

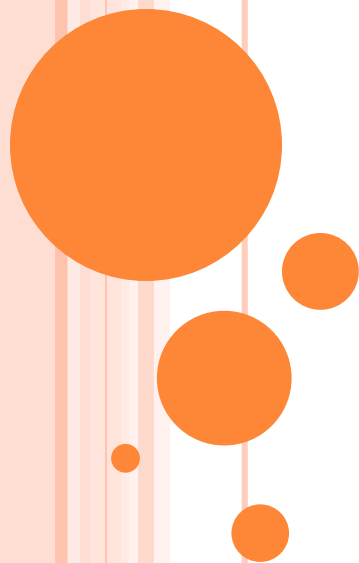
**Tenth meeting of the Task Force on Access to
Justice under the auspices of the Aarhus
Convention**

Geneva, 27-28 February 2017

**Legal Aspect of Combating Corruption in
the Field of Environmental Protection**

- Republic of Serbia -

Gordana Petkovic



LINKAGES BETWEEN CORRUPTION AND ENVIRONMENT

- Significant impact of corruption on development, security, peace and environment
- Link with **two categories of law: positive and natural law**, which includes moral categories too
- **Different causes of corruption:**
 - lack of a democratic society
 - non-functioning of the system (political, economic, judicial system, etc.)
 - lack of transparency, accountability, verifiability, competition, laws and regulations, institutions and their non-functioning, personal integrity and professional ethics
 - poverty, economic factors (low wages)
 - cultural factors.



Key International Instruments

Charter of the United Nations, 1945

Universal Declaration on Human Rights, 1948

Declaration on Human Environment, 1972

Declaration on Environment and Development, Agenda 21, 1992

ILO Declaration on Fundamental Principles and Rights at Work, 1998

Millenium Development Goals, 2000

United Nations Global Compact principles, 2004

Sustainable Development Goals, 2015

HUMAN RIGHTS, ENVIRONMENT AND CORRUPTION

PRINCIPLES

Sustainability

Human rights

Equality

Healthy environment

Poverty reduction

Good governance

Transparency

Anti-corruption

Justice



INTERNATIONAL AGREEMENTS

Key agreements

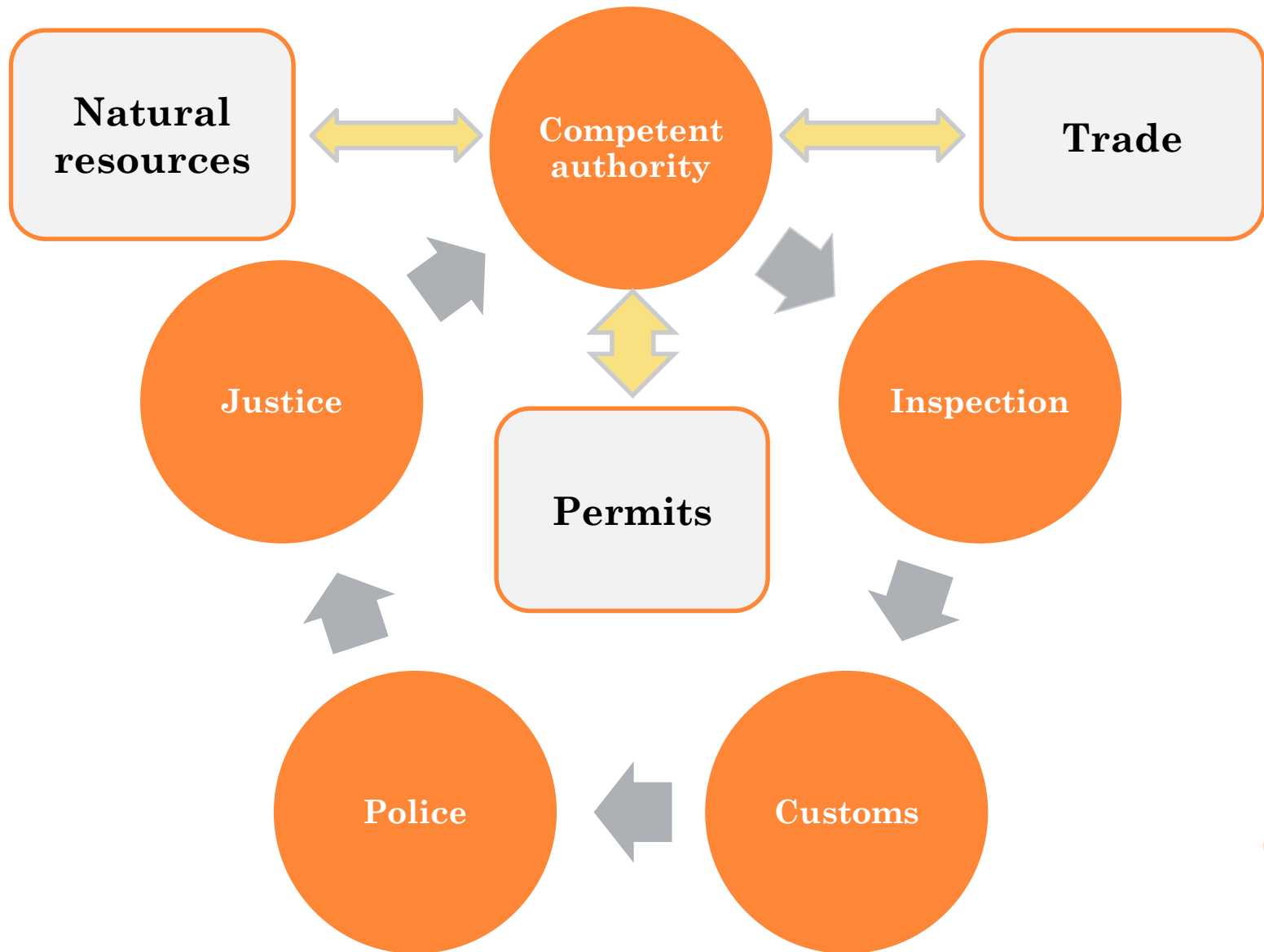
- **Law on Ratification of European Convention on Human Rights** ("Official Gazette of SM- International Treaties", No. 9/03)
- **Law on Ratification on Criminal Law on Corruption** ("Official Gazette of FRY- International Treaties", No. 2/02 and Official Gazette of SM, No 18/05)
- **Law on Ratification on Civil Law Convention on Corruption** ("Official Gazette of RS- International Treaties", No. 102/07)

Key agreements

- **Law on Ratification of the United Nations Convention against Corruption (UNCAC)** ("Official Gazette of RS- International Treaties", No. 12/05)
- **Law on Ratification Aarhus Convention** ("Official Gazette of RS- International Treaties", No. 38/09)



ENVIRONMENT AND CORRUPTION



STRATEGIC AND LEGISLATIVE FRAMEWORK

No.	Basic acts	Published “Official Gazette”
1	Constitution	No. 98/06
2	National Strategy of Combating Corruption in the Republic of Serbia for the period 2013. to 2018. Action Plan to the National Strategy	No. 57/13 No.79/13
3	Law on Whistle-Blowers Protection	No. 128/14
4	Rulebook on the internal whistle-blowing procedure, the manner of appointment of an authorised person working with/for the employer	No. 49/15
5	Rules on the program for acquisition of specific knowledge related to the protection of whistleblowers	No. 4/15
6	Law on Civil Servants	No. 79/05, 81/05 , 83/05, 64/07, 67/07, 116/08,104/09
7	Law on Anti-Corruption Agency	No. 97/08, 53/10, 66/11, 67/13, 112/13
8	Law on Data Secrecy	No. 104/09
9	Law on Protection of Personal Data	No. 97/08, 104/09, 68/12
10	Law on Free Access to Information of Public Importance	No.120/04, 54/07, 104/09, 36/10

STRATEGIC AND LEGISLATIVE FRAMEWORK

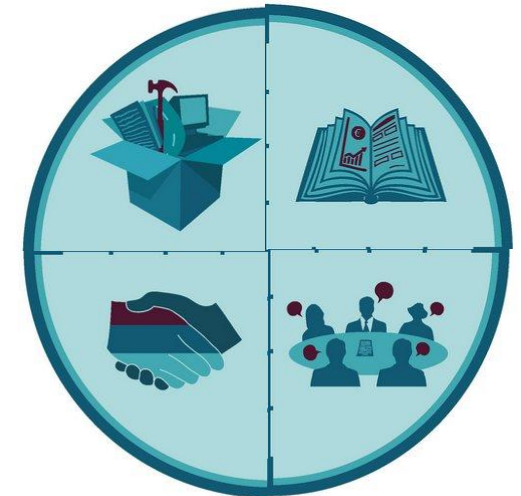
No.	Other laws	Published "Official Gazette"
10	Law on Prevention of Harassment at Work	No. 36/10
11	Criminal Code	No. 85/05, 88/05, 107/05., 72/09, 111/09, 121/12
12	Criminal procedure Code	No. 58/04, 85/05, 115/05, 85/05, 49/07, 20/09, 72/09, 76/10
13	Law on Offences	No. 101/05, 116/08, 111/09
BASIC ENVIRONMENTAL LEGISLATION		
Law on Ratification of ESPOO Convention Law on Ratification of Basel Convention Law on Confirmation of CITES Convention Law on Confirmation of POPs Convention Law on Confirmation of Rotterdam Convention Law on ratification of Montreal Protocol on Substances that deplete the Ozone Layer		No.102/07 No. 2/99 No. 11/01 No.135/04, 36/09 No. 42/09 No. 38/09 No. 16/90
Law on Environmental Protection Law on Environmental Impact Assessment Law on Waste Management Law on Nature Protection Law on Chemicals Law on Biocidal Products Law on Air Protection		No. 135/04, 36/09, 88/10, 14/16 No. 36/09, 88/10,14/16 No. 36/09, 88/10, 91/10, 14/16 No. 36/09, 88/10, 92/11, 93/12,25/15 No. 36/09, 88/10, 92/11, 25/15 No. 36/09, 10/13

- Ministry of Justice
- Ministry of Agriculture and Environmental Protection
- Anti Corruption Agency
- Anti-Corruption Council
- Commissioner for Access to Public Information and Personal Data Protection
- Ombudsman
- Judicial Academy
- Bureau for Social Research
- Transparency Serbia - operates an Advocacy and Legal Advice Centre
- Pitaljka

INSTITUTIONAL FRAMEWORK

CAPACITIES

PUBLIC INSTITUTIONS



NGOs SUPPORT

KNOWLEGDE CENTRES



WHISTLE BLOWERS PROTECTION

WHISTLE-
BLOWER

WHISTLE-
BLOWING

ADVERSE
ACTION

Empoyer

Competent
Authority

STOP



INTERNAL
whistle-blowing

disclosing
information to
an employer

EXTERNAL
whistle-blowing

disclosing
information to a
designated
authority

**ALARMING
THE PUBLIC**

disclosing
information
using mass
media, the
Internet, at
public gatherings
or in other way



MOTION FOR ISSUANCE OF A PRELIMINARY INJUNCTION

Whistle-blower/
Associated Parties

Prior to the Initiation of
Court Proceedings

- prior to the initiation of the court proceedings,
- during the court proceedings or
- after the conclusion of the court proceedings, until the enforcement has been completed



HIGHER COURT

- delay the legal effect of an act
- prohibit adverse action from being taken
- order for the consequences of the adverse action to be eliminated.



HIGHER COURT

Workers returning to work

(delay of legal effects of termination of employment)

Workers returning to the old position

(delay a transfer to another job)

**WORKER
PROTECTION**

**Claim in
relation to
whistle-
blowing**

SPECIAL PROCEEDINGS

**Revoke the legality of an employer's
individual written act**

**An adverse action
to employer**

**An adverse action
to state servant**

**Merits of the argument that individual act by an
employer had been an adverse action in relation
to whistle-blowing**

BASIC COURT

**ADMINISTRATIVE
COURT**

**Appeal
APPELLATION
COURT**

**Extraordinary Remedy
SUPREME
CASSATION COURT**

**Burden of proof is on defendant (to an employer)
that there had not been a causal link between the whistle-
blowing and the adverse action**

PRACTICES AND EXPERIENCES

Before adoption of the Law

- The Anti-Corruption Agency received:
- 10 requests in 2011, four of which were granted
- 31 requests in 2012, eleven of which were granted
- 103 requests in 2013 for whistleblower status, 78 of which were granted.
- **Whistleblower testimony**, Association Eutopia, financed by UNDP, November 2013, <https://pistoljka.rs>



Implementation of the Law – 2015/2016

- Total number: 299 cases initiated
- Total number: 213 cases finished
- **There is no case in the field of environmental protection**



CHALANGES - ENVIRONMENTAL SECTOR

Possible types of corruption


- ❑ All levels of decision-making and
- ❑ All stages of conducting administrative actions
- ❑ Before issuance and after issuance of a permit
- ❑ During inspection control
- ❑ Work of police and customs officers

when there is an intention of committing a crime of illegal act

Preventing and fighting corruption

- ❑ exploitation of natural resources (issuing permits, consents-EIA etc.)
- ❑ illegal traffic and trade in waste and endangered species of wild flora and fauna and other environmental goods

Coordinated measures:

- ❑ competent authorities
 - ❑ business sector
 - ❑ public participation in decision-making
 - ❑ adequate sanctioning in public and private sectors.
- 

CHALLENGES OF COMBATING CORRUPTION

- Credible investigations of all reported corruption cases and publishing of findings
- Proactive work of public prosecutor
- Changes of Criminal Code and Whistleblower Law to ensure protection from reprisal
- Informing citizens about possibilities to report corruption
- Conducting systemic changes on the basis of investigated cases



CONCLUSIONS

- Serbia has a **policy** on combating the corruption
- Serbia has established **legal and institutional framework** on the protection of whistle-blowing
- **Preventing corruption** in the field of environment requires the following measures:
 - appropriate **legislative framework** which prevents criminal activities in the field of environment, with precisely **defined responsibilities of enforcements bodies and their capacity building** (the competent authorities for licensing, inspection, police, customs)
 - **close coordination and cooperation** of all stakeholders
 - **respect the Code of Conduct**
 - **adequate penalty policy** in the Criminal Code and environmental legislation
 - **trained respective structures** of state authorities (competent authorities, prosecutors and judges) both in the field of corruption and environment.



THANK YOU

**Ministry of Agriculture and
Environmental Protection of
the Republic of Serbia**

Gordana Petkovic, L.L.M

gordana.petkovic@eko.minpolj.gov.rs

