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**LEGAL AND PLANNING FRAMEWORK FOR NATURE PROTECTION -
COMPARATIVE ANALYSIS OF AUSTRIA AND THE REPUBLIC OF SERBIA**

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ABSTRACT

The topic of the study is specificity of the system of protection of natural parks in Austria and the Republic of Serbia. Similarities and differences of the system in analyzed countries are shown through the analysis of planning documents, legal and other legal regulations referring to nature protection, with special emphasis on problems of protection of areas of natural parks. The aim is to indicate the possibilities of improvement and future direction of development of the system of protection of national parks in Serbia on the basis of examples of good practice of EU member countries.

Key words: Legal and planning framework, Nature protection, National park, Austria, Serbia.

INTRODUCTION

Human activities have influenced environmental changes, so now there is a common opinion about environment adapted to human necessities. Original intact landscapes are truly rare which is why ecologically prosperous countries invest significant efforts to preserve actual state of national landscape, both the intact and partly modified. This is exactly what numerous international organizations have claimed as one of the instruments for nature and environmental protection. A good representative of this approach is Austria, as an example of good management and protection of diverse spatial elements, whose experience can be applied to similar cases in Serbia.

Austria is a State Federation of nine federal units that are divided on urban and rural districts. The planning system and the environmental protection framework are based on the principal Austrian law "Grundgesetz" which is a pendant of a constitution. As such, it is a very important federal state, where the states (Länder) have a high degree of autonomy. The coordination between these several country parts is in the hands of the institutions on the national level.

Austria has a huge natural heritage, consisting inter alia of: 6 national parks (Neusiedler See – Seewinkel, Thayatal, Hohe Tauern, Kalkalpen, Donau-Auen and Gesäuse), 60 special nature reserves and nature parks, around 35 "hot spots" for bird watching and around 20 protected areas in the area of the Alps. These National parks are ecologically the most valuable parts of the federal territory including a large scale of

natural and anthropogenic contents and 3% of the national territory (2.350 km²). On this basis a few cross-border cooperation projects have been conducted with Hungary and Czech Republic (for Neusiedler See – Seewinkel and Thayatal National parks). All in all, these National parks are characterized by an extraordinary natural heritage, biodiversity, hydrographical, geomorphological and geological objects, phenomena and processes, requiring a particular regime of planning, arrangement and protection [3], [7], [9].

On the other side, on the basis of the institutional nature protection measures implemented for more than six decades, protected areas in Serbia amounts to 5753.1 km², or 6.51% of Serbia's territory, where there is a 461 protected areas: 5 national parks (National parks in Serbia are: Fruška gora, Đerdap, Tara, Kopaonik and Šar-planina), 17 nature parks, 20 areas with specific features, 68 nature reserves, 3 protected habitats, 310 nature monuments and 38 areas of cultural and historical significance [15].

In Serbia protected areas, depending on the value and importance, fall into three categories. Protected areas of great importance are the first category, which has international and national importance, and the national government declares them as such. The second category of protected areas are the ones of great importance to the provincial or regional level, which are proclaimed as such by the national government or a provincial body. The protected areas of local importance designated by the competent authority of local governments, constitute the third category of protected areas. When it comes to protected areas, National parks belong to the first category and are of the utmost importance for Serbia [15].

LEGAL FRAMEWORK

Austria

In this country nature protection (Naturschutz) is arranged by the complex system of laws and regulations that are in accordance with the EU directives. These laws are brought on the Länder level, meaning Länders are responsible for this legal segment. It is important to underline that all laws are mutually coordinated and that the legal base of all the federal states is similar – there are basic principles of nature protection which are adjustable to regional and state specificities. The Ministry of agriculture, forestry, environment and water management (Bundesministerium für Land-und Forstwirtschaft, Umwelt und Wasserwirtschaft) has the key role and an institutional responsibility in the area of nature protection. There are also some authorities under the auspices of the Ministry that have a particular role on the topic of nature protection - the Environmental Protection Agency of Austria (Österreichische Agentur für Umweltschutz) and several agencies and offices on the state level (Naturschutzfachstellen and Naturschutzabteilungen). The indicated institutions carry out professional tasks in terms of nature and landscape protection, identify problems, define protected areas of protected natural goods, but they also provide cooperation with the broader public involved. The primary legal acts are: The Law on Environmental Protection (Umweltschutzgesetz), The Nature Protection Law (Naturschutzgesetz), The Law on National Parks (Nationalparkgesetz), The Law on Spatial Planning (Raumordnungsgesetz), as well as

numerous other laws and bylaws that regulate protection of plant and animal species, wild animals and hunting, protection of water, air and soil, waste management etc. [1], [9].

The Nature Protection Law, which is compliant to the international agreements and conventions, is the one that protects and promotes diversity and unity, that defines educative, scientific, cultural, biological and recreational values of landscapes and that adapts economic and social development to the natural resources. It establishes basic principles of nature protection. It includes a classification of protected natural goods, declares measures of protection and monitoring, defines jurisdiction of state authorities, penalties and fees and prescribes participation and free access to and exchange of information as obligatory. In addition this law also defines national parks as: natural ecosystems of special scientific or biological national or international significance that excel original natural and historical elements. Nature protection is set up on a permanent basis as a top priority of state and local authorities [1], [3], [7], [9].

The Law on National Parks – by the analysis of national laws a complex conclusion has been drawn: the Austrian National parks have impressive and rich landscapes that abound in beauty and originality of biodiversity. In order to provide nature protection and reduce human influence, the laws rely on IUCN (International Union for Conservation of Nature and National Resources) guidelines. This law determines land use within the National parks, primarily for education and recreation, science and researches. National parks represent intact or slightly changed landscapes, representative habitats of flora and fauna as well as cultural landscapes and historical objects as important elements of a protected area. The law specifies what are the prohibited activities and the National park authorities, bodies that will be responsible for control and monitoring and penalties for violation of its provisions. It claims the need of bringing a Declaration of the National park (Nationalparkerklärung) as an instrument that will help local authorities and communities to manage together protected areas and to dispose of them in an efficient and responsible manner. The state government has a duty to bring a National Park Management Plan (Managementpläne), apart from the Declaration, in order to define different areas of protection and the limits of the natural area, but also to regulate which activities are welcome within National parks and which ones are not. There is the three-stage protection regime (three zones of protection should be determined) in the area of the National park according to the laws and bylaws [1], [2], [5], [6].

The Law on Spatial Planning coordinates spatial development and the economic, social and cultural needs of a certain community that inhabits a particular area, for the sake of public interest and environmental protection, defines the mode of spatial and land use planning and the cases when construction is allowed or those when it is prohibited, like in the case of protected goods. Plans and programs are here classified into three categories: Development plan for the state, Program of development of the region and the Sector development plan (Landesraumordnungsplan and Raumordnungsprogramm). Local authorities bring and implement their local plans (Flächenwidmungsplan) in accordance with the plans of the higher order. As regards the environment and nature this law considers both their preservation and their planned and sustainable use in order to make the rest of it sufficient and of an adequate quality. The

main issues are: protection of soil, flora, fauna, natural and cultural heritage, urban and rural landscapes [1], [4].

Republic of Serbia

Field of nature protection in Serbia is normatively regulated by The Law on Environmental Protection, Nature Protection Law and other laws and regulations that are directly or indirectly related to the nature and natural values. When it comes to national parks, especially important laws are The Law on National Parks and The Law on Planning and Construction. In addition to law enforcement, where the adoption of The Nature Protection Law which regulates the protection and conservation of nature, biological, geological and landscape diversity was of extreme importance, for the normative regulation in this area there are many bylaws which are also significant. Harmonization of legislation in the field of environmental protection and nature protection, with the EU, which is underway, European and international standards are taken into consideration and are implemented. Also, improvement and harmonization of nature conservation contributes to the implementation of the provisions and principles of international conventions of which the Republic of Serbia is a signatory [13], [14], [15]. Ministry of Agriculture and Environmental Protection of the Republic of Serbia is the central institution for the public administration tasks which are related to the system of protection and management of protected areas. Under existing law, the part of the competencies in the field of environmental protection is decentralized to the provincial level. Local governments, through the Secretariat for Environmental Protection, have responsibilities that are related to spatial planning, environmental protection and municipal services. Environmental Protection Agency is the body of the Ministry. This Agency performs state administration related to the development, coordination and management of the national information system for environmental protection; as well as cooperation with the European Environmental Agency (EEA) and the European environment Information and Observation Network (EIONET). In addition to the Ministry and the Agency on the basis of the Nature Protection Law competencies in the field of protection and improvement of the natural heritage of the Republic of Serbia and Autonomous Province of Vojvodina have been entrusted with the public professional institutions which are the Institute for Nature Conservation of Serbia and Provincial Institute for Nature Protection.

Law on National Parks regulates the goals, values, size, boundaries and regimes of protection, management and sustainable use of all five national parks in Serbia. By this Law, the protection and sustainable use of the national park is carried out according to the National Park Management Plan for the period of ten years and other acts adopted on the basis of laws, regulating the protection of nature [10]. The management plan includes measures, prohibitions and limitations of works and activities in accordance with prescribed protection regimes. Management plans, are adopted by Public companies - managers of national parks as an obligation. Also, managers are required to ensure internal order and safeguarding of protected areas in accordance with The Rules of Order and the Guardian service, which are made with the consent of the competent authority [10], [15]. Within the National park are determined protection regimes of first, second

and third level (closer regulated by The Regulation on the Protection regimes), in which are applied prohibitions and restrictions on work and activities identified in the Management Plan and regulations governing the protection of nature. These activities, as defined in the Management Plan, and harmonized with the Spatial Plan for Special Purpose Areas, forbid the construction of buildings that are in contradiction with the present plan [10], [15].

PLANNING FRAMEWORK

Austria

The process of spatial planning in Austria (Raumordnung and Raumplanung) is an arranged and complex system of plans on the federal, state, town or municipality level. States are responsible for Regional plans, both for their drawing and implementation. These regional plans are very significant because they are crucial for setting principles of systemic and sustainable organization of space, with the aim of rational land use, special areas and environmental protection. Towns and municipalities are competent for land use planning and nature protection on local levels, by local regulations and plans. So, land use planning is of great importance for nature and space protection in Austria, being an interactive process consisted of dialogs between all the interested actors in order to define a sustainable form of land use [3], [4]. Is important here to mention LISA (Land Information System Austria) which has the purpose of collecting and present actual and detailed geospatial data for the purposes of state authorities and the private sector about development level and actual state of soil and land use in Austria. All these planning levels – the federal, state and local are connected by ÖROK (Österreichischen Raumordnungskonferenz). ÖROK is a complex organization which deals with the application of EU regional policies on the federal level and also with diverse analysis, researches and statistics. It is a managing authority for EU programs [9].

The soil and ecosystems within the Austrian National parks need a special regime of planning and management to be sustainable. Planning documents are, apart from laws and other regulations, another instrument for protection and development of nature goods. Among them, Regional plans as planning documents of the highest level, determine basic, long-term objectives in the field of nature protection, allocate and set out important protected areas within the planning area, lay down general guidelines for planning and management and measures to protect natural resources, whereby the emphasis is on national parks as natural areas of greatest ecological value (if existing in the area to be treated). Local plans that refer to municipalities (Flächenwidmungsplan) or Land use plans must adopt basic principles and guidelines from the planning documents of the higher level and should implement and respect them. Local self-government carries out a zoning process with the help of these plans and sets aside areas for different purposes, separating residential zones, work zones, green areas, etc. [1], [4], [8].

The most important document in the field of protection and management of National parks is the National Park Management Plan (Nationalpark Managementpläne) [5], [6]. This Management Plan together with the Declaration of a National Park

represents an instrument for sustainable development of natural goods. The Management Plan is a long-term document that is brought usually for a 10 years period. A company that manage a National park brings this plan in order to precisely define the boundaries of the treated protected area, disposes the protected zones within them and designates what activities can be placed in that area. The drafting of a Management Plan is based on the real situation, so its implementation could be complete. Management Plans in Austria have the role in achieving the objectives, which means they aren't only "wish lists". This implies that the majority of those objectives is realized in the time horizon of the plan, making a significant difference comparing to the Republic of Serbia. First, the Management Plan defines land use within the area of a National park and emphasizes what are the most important allowed activities: agriculture, forestry, hunting and fishing, tourism and other economic activities that are represented here, spatial development and others. This is followed by an overview of the state of the environment and an identification of the most valuable natural parts, representative specimens of flora and fauna and their habitats and if there are, those spatial entities that are in a "worse condition". Finally, it defines the scenarios for future development, lays down measures to protect the environment, regulates the system of monitoring and evaluates priority activities [5], [6].

Republic of Serbia

The planning framework for the regulation and protection of areas of the national parks in Serbia is based on spatial planning documents. The Law on Planning and Construction prescribes four types of spatial plans which are to some extent related and treat protected areas of national parks: Spatial Plan of the Republic of Serbia, the Regional Spatial Plan, the Municipal Spatial Plan and Spatial Plan for Special Purpose Areas [11]. Spatial Plan of the Republic of Serbia (SPRS) passed for the territory of the Republic, is the basic planning document of spatial planning and development in Serbia, and all other documents (plans) must comply with it. This plan, which have strategic development and general regulatory function, defines all the protected areas of international, national and regional importance in Serbia. In the context of ecological connectivity, order and sustainability, national parks have a special place and were recognized as areas protected, maintained and with adequately presented natural and cultural values. As for the elements of the environment, national parks are seen as areas of high-quality environment which require planning solutions to keep the existing state of its quality and protect valuable and preserved natural ecosystems [11], [12].

Regional Spatial Plan (RSP) is made for larger spatial entities with administrative, functional, geographic or statistical character, aimed towards common objectives and projects of regional development. The RSP is a planning document with respect to specific needs arising from regional particularities, and elaborates the objectives of physical planning and determines rational use of space, in line with neighbouring regions and municipalities, while respecting the strategic solutions and recommendations of the SPRS. In this context, protected areas are treated when a part or the entire area of the national park is in the scope of the RSP [12].

Municipal Spatial Plan shall be adopted for the municipal territory and determines guidelines for the development, land use and conditions for sustainable and balanced development within its territory. Similar to RSP, when the territory of the municipality is part of the national park or a complete municipal territory falls within the scope of the national park, the plan must comply with all orders and directions given higher level plans (SPRS and RSP) [12].

Spatial Plan for Special Purpose Areas (SPSPA) shall be adopted for areas that require special regime of organization, development, use and protection of space, projects of importance for the Republic of Serbia or for areas designated by the SPRS [9]. This applies to national parks as areas with natural values, as well as the areas with the possibility of using tourism potential, which makes it the most important planning document when it comes to national parks and protected areas. SPSPA is adopted by the Government of the Republic of Serbia, at the proposal of the ministry responsible for regional planning, while for areas located entirely within the territory of the autonomous province brings the Government of the Autonomous Province. SPSPA for the area of the National Park contains first, second and third level of regimes of protection, which are prescribed by the Law on National Parks [10], [11].

Urban development plans defined by the Law on Planning and Construction: General Urban Plan, Plan of General Regulation and Plan of Detailed Regulation, when made for the part of the National Park (settlements, resorts, undeveloped areas etc.) must be harmonized with the SPSPA and respect the established regimes of protection. Urban development plans shall be adopted with prior approval of the Ministry of Agriculture and Environmental Protection and the Ministry which is responsible for urban and spatial planning in Serbia. Until the adoption of urban development plans, the terms of the regulation, use and protection of individual locations are also determined after receiving approval from the competent Ministry [10], [11].

CONCLUSION

The analysis of the planning and legal framework of Austria and the Republic of Serbia led to the conclusion that the planning systems and legislative provisions of the two countries are based on principles of sustainable development. The Laws, according to the character and content, are very similar, which is the result of harmonization of national legislation with international conventions and EU directives.

The biggest difference between the observed countries is the way of law enforcement and implementation of planning documents. Austria as a strong and regulated federal state has developed the local level that is able to actively participate in the realization of the set goals. On the other hand, local governments in Serbia, weakened by the negative trends that are deeply rooted and difficult to overcome, have no other solution but to seek and rely on help of the state and its intervention in space. Also, a significant difference is the fact that the implementation of planning documents is the weakest link in spatial and urban planning in Serbia. This is the result of expressed generalization of planning solutions. On the other hand, in Austria, national and local level are very responsible in implementing the decisions which are defined in planning

documents. Planning solutions are very clearly and specifically defined, and sustainable land use is one of the main tasks of the community.

Other previously mentioned obvious difference is the implementation of the law. The laws are very similar, with the big difference in the degree of compliance with legal provisions. Structure and harmonization of Austria as a complex state is based on the strict respect of all types of legal acts which are adopted, while in Serbia, a common practice is to find "legal loopholes" and "Stretching the Rules" or contempt of legal acts, which can be interpreted as the result of less rigorous punitive measures. The dominant cause of this is the low level of political responsibility, ignoring the opinions and suggestions of experts, symbolic participation and lack of civic discipline. Also, Serbia has gone through a very difficult transition period that left deep traces on the functioning of the country in all segments of the community. For this country is of great importance to collect positive experiences of developed European countries, such as Austria, which can be used as a model for future sustainable and more effective development in the field of nature protection as well as in other areas important for a legally stable and well organized country.

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