se ograničavati na sadašnja stanja.

- Različiti su postupci države u slučajevima kad postoji vjerojatnost da će nastupiti zabranjena posljedica odnosno kad postoji tek sumnja u nastanak opasnosti.
- Za postojanje opasnosti dovoljno je doći do uvjerenja je postojanje ili nepostojanje određenih činjenica vjerojatno i da ima više argumenata koji govore u prilog uvjerenju o nastupu zabranjene posljedice negoli onih koji govore protiv njega.
- Nasuprot tome, sumnja je osnovana ako postoji pretpostavka o nastanku štete, s tim što još ne mora biti iskazana i vjerojatnost njezina nastanka.

- Većina pravnih poredaka zahtijeva danas intervenciju države već u slučaju osnovane sumnje o nastanku opasnosti.
- U vezi s tim, (sekundarno) načelo *in dubio pro securitate* ističe se kao posebno načelo unutar općeg načela preventivnosti

1) Načelo očuvanja vrijednosti prirodnih izvora i biološke raznolikosti

- koje sadrži zabranu umanjivanja vrijednosti prirodnih izvora, vode, mora, zraka, tla, šuma i izvornih vrijednosti krša, koja se očituje i u dodatnom zahtjevu za izbjegavanjem svakog zahvata sa štetnim učinkom na biološku raznolikost.

1) Načelo zamjene ili nadomještanja drugim zahtjevom

- je višeznačno načelo.
- Temelji se na političkom opredjeljenju da se okoliš mora zaštiti bez obzira na cijenu (troškove).
- Sukladno tome načelo ekonomičnosti samo je sekundarno načelo hrvatskog ekološkog pravnog poretka.

- Pri konkretizaciji ovog načela vodi se ~~računa o vrijednosti objekta koji valja~~ zaštiti (zaštićenog objekta).
- Prihvaćena su dva različita pristupa, ovisno o svojstvima zaštićenog objekta:

a) Zahvat koji bi mogao nepovoljno utjecati na okoliš treba nastojati zamijeniti zahvatom koji predstavlja bitno manji rizik ili opasnost za okoliš, pa i u slučaju kad su troškovi takvog zahvata veći od vrijednosti koje treba zaštititi (načelo zamjene, koje dopušta troškove veće od vrijednosti zaštićenog objekta);

a) Tvari koje se mogu ponovo upotrijebiti ili koje su biološki razgradive trebaju imati prednost pri uporabi, pa i u slučaju većih troškova ako su ti troškovi razmjerni vrijednosti koje treba zaštititi (načelo nadomještanja, koje dopušta troškove razmjerne vrijednosti zaštićenog objekta)

Načelo zamjene ili nadomještanja drugim zahvatom sadrži i dva dopunska ~~zahtjeva:~~

ii. pri korištenju proizvoda, uređaja i opreme te primjeni proizvodnih postupaka onečišćavanje okoliša treba ograničavati na samom izvoru nastanka;

iii. upotrebi kemikalija i ostalih tvari koje razgradnjom postaju neškodljive dat će se prednost pred drugim tvarima ako pri tome nema rizika ili opasnosti za okoliš (čl.3. ZZO)

- Pri normativnoj razradi načela preventivnosti zakonodavac se izričito mora opredijeliti i za prihvaćanje (sekundarnog) načela in *dubio pro securitate* , propisujući da se, kad prijeti opasnost od stvarne i nepopravljive štete okolišu, ne smije odlagati poduzimanje nužnih zaštitnih mjera, pa ni u slučaju kad ta opasnost nije u cijelosti znanstveno istražena.

Načelo preventivnosti

- Parlament Savezne Republike Njemačke prihvatio je 1976. godine izvješće o okolišu u kojem se naglašava da se :
- “očuvanje okoliša ne ograničava tek na obranu od prijetećih opasnosti i odstranjivanja nastalih šteta. Preventivna politika zahtjeva da se zaštite temelji prirodne datosti, a za to su potrebne planske mjere za budućnost”
- Nakon tog vremena načelo je preventivnosti ušlo i u zakonodavstva drugih zemalja koji su tretirali zakonodavstvo zaštite okoliša

- Neprijeporno se ne radi o postupcima nakon pojave štete u okolišu, nego, prije svega, o sprečavanju novih šteta.
- Zato se u svim zakonodavstvima, prije postavljanja zahtjeva o njihovom smanjivanju, obavezno utvrđuje zabrana emisija.
- Ne radi se o pasivnoj zaštiti okoliša niti o jednostavnoj razdiobi opterećenosti okoliša, nego prije svega o planiranom postupanju za budućnost.

- Tumačenje tog načela znači preventivu prije rizika, opasnosti, onečišćavanja i ugrožavanja prirodnih izvora.
- Od opasnošću za okoliš u pravnoj se teoriji razumijeva stanje u kojem bi nesprečavani tijek događanja doveo do štete, dakle do protupravnog stanja s umanjivanjem pravno zaštićenih dobara – radi se o spoznajno, objektivno neuklonjenoj mogućnosti pojave štete.

- Zato zakonodavstvo , osim što razmatra slučajeve kad šteta već nastane, zabranjuje i one postupke koji bi mogli dovesti do štete. Radi se o uvažavanju (sekundarnog) načela zaštite, koje se odnosi na stanja dok još nema opasnosti.
- Načelo preventivnosti obuhvaća vremenski i prostorno udaljene opasnosti, slučajeve manje vjerojatnosti pojave štete – sve do sumnje u postojanje opasnosti.
- Pravodobna preventiva djeluje dugoročno, za buduće generacije i ne smije se ograničavati na sadašnja stanja.

- Različiti su postupci države u slučajevima kad postoji vjerojatnost da će nastupiti zabranjena posljedica odnosno kad postoji tek sumnja u nastanak opasnosti.
- Za postojanje opasnosti dovoljno je doći do uvjerenja je postojanje ili nepostojanje određenih činjenica vjerojatno i da ima više argumenata koji govore u prilog uvjerenju o nastupu zabranjene posljedice negoli onih koji govore protiv njega.
- Nasuprot tome, sumnja je osnovana ako postoji pretpostavka o nastanku štete, s tim što još ne mora biti iskazana i vjerojatnost njezina nastanka.

- Većina pravnih poredaka zahtijeva danas intervenciju države već u slučaju osnovane sumnje o nastanku opasnosti.
- U vezi s tim, (sekundarno) načelo *in dubio pro securitate* ističe se kao posebno načelo unutar općeg načela preventivnosti

1) Načelo očuvanja vrijednosti prirodnih izvora i biološke raznolikosti

- koje sadrži zabranu umanjivanja vrijednosti prirodnih izvora, vode, mora, zraka, tla, šuma i izvornih vrijednosti krša, koja se očituje i u dodatnom zahtjevu za izbjegavanjem svakog zahvata sa štetnim učinkom na biološku raznolikost.

1) Načelo zamjene ili nadomještanja drugim zahtjevom

- je višeznačno načelo.
- Temelji se na političkom opredjeljenju da se okoliš mora zaštiti bez obzira na cijenu (troškove).
- Sukladno tome načelo ekonomičnosti samo je sekundarno načelo europskog ekološkog pravnog poretka.

- Pri konkretizaciji ovog načela vodi se ~~računa o vrijednosti objekta koji valja~~ zaštiti (zaštićenog objekta).
- Prihvaćena su dva različita pristupa, ovisno o svojstvima zaštićenog objekta:

a) Zahvat koji bi mogao nepovoljno utjecati na okoliš treba nastojati zamijeniti zahvatom koji predstavlja bitno manji rizik ili opasnost za okoliš, pa i u slučaju kad su troškovi takvog zahvata veći od vrijednosti koje treba zaštititi (načelo zamjene, koje dopušta troškove veće od vrijednosti zaštićenog objekta);

a) Tvari koje se mogu ponovo upotrijebiti ili koje su biološki razgradive trebaju imati prednost pri uporabi, pa i u slučaju većih troškova ako su ti troškovi razmjerni vrijednosti koje treba zaštititi (načelo nadomještanja, koje dopušta troškove razmjerne vrijednosti zaštićenog objekta)

- Načelo zamjene ili nadomještanja drugim zahvatom sadrži i dva dopunska ~~zahtjeva:~~

ii. pri korištenju proizvoda, uređaja i opreme te primjeni proizvodnih postupaka onečišćavanje okoliša treba ograničavati na samom izvoru nastanka;

iii. upotrebi kemikalija i ostalih tvari koje razgradnjom postaju neškodljive dat će se prednost pred drugim tvarima ako pri tome nema rizika ili opasnosti za okoliš

- Pri normativnoj razradi načela preventivnosti zakonodavac se izričito mora opredijeliti i za prihvaćanje (sekundarnog) načela in *dubio pro securitate* , propisujući da se, kad prijeti opasnost od stvarne i nepopravljive štete okolišu, ne smije odlagati poduzimanje nužnih zaštitnih mjera, pa ni u slučaju kad ta opasnost nije u cijelosti znanstveno istražena.