

## National developments – Slovenia by Rajko Knez

### I. Constitutional and legislative developments

#### A constitutional (basic) right to drinking water

The Slovenian parliament defined the expert group which prepared a proposal for the *Constitutional Commission of the Slovene Parliament* regarding possible future constitutional rule on a basic human right to a drinking water. Such a rule would like to limit the exploring of natural water resources for household purposes by any other than public companies for drinking water supply (*public service company*). If enacted like proposed, it will not allow public private partnerships (concessions) to supply drinking water for households. The proposal does not limit any other use and exploitation of water resources, even not for bottling. The only limit in this respect that is proposed is that water for drinking supply and water for bottling for market purposes shall not use the same spring. The expert group finished its work in March 2015 and remains to be seen, if the Constitutional Commission of the Slovenian parliament will uphold it and send it further to parliamentary procedure. To change Constitution 2/3 majority of member of the parliament is necessary.

#### The Environmental Protection Act implemented the industrial emissions directive

In the legislative process of implementing the industrial emissions directive (2010/75), the Slovenian government proposed to implement also Art. 15.4 which sets forth a possibility to reduce permission standards; it defines that the competent authority may, in specific cases, set less strict emission limit values. Such a derogation may apply only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits due to:

- the geographical location or the local environmental conditions of the installation concerned; or
- the technical characteristics of the installation concerned.

One for the NGO (Eko krog) started an open discussion, that the implementation of this provision is not necessary, also not mandatory for the member state. This is an interesting legal question; namely, provision is drafted as an option for the Member State, but includes certain conditions. The Government is of the opinion, that since this mandatory conditions are included in the provision, that the whole paragraph need to be implemented. Advice, given by the lawyers to the parliament is that even though it is still an option but if the Member State would like to implement such an option, then certain mandatory provisions (conditions) needs to be followed. However, if the option is not used, that also mandatory conditions for this options become redundant.

This change of the Environmental Protection Act brings another huge advantage to the commercial companies, which need to obtain environmental permits. New legislation in force does not foresee any more environmental permits that would be timely limited. So far this was the case and the extension was necessary after five years of the validity. Now this is not the case anymore. Once environmental permit is issued, it is valid with no time limitation. Of course, this does not mean that in the case of violation of environmental permits the later cannot be revoked or annulled.

### II. Pending court cases and jurisprudence

#### Waste clean-up case at the ECJ (C-140/14)

The ECJ rendered a judgment against Slovenia under which Slovenia is under the duty to cure polluted part of the city Celje (in which in the past the factory for zinc operated). The soil in this area contains several dangerous substances, like cadmium and zinc. Slovenia is now searching for solutions. Different plans are prepared and are now under the discussion by the EU Commission. The Commission needs to give a green light to preform one of them. One among the proposals foresees that the soil shall be treated (cleaned up)

at the source. In this case the whole area would first need to obtain the status of dumping site, which also might take substantive time.

### **Quality of the air (PM<sub>10</sub>)**

Slovenia is faced with long standing issue of PM<sub>10</sub> and air quality. For years now, European commission, including the Court of the EU, are pressing Slovenia to adopt different measures to improve quality of air. Although Slovenia is adopting certain measures, these are still not enough. Actually, some Slovenian cities are facing with PM<sub>10</sub> emission values being exceeded especially during the winter. The problem is complex; one thing is that some of the cities are in the valleys and that cold wetter is pressing the air down, without possibility for bad quality air being released into the atmosphere. During the winter the traffic is also heavy, heating also burns the air with SO<sub>2</sub> and other pollutions, etc. On the other hand, some cities, especially three biggest cities, are faced with PM<sub>10</sub> due to the traffic and industry.

Second letter from the EU Commission requested additional measurements point in order to measure air quality more efficiently on more places. Might be that Slovenia will be faced with a new lawsuit at the CJEU in this respect.

### **Hydropower plant – plans without strategic EIA**

Another, interesting, domestic case, which might come to the court is relating to hydroelectric power station on river Mura. The government issued a concession act (regulation) giving a legal base for future concession to build hydropower plants on this river, which is environmentally very sensitive. hydroelectric power station, together with accumulative lakes, might cause severe danger to natural habitats. Interesting, from legal point of view, is, that now impact assessment for plants (strategic environmental impact assessment) has been performed for adoption of the regulation. That is one thing. Another issue, which is disputable is, that concessioner can be a company, which use already one of the small power plant on that river (up to 10MW). This means, that there will be no public tender and transparency procedure for the selection of the concessionaire. Regulation is now disputed by NGOs and they are preparing constitutional review.

### **Access to the sea**

Another interesting case that was resolved by the Administrative court in Ljubljana concerns the access to the sea by the individuals. In a touristic city Portorož one of the hotels located very close to the beach made a fence, which allowed the use of the beach and the access to the sea only for hotel guests. Others had to pay entrance fee. According to Slovenian legislation the access to the water (rivers, sea) is free to anybody and it is regarded as a public good. There is one exception provided in the law on water, namely, that if there is certain infrastructure to be use in order to enable the access to the water, the use of such infrastructure can be payable. This hotel argued that it owns such infrastructure (this part of beach is construed by the concrete, which allows people to use the beach, have easy access to the water, offering them places to lay down, etc.). The court, however, decided that this is not the kind of infrastructure foreseen by the law and it did not allow the hotel to limit access to the sea or to take charges.

### **III. Misc.**

I would like to mentioned two additional cases:

- the brewery Laško (company where the state owned shares) was sold by Slovenia to Heineken, but the case is not only about the brewery. The case refers also to the access to water sources. Namely, the brewery Laško owned a concession to explore lots of water resources (app. 60% of all Slovenia water resources). Brewery was also obliged to supply the drinking water to the citizens of Laško. Heineken got the same access to water resources as it was given to brewery Laško. However, shortly after taking over the brewery it rejected a supply of drinking water to the City of Laško. It denounced the concession agreement in this part. This part, of course, is not profitable, since it is a public service and the price of water is state regulated; one 1 m<sup>3</sup> costs 0,063 €. The same water, bottled, brings Heineken app 1.000 times more profit.

- another example, which is hard to understand, regards the closing of mines. One mine in Idrija Hg – mercury, ended with the production end it was listed (part of the mine and part of the city Idrija) on Unesco list. The mine needs a constant maintenance on daily bases and it is necessary, on daily basis to pump out of mine app. 22.000 litres of water (the mine cannot be full of water), since the soil is not stable and might result in subsiding the ground in whole town Idrija. However, since the mine is on the UNESCO list, the Government decided to obliged the Ministry of Culture to take over the maintenance. Otherwise, the Ministry of infrastructure is the one, responsible for the mines. The Ministry for Culture is now engaged in mining activities, but hawing no knowledge, now human and other resources in this respect. The minister for culture did not consent and she was replaced in a very short period of time due to this objection against the Governmental decision. According to the mining law the obligation for maintenance shall be given to the same company which explore the mine.