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# RELATIONSHIP BETWEEN ENVIRONMENTAL LAW AND ENERGY LAW

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**Abstract:** *The connection between energy law and environmental law is reflected through the influence that the field of energy, i.e. subjects of energy law, do their activity on the environment. The fact we're having in mind that energy activities (production, transport, consumption, storage...) continually disturb the environment. The aim of this paper is exactly to point out the connection between the use of energy and the adverse effects that these activities cause during their normal performance, which is sometimes tolerated for economic or other reasons, although through their effects in the long term may be detrimental. In this regard, the paper analyzes connection between energy law and environmental law by analyzing the terms, sources and principles of these two branches of law. Comparing the regulations between one and the other area of law, it concludes that the legal acts which regulate the field of energy, emphasize the requirement for respecting the regulations of the environmental protection, which indicates the connection between of the areas that are the subject of research. In this regard, when the competent authority makes decisions which are related to the one of the foregoing areas, it must also have in mind, i.e. consult regulations from another area too, which indicates the need for an integrated approach. Certainly, the field of energy is not the only polluter of the environment, but the overall influence of primary and secondary sources of pollution in this field, which are the consequences of the necessity of production and consumption of energy, it is not negligible.*

**Keywords:** *environmental law, energy law, The Paris Agreement, The Energy Charter Treaty*

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## 1. ENERGY LAW - AN INDEPENDENT BRANCH OF LAW OR NOT?

In our country energy law is not independent branch of law, but it is a special area of commercial law. It is a young legal discipline which emerged from the oil law of the countries of the Anglo-Saxon legal system, in the last three decades of the last century, as an area of international commercial law which is also related to international environmental law.

Exactly, it first appeared in concessions for the exploration and exploitation of oil, gas and coal, that concessions later had an international character. In the countries of the Anglo-Saxon legal system, in regions with a strong energy sector, the field of energy teaches within the courses that bear the title oil law and the right of natural resources. In these countries there is an increasing students interest to study this field. The need for international energy exchange, i.e. the need for the cross-border connection of the energy networks of certain countries, has led to this area has gradually turned into the international law of energy.

Over the past twenty years, there has been an increase in the number of elective subjects at the Law Faculties in the countries of the Anglo-Saxon legal system. Until the 1970s years last century most of the subjects at these faculties were obligatory subjects, so that the students had a relatively small choice to engage in certain other fields. However, in recent times syllabus have radically changed in terms of reducing obligatory courses, and increasing number of electives courses. In this regard, students are more interested and engaged in the choice of practice in other fields. One of them is the energy sector.

Generally speaking, energy law is not the course of study that is available to law students. In Australia, for example, this field is taught in only two of the total of twenty-six Law University (University of Adelaide i University of Wollongong). In Canada, there is only one University (University of Adelaide of Calgary), while in New Zealand it is not studied at all. These few faculties are located in regions with a strong energy sector, and the field of energy is studied within the courses that bear the title of oil law and the right of natural resources (Bradbrook 1996).

Therefore, it is difficult to speak about the specifics of national energy laws. The need for energy resources, connecting national energy markets to regional markets, international exchange of goods and information has influenced the harmonization of norms in the field of energy, and consequently on the creation of international energy law, which is influenced on national energy law and harmonization of national regulations in this field. This process has led to the harmonization of the regulations of certain countries, and consequently to the gradual disappearance of the specificity of national energy law, so today we can speak about energy law as an international legal category (Lepotic Kovacevic 2005: 395-404).

That is a legal discipline that develops through the intergovernmental agreements and international conventions. In this regard, international conventions such as the Energy Charter Treaty and the International Framework Agreement on institutional foundations for the establishment of an interstate system for the transport of oil and gas (INOGATE) have had a major impact on the creation of international energy law. Also, the importance of international law of energy are the conventions of environmental protection, such as: United Nations Framework Convention on Climate Change, Kyoto Protocol, Aarhus Convention. Most conventions in this field, which are the sources of environmental law, have different energy products for their subject of regulation, i.e. facilities for the production and transport of energy.

Unsustainable practice around the world in the production and consumption of en-

ergy has led to a many of environmental problems, as well as to serious global worry, were getting the conclusion that the field of energy should be also realised from the both aspects, of international law and from the aspect of national law. In this regard, there is a need for continuous finding of adequate legal solutions in order to promote sustainable development (Luster-Bradbrook 2006).

## 2. ENERGY LAW - NATIONAL OR INTERNATIONAL AREA, I.E. BRANCH OF LAW?

As a national area of law, energy law is connected with other branch of law, especially with administrative law, civil law, environmental law, constitutional law and international law.

With respect that the Constitution is the highest legal act of the state, it is clear that the regulations in the field of energy, as well as all other regulations, should be in accordance with the Constitution. Relationship between energy law (as special area of commercial law) and civil law (i.e. law of obligations) is the relationship between a special and a general area because the energy law is studying the turnover of goods and services only in the field of energy, unlike the law of obligations that examines the turnover of goods and services in general. When we consider the relationship between the rights of energy and administrative law, it can be concluded that these are two separate branches of rights that are interconnected in a situation where the competent authority, in an administrative procedure, decides on the request of an energy entity. The point of contact of international public law and energy law is the cases when the state acts as a subject of legal relations in the field of energy (when the state acts as a guarantor of enforcement intergovernmental agreements of business entities). The connection between environmental and energy law is visible while performing energy activities, which are biggest pollutant of environmental. Therefore, it is importance to regulate environmental protection, i.e. regulate the performance of energy activities, in order to reduce and eliminate the pollution that may result from these activities (Lepotic Kovacevic 2005: 497-515).

The countries have regulated the field of energy by national regulations, but the international energy exchange has caused the conclusion of foreign trade agreements and development of the international agreements and conventions. The need for the international energy exchange has influenced the development of energy law, so today it is more difficult to talk about the national law of energy. Because of that, we can more objectively speak about the international law of energy. The international energy exchange has influence on the gradual harmonization of the regulations in the field of energy. In this way, the permanent influence of national law of individual states and international law is realized (Lepotic Kovacevic 2005: 517-520).

Geographically unequal layout of energy sources, i.e. the circumstance that there is a difference between the place where energy can be found and the places where energy must be used caused the need for the exchange of energy. At first, it was crude oil and later natural gas and oil derivatives (Kovacevic 2005: 589-602). The development of energy networks has enabled supply of population in remote areas, which is very important because without energy it is hard to imagine a quality life. With the development of energy trade and possi-

bility of energy transport, there has been a need for connecting national energy networks to interconnection lines and pipelines. The market was formed and the conditions for further development of market institutions were created. In addition, energy markets are interconnected with complex technological, ownership and financial connections (Kovacevic 2005: 603-604). Speaking of the development of international law of energy and international energy market were also created International companies which perform activities in the field of energy, such as international organizations that have the energy or certain energy fields for the subject of their work, for example World Trade Organization (WTO), International Atomic Energy Agency (IAEA), United Nations Industrial Development Organization (UNIDO), and others.

Energy law continuously develops by changes in the existing regulations, as well as by the creation of a new regulation consisting of laws, market rules, network rules and technical regulations that contain technical standards. The activities of the first pillar European Union has influenced on harmonization of the member states energy law. Because of that, all of countries that want to become members must to harmonize their national rights with EU law as one of the conditions for their membership in this organization. Foreign trade cooperation in the field of energy and comparison of legal norms of different countries, in order to achieve business cooperation, has also affects on the appearance of new contracts and legal concepts.

### **3. THE CONCEPT, SOURCES AND PRINCIPLES OF ENERGY LAW**

Sources of energy law can be divided into material, formal, domestic and international law (as in other branches of law). According to the legal force, they are separated into laws and subordinate legislation, general acts of energy entities, contracts and general business conditions, business customs, judicial practice and legal science. Energy law of the European Union is a special group of law sources that apply in its territory.

In the first place, in domestic law, should be mentioned Energy Law which regulates, among other things, the goals of the energy policy and the way of its realization, the conditions for reliable, safe and quality delivery of energy and conditions for safe supply of customers, protection of energy customers, etc. Also, the laws that confirm or ratify interstate agreements have special significance, in which way the text of the ratified international agreement or convention becomes an integral part of the domestic legal system. In the field of energy, as a subordinate legislation exist regulations and decision which closely regulate legal relations that are not well regulated by law. Economic entities regulate their activities, organization and operations by general acts, while increasing importance, due to the speed of performing traffic of goods, have a general business conditions that contain a set of contractual clauses or even type contracts for trade in certain goods. Their significance are reflected in the stock exchange trade, which includes crude oil, oil derivatives, electricity, natural gas and coal. Business customs, which were once the main source of commercial law, have lost their significance because today we have laws that regulate legal relations of goods and services exchange. Unlike customary law, they are followed by awareness that their application is useful. In domestic law, jurisprudence is not a formal source of law (but it is a factual source of law, because it effects on regulation of legal relations). In Anglo-Saxon countries jurisprudence is a source of law. The influence of Anglo-Saxon law on European

Union law is also reflected in the fact that decisions of the European Court of Justice are the sources of law. In domestic law, legal science is not a formal source of law but is significant in the field of its application, because it points to the need to introduce new legal institutes into the domestic legal system (Lepotic Kovacevic 2005: 405-420).

International sources of energy law are the conventions or treaties that our country ratified. The most important conventions are from the field of transport and energy trade, as well as the agreements on accession to international organizations dealing with various issues in the field of energy and international agreements on environmental protection and on human rights, such as the Umbrella Agreement on the Institutional Framework for the Establishment of Interstate Oil and Gas Transportation Systems.

In international sources of law whose matter is not energy law, but whose certain norms have an effect on legal relations in the field of energy are: United Nations Convention on Contracts for the International Sale of Goods, Convention on the Contract for the International Carriage of Goods by Road, Convention Regarding the Regime of Navigation on the Danube, International Convention on Civil Liability for Oil Pollution Damage and Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, United Nations Framework Convention on Climate Change. Apart from the mentioned international sources of rights which by ratification have become an integral part of the domestic law, it is very important to list the international sources of rights that we have not ratified, and whose ratification is very important for the further development of energy law in our country, as well as other areas of law. Respecting this fact, the following regulations should be mentioned: Energy Charter Treaty, and Aarhus Convention.

Principles are criteria in accordance to whom the subjects of energy law should behave. For our energy law, the following principles are important: security of supply and energy efficiency. Security of supply is achieved by sufficient energy on the market, energy reserves, development of the energy market and safe operation of energy networks. Also, it creates the conditions for every person to become an energy consumer if he wants, while energy efficiency is being realized in a way that the lower energy consumption achieving the same effect. Energy efficiency should be the subject of the energy policy and strategy of each state, because it reduces environmental pollution, which is the consequence of the production and consumption of dirty energy (Lepotic Kovacevic 2005: 421-442).

#### **4. INTERNATIONAL LEGAL REGULATION OF ENVIRONMENTAL PROTECTION AND ENERGETICS**

The legal rules of international law which regulate the field of environmental protection can be divided into several groups: a) rules that related to the preservation of living nature and cultural heritage (Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention on the Conservation of Migratory Species of Wild Animals, Convention Concerning the Protection of the World Cultural and Natural Heritage, Convention on Biological Diversity, Convention on the Conservation of European Wildlife and Natural Habitats; b) rules that related to the protection of the atmosphere, ozone layer and climate (Convention on Long-Range Transboundary Air Pollution, Vienna Convention for the Protection of the Ozone Layer, Montreal Protocol on Substances that Deplete the Ozone

Layer, United Nations Framework Convention on Climate Change, Kyoto Protocol; c) rules that related to the protection of the marine and oceanic (Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources, Kuwait Regional Convention for Co-operation on Protection of the Marine Environment from Pollution, Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, Convention on the High Seas, International Convention for the Prevention of Pollution from Ships, International Convention for the Prevention of Pollution of the Sea by Oil, International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution, International Convention on Civil Liability for Oil Pollution Damage, International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage) and d) rules concerning dangerous waste - Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Stockholm Convention on Persistent Organic Pollutants (Kreca 2010: 698).

Conservation of the environment is a necessity that can only be achieved at a global level. Because of that, the globalization of energy law is achieved alongside the globalization of environmental law. In its energy policy, the European Union has set itself the goal of achieving environmental protection by using energy more efficiently, increasing the scope of renewable energy sources and energy savings. Reducing the volume of production and consumption of „dirty energy“, increasing the volume of renewable energy and green energy consumption is one of the key environmental protection measures. Regulations about pollution control are also very important, such as Aarhus Convention and Kjoto Protocol (this act was adopted with the aim of reducing greenhouse gases and the risk of climate change, by which act, countries classified according to the degree of pollution and the height of the national product). Pursuant to the above-mentioned regulations, countries with a high degree of environmental pollution (and very often those are countries with a large national product), should also undertake higher pollution reduction rates on their territory, in relation to countries with low pollution levels, how a uniform reduction in global pollution would be achieved.

One of the biggest sources of environmental pollution, caused by human activity, is the process of combustion of fossil fuels. In this regard, the special challenge is the harmonization of the requirements for the economical provision of the required amount of energy and the retention of emissions of polluting substances within the permitted limits. This is possible to achieve through the implementation of a whole range of different measures, inter alia by switching to cleaner energy sources, as well as appropriate legislation. Because of that, when adopting regulations in the field of energy law we must pay attention on the environmental regulations, especially on the international level. In this regard, regulations in the field of energy must take into account, and not to ignore the obvious connection between production and consumption of energy and the negative impact that these activities may have on the nature. Access to these areas must be integrated and not strictly divided on the areas. This means that the regulations in field of energy can not deal exclusively with energy supply on the market without disturbance by affordable price and, in the other hand, that regulations in the field of environment have focus only on the processes in the nature, including and energy production that not cause “too much” pollution, whatever that means (Wildermuth 2011).

## 5. CONFERENCE IN PARIS

The United Nations Framework Convention on Climate Change and *Kjomo* Protocol are the beginning of legal regulations in the fight against climate change. The main objective of the Convention, adopted at the Rio Conference in 1992, is the stabilization of greenhouse gases, starting from the fact that most of these emissions come from developed countries. Therefore, these countries, having regard to the principles of common and different responsibilities, besides the general obligations imposed on all contracting parties, have special obligations too. The effects of the Convention have been shown as more than modest, since developed countries didn't show a willingness to explicitly commit to the reduction of greenhouse gas emissions and also didn't want to develop instruments to implement the commitments undertaken (Vlajnic 2017). Bearing in mind that after 1992 have been a little concrete actions in this direction, and that in the Report of the Intergovernmental Panel on Climate Change of 1995 clearly identified the negative impact of human activities on the climate, in 1997 have signed an additional protocol containing an legally binding, quantified obligations regarding the reduction of greenhouse gas emissions for industrialized countries (Von Stein 2008). Although, at the end of the first period of implementation of the Kyoto Protocol it was found that most of the contracting parties reduced the emissions in larger quantities than prescribed, the overall emissions reduction were not at the expected level, and therefore the objectives of the Protocol haven't been met (Morel- Shishlov 2008). Neither the three so-called. "Flexible mechanisms", conceived as an incentive for developed countries to sign to the Protocol, haven't proved effective because they have enabled the contracting parties to find a way to maintain or even increase the old levels of emissions without violating obligations under the Protocol (Kreca 2010: 655). This is because, the countries with low emission level, using the emission trading mechanism, sold your emission credits to larger polluters, and using the Clean Development Mechanism, the effects of investment by developed countries in reducing greenhouse gas emissions in underdeveloped countries have been attributed to investors.. However, the significance of the Kyoto Protocol can not be disputed, bearing in mind that it has encouraged further struggle against the adverse effects of climate change (as well as it contributed to raising awareness of the need to reduce emissions of harmful gases and to protect the environment).

Following the entry into force of the Kyoto Protocol, negotiations on further State obligations to reduce greenhouse gas emissions were held at the conference of the Parties to the Framework Convention held in December 2007 on the Bali Island in Indonesia, which adopted the document „Bali Action Plan“. The next negotiations took place at the Climate Summit in Copenhagen, where no legally binding document was issued, but the parties agreed that it was necessary to take measures to reduce national and global emission limit values, so that the overall emission increase would not be more than 2°C.

Negotiations on further state commitments to reduce greenhouse gas emissions continued in 2010 at the Summit in Cancun, which again failed to reach on a legally binding agreement. Then followed the Summit in Durban in 2011, in which an agreement was reached on the development of a new agreement by 2015, which will for the first time prescribe obligations for both developed and developing countries. The great success of this summit is that the thirty-eight industrialized countries have committed themselves to continue to reduce the emissions of gases prescribed in Annex B, beginning in 2013. Then, at the 2012 Qatar Summit, the Doha Amendment was signed and a second binding period for the implemen-

tation of the Kyoto Protocol was established, from 2013 to 2020. The next summit held in Warsaw in 2013 was a step towards a universal climatic agreement.

The two-week negotiations at the United Nations Conference in Paris, from November 30 to December 12, 2015, led to the adoption of the Paris Agreement, which is a key step in the action against climate change. The agreement consists of 195 members which, among other things, set up the objective of limiting the temperature increase significantly below 2 °C in relation to the pre-industrial period, strengthen the obligations of developed countries to support the efforts of developing countries and extending the mechanism for responding to losses and damages arising from climate change. The principle of “shared and shared responsibility” was kept, so that the developed countries need to contribute more for reducing emissions of harmful gases, as, unlike the Framework Convention, didn't made division to the countries listed in Annex I (developed countries) and the countries listed in Annex II (under development countries). Pursuant to the Agreement, climate change should be solved urgently, jointly and differentiated, in accordance with national circumstances.

By its legal nature, the Agreement is an international treaty, with only certain provisions legally binding, mainly procedural, while material provisions are formulated in the form of principles which should be followed. The nationally determined contributions of each state, as well as the main goal of the Agreement - preventing growth of temperature above a certain level, have formulated in the form of principles. The obligations of States is to prepare these contributions and determine domestic measures to achieve them, as well as a number of provisions on mitigation, adaptation and transparency, are provisions that are legally binding.

If the Agreement should be adopted it needs to be ratified by 55 countries at least, which are together produce over 55% of the global greenhouse gas emissions. Pursuant to Article 14 of the Agreement, its implementation by all Contracting Parties will be considered every five years, and the first evaluation will be carried out in 2023. After this consideration, a new „nationally determined contributions” will be established.

The significance of the Conference is reflected in fact that was the first time in history when a universal agreement on methods to mitigate climate change has been reached, which all countries of the world agreed. Before the Conference, 146 national climate panels publicly presented the intended national contributions as a global response to climate change. The role of the France, as the host and chair of this Conference, was to approximate the attitudes of the conference participants in order to achieve consensus within the UN, but also within the European Union which occupies a significant place in the climate negotiations. That is why the European Union, and especially France, wanted to play a proper role, and all EU members committed themselves to reducing their own emissions by 40% by 2030, while France intends to move further, committing to a reduction of 60% until 2040. Several other major world economies have already announced their contribution: the US - 26% by 2025, Russia - 25% - 30% by 2030, compared to 1990 broadcasts, Canada - 30% by 2030, etc. Serbia was one of the first countries in the Western Balkans region, which announce its commitment to reducing emissions of harmful gases by 9.8% by 2030.

As we know, by Kyoto Protocol have obligated, on the similar aims, former industrial forces which are not produce, in this days, not more than 15% of the greenhouse effect gases, and on their places comes a new forces such as China, India and Brazil. Because of this reasons, new Climate Agreement was necessary. In the Preamble of the Paris Agreement is

emphasize the need for urgent solving of the climate change, common but differentiated, taking into account the national circumstances (developed - underdeveloped countries), as the need for financing and technology transfer, eradicating poverty, protecting biodiversity and sustainable development.

Solutions for reducing harmful gases exist, in all sectors, and they involve the application using the new technologies and the adoption of new behavioral patterns. In particular, in the case of energy production, the solution would be to reduce the consumption of fossil fuels (gas, oil, coal) and gradually switch to renewable energy sources (eg sun, wind, biomass). A poll conducted by the European Commission (Eurobarometer) showed that Europeans are very worried about climate change, as many as 92% of respondents consider climate change a serious problem and 74% a „very serious” problem. The poll’s results showed that 20% of respondents consider it as important that the national governments taking by 2030 for aim increasing the use of energy from renewable sources (89%), create conditions for increasing energy efficiency (88%) and create financial conditions for switching to clean energy (79%). Applying these measures, according to the opinion of 79% respondents, will bring to the economic growth and job creation.

Speaking about the fact that the Agreement was ratified by 170 of the 197 members of the UN Convention on Climate Change, indicates that the significance of the Agreement. Sufficient threshold for ratification was reached on October 5, 2016 and, after that, the Agreement entered into force on November 4, 2016. In June 2015, the Republic of Serbia, was published its goal of reducing emissions for 2030 compared to 1990 (9.8%), and did it amongst the top ten countries in the world and as the first country in the region. These goals are based on existing sectoral documents (strategies for energy, transport, agriculture, waste). On May 29, 2017, the National Assembly of the Republic of Serbia passed the Law on the Confirmation of the Paris Agreement, which is in force from June 7, 2017.

The Kyoto Protocol and the Paris Agreement represent two very important documents issued in order to protect the environment from harmful consequences of human activities. The final result for the both documents were to reduce carbon dioxide emissions and prevent global warming above the prescribed level. Kyoto Protocol prescribing obligations only for developed countries (from Annex I to the Convention), while the Paris Agreement retains the principle of common but differentiated responsibility, emphasizing the need for mutual cooperation among developed and underdeveloped countries. The difference between these two agreements is that the Kyoto Protocol based its focus on reduce using the fossil, while the Paris Agreement its focuses moving on to renewable energy. In addition, the Protocol does not pay much attention to the transfer of technology and international cooperation in achieving the set aims, while the Paris Agreement clearly indicates cooperation between countries, as well as support systems for achieving effective implementation. This refers to the obligation of developed countries to create a fund, from which assistance would be provided for developing countries to achieve their aims.

Analyzing the Paris Agreement, we can conclude that it has achieved success in the two-year contest against climate change. This also implies a multilateral approach to this problem, bearing in mind the number of members that signed this Agreement. The message of the agreement is that the period of fossil fuels is completed, assuming that any global warming is dangerous. Its success is reflected in the fact that it has the potential to influence further development and creation of national policies in the direction of preserving

a healthy environment. This is possible with the help of provisions on the obligation of States to prepare their national contributions and determine domestic measures in order to achieve them, in which way is introducing a reputational risk mechanism, instead of legal sanctions, that forces the contracting parties to increase their contributions every five years. Also, the Agreement has managed to reconcile the different interests of developed and developing countries, taking into account the specific needs and opportunities of developed and developing countries (Obergassel- Arens, etc. 2016). In any case, time will show are the states really prepare to comply provisions of Agreement.

## 6. THE ENERGY CHARTER TREATY

The Energy Charter Treaty is an instrument for the promotion of international cooperation in the energy sector. After this treaty became into force, on April 16, 1998, together with related documents, provides a valid legal basis for the creation of open international energy market. The agreement was signed by the countries of the European Union, Central and Eastern Europe, the Russian Federation, Central Asia, the Caucasus, as well as Japan, Australia and Mongolia. Also, all countries that are committed to respecting principles of the Treaty can be its members. This countries are, first of all, China, Iran, South Korea, as well as countries ASEAN-a (Association of Southeast Asian Nations), which opens up the possibility of expanding its geographical area. The main challenge which the signatories have is the full implementation of contractual obligations, in order to achieve long-term cooperation in the fields of energy, trade, investment, environmental protection and energy efficiency.

This process has been started from a political initiative launched in Europe in the early 1990s, because the end of the Cold War created the possibility of overcoming the economic divisions that existed between the countries of the Eurasian continent. The perspective for mutual cooperation between East and West were recognized in the energy sector, because Russia and many other former Soviet countries were rich in energy resources, but they did not have significant financial resources for the development of the energy sector. Unlike these countries, countries of Western Europe had a strategic interest for the diversification of energy sources. On the basis of the recognized need for mutual cooperation, has began the process of establishing such one of this document and the related Energy Efficiency Protocol, which were signed in Lisbon in December 1994 (Konoplyanik-Wälde 2006). Amendments regarding the trade provisions of this agreement were subsequently adopted (Brussels, 1998).

The first formal step in this process was the adoption and signing of the Energy Charter, which contains guidance for negotiating a subsequent binding document. Following objectives and principles of the Energy Charter, which were adopted at the Conference held in The Hague on 16 and 17 December, the Conference began negotiations on the Basic Agreement, which was later renamed into the Energy Charter Treaty, and finalized in 1994 by adopting the text of the Treaty. This document represents a legally binding act that establishes a legal framework for the promotion of long-term cooperation in accordance with the objectives and principles of the Charter. It regulates five areas: protection and promotion of foreign investments in the energy sector in accordance with national interests; free trade in materials, products and equipment related to the energy sector, in accordance with the

rules of the World Trade Organization; free transmission of energy through pipelines and networks; reducing negative environmental impacts by increasing the energy efficiency of the whole energy cycle and mechanisms for resolving disputes between states or between investors and the state.

It is an international source of rights that we haven't ratified, but whose ratification is very important for the further development of energy law in our country (Lepotic Kovacevic 2005: 487). From the surrounding countries, Bosnia and Herzegovina signed this Treaty in 1995, and in 2000 ratified it, together with the Energy Charter Protocol of Energy Efficiency and Related Environmental Aspects. On December 17, 1994, Croatia signed the Energy Charter Treaty and on 19 September 1997 has adopted the Law on the Confirmation of the Energy Charter Treaty, bearing in mind the need for long-term international cooperation in the field of energy. Regarding the other countries of the former Yugoslavia, Macedonia and Montenegro are members of the Energy Charter, which, unlike the Treaty, is not a legally binding document, but it is a declaration of political intent aimed to strengthening energy cooperation between the signatories, in accordance with the principles of non-discrimination and the openness of the energy market. The Charter highlights the importance of energy efficiency as a mechanism for reducing harmful effects on the environment and, together with the Charter, it was made the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects - PEREA), by which signatories have committed themselves to establish a clear policy aimed at improving energy efficiency in all parts of the energy cycle (starting from production, through transport and energy transfer to distribution and final consumption) and reducing the negative impacts on the environment which come from the energy sector. The Protocol entered into force simultaneously with the Treaty, on 16 April 1998, and it was opened for its signature.

Fields of Energy and environmental protection are connected in Article 19 of the Treaty, which contains the obligations of contracting parties to reduce adverse environmental impacts deriving from activities carry out in the energy sector. These obligations should be committed in an economically efficient manner and with the application of the precautionary principle and polluter pays. In other words, the contracting parties are required to strive towards more efficient way of minimizing adverse environmental impacts, which resulting from undertaking energy activities in their own territory. The precautionary principle refers to the situations in which do not exist complete scientific certainty that the application of the best available technologies and equipment will prevent or limit adverse environmental impacts, and in these situations, contracting parties must take, and not postpone, cost-effective measures.

The polluter pays principle relates to the obligations of the Contracting Parties to bear the costs of measures to reduce the consequences of pollution caused both in their own territory and in the territory outside the boundaries of the polluters. With the same article, the contracting parties undertook to take into account environmental problems when formulating their energy policies (Todic- Dimitrijevic 2012).

Starting from the norms contained in the Agreement, it can be concluded that it provides the legal basis for long-term energy cooperation between different countries viewing economically, legally and culturally, based on mutual benefits, enabling the transfer of Western technology to the East, i.e. investing in the development of energy sectors of Eastern

Europe and Russia (Axelroad 1996).

The main objective of the Agreement, when it comes to the provisions relating to investments, is to ensure the creation of favorable, clear and unbiased conditions for investors of other contracting parties, as well as the security and protection of the investment itself. This through a standard that guarantees mutual non-discrimination between the contracting parties, applying the principle of national treatment according to which the parties to the Treaty should treat investors of other contracting parties in the same way as domestic investors in all stages of investment (Wälde 1996). Because of that, the Agreement has made a distinction between the pre-investment phase and the post-investment phase in the sense that the provisions relating to the pre-investment phase were primarily in a “soft regime”, in contrast to the post-investment phase when must be apply clear obligations to the contracting parties.

In this regard, Article 26 of the Treaty contains provisions on the settlement of disputes between the investor and the contracting party, in relation to the investment of one of the contracting parties in the territory of the other, in the event when the contracting parties fail to fulfill their obligations. This disputes will be resolved peacefully, but if it is not possible to reach an agreement, within three months from the date of submission of the request for a peaceful resolution of the dispute, the investor may file complaint to the local court, competent authority according to a pre-arranged dispute settlement procedure between the contracting parties or international arbitration. It should be emphasized that the right to arbitration or other methods of dispute settlement arises exclusively from Article 26 of the Treaty, and does not depend on previous exhaustion of local remedies or any other dispute settlement mechanisms.

As an example, may be stated the arbitration dispute between Petrobart Ltd Gibraltar and the Kyrgyz Republic, regarding a contract for the sale of 200,000 t of gas condensate, which Kyrgyz State-owned company KGM bought from the Petrobarth. Bearing in mind that Petrobart Ltd was supplied by gas five times, but it charged only twice, it had to file complaint to the local court, for the payment of the total value of gas, in accordance with the contract. However, the Kyrgyz authorities (in the pinnacle of the reform of the oil and gas supply system in the Kyrgyz Republic) undertaken certain measures in aim to prevented Petrobart Ltd in exercising its rights from the contract of sale. The measures included the decision of the authorities to privatize the state-owned KGM and transfer its properties (but not obligations) to the newly established company. Also, the authorities pressured to the court to postpone the execution of the verdict, and in the meantime KGM's bankruptcy was declared, which meant that the execution of the verdict was no longer possible. However, the arbitral tribunal found that the Kyrgyz Government was responsible for failing to provide a fair and equitable treatment to an investor from another Contracting State, transferring assets from KGM to a newly established company, and at the detriment of the creditors of KGM, including Petrobart Ltd. As well as it mediated in court proceedings concerning the postponement of the execution of a final court judgment to the detriment of Petrobart. On the final court judgment an appeal has been lodged to the Appellate Court in Stockholm, but the Appellate Court confirmed, on 19 January 2007, an arbitration judgement (Hobér 2010).

## 7. CONCLUSION

Relationship between energy law and environmental law is realized through the influence that energy, as a global pollutant, is achieving by the activity or inactivity of energy entities in the whole environment. Pollution derives from both sources of pollution: primary sources (production of electricity in thermal power plants, production of thermal energy in heating plants, production of oil derivatives and household energy consumption, especially when burning wood, coal or oil), and secondary sources from the pollution (energy consumption in industry and traffic). Also, all forms of energy transport are potential environmental pollutants. The smallest potential pollutant is the transfer of hot water by hot water pipeline. Of course, the field of energy is not the only one polluter of the environment, but the overall impact of primary and secondary sources of pollution, which is a consequence of the necessity of production and consumption of energy, is very high.

Both legal disciplines are quite complex, having in mind that the relations between subjects regulate by laws, subordinate legislation, judicial practice, legal principles, agreements, „soft law“ and policies in these areas. With increasing concern for security of supply and diversification of supply sources led to the need for regulate relations between the energy entities (this happend in the 70s of the 20th century), which is, together with environmental protection, very important for society and for achieving of sustainable development (Kluwer 2008). Also, awareness of scientific knowledge is the basis for both areas of law, which inevitably leads to an interdisciplinary approach to environmental and energy challenges. This is because the feature of ecological damage is irreversible process, whereas the feature of fossil fuels are non-renewability, ie limited availabilities. Because of that, it is better to focus on preventive measures and in this way to prevent possible damage, rather than the traditional remedies that are activated in case of need for compensation already caused damage. At the same time, by studying and understanding of international legal norms in the field of environmental protection, it is possible to better understand their impact on the field of energy law, which creates the basis for prescribing adequate protection for the violation committed.

From the above, it can be concluded that it is necessary to continuously harmonize the regulations which will regulate the field of energy with the regulations which are from the field of environmental protection, at all levels. In all this, one should bear in mind the principle of sustainable development, which is an expression of the intention to establish a balance between environmental protection and economic development.

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