

THE CASE OF DISPOSAL OF NUCLEAR WASTE IN TRGOVSKA GORA IN THE REPUBLIC OF CROATIA: ECONOMIC AND LEGAL CONSEQUENCES FOR BOSNIA AND HERZEGOVINA

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ABSTRACT

The storage of nuclear waste planned by the Republic of Croatia in Trgovska gora, located on the border with Bosnia and Herzegovina in its northern part, causes controversy and has far-reaching consequences for the population, flora and fauna, and the environment itself. In parallel with these consequences, it will affect the economic development of 13 municipalities in the Una basin. Croatia has already carried out part of the research, examined the terrain and moved on to geological research. In addition, an environmental impact study is planned and should be completed by 2023. Bosnia and Herzegovina has committed itself to find a solution through diplomatic channels with the Republic of Croatia and the application of international legal standards in this area, as well as legal options available to BiH to protect its interests and mechanisms to deter Croatia from disposing nuclear waste at the site. In the event that Croatia implements this project and builds a nuclear waste dump in Trgovska gora, in addition to environmental consequences, it will affect the economy of municipalities in the Republic of Srpska in terms of a fall in real estate prices, jeopardize agricultural land and create a significant outflow of population.

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1. INTRODUCTION

Croatia has failed to find a solution with Slovenia regarding the joint storage of nuclear waste from the Krško Nuclear Power Plant located in Slovenia. That is why Croatia has planned to do that on the location of the former barracks Čerkezovac in Trgovska gora in the Municipality of Dvor. At the time of the

construction of the Krško NPP in 1979, the construction of a dozen nuclear power plants and a central RAW landfill was planned within the former Yugoslavia. At that time, 13 locations for RAW landfills were planned. (Veinović, 2016: 422). Trgovska gora, i.e. Čerkezovac, were not foreseen by that plan in Yugoslavia for the RAW landfill. In 1988, Croatia began to independently search for a location for RAW disposal. As early as 1993, 7 potential areas for RAW landfill sites were identified: Petrova gora, Trgovska gora - Zrinska gora, Moslavačka gora, Bilogora, Papuk-Krndija, Psunj and Požeška gora. (Čerškov Klika, 1998: 116).

Trgovska gora is geographically located between Bosnia and Herzegovina and Croatia, i.e. on the border between the Una River and its tributaries. On the Croatian side, its slopes are located in the area of Banija and lean on the southern hills of Zrinska gora, and some classify them into the area of Prekouska krajina - hills east of Velika Kladuša and Bužim - with hilly-mountain elevations average of 400-550 meters above sea level, and with the highest point Radač (629 m above sea level). Therefore, this is a site where the disposal or storage of nuclear waste from the Krško NPP (Slovenia) is planned. On the other hand, municipalities interested in this issue are located near the border in Bosnia and Herzegovina. One of the biggest challenges is that the planned disposal of nuclear waste can have a detrimental impact on human health and the environment, as the barracks are located in immediate vicinity of the population on both sides of the border. Also, the question is how it will affect the use of agricultural land in municipalities in the Republic of Srpska.

There is also a debate in the public discourse about whether it is a warehouse or a landfill for low- and intermediate-level nuclear waste, a distinction which is necessary to be made. It is emphasized that the storage is temporary, from 10 to 30 years, and that it includes institutional supervision and state monitoring of the environment. Also, the landfill is permanent and the site, where waste decomposes to natural levels after 300 years, is permanent. A warehouse cannot simply be turned into a landfill, because these are physically different facilities. (Abramović, 2020).

There are geological, seismic and hydrological dangers in Bosnia and Herzegovina, and according to some expert estimates, the location of Trgovska gora endangers 7/8 of the territory of Bosnia and Herzegovina and 1/8 of the territory of Croatia, which makes it very unfavorable for Bosnia and Herzegovina.

Nowadays, the issue of Croatian nuclear waste disposal at the Trgovska gora site has become a first-class issue addressed by the legal profession in terms of legal possibilities to implement the plan of the Republic of Croatia, application of international legal standards in this area, and legal options available to Bosnia

and Herzegovina in order to protect its interests and mechanisms to deter Croatia from disposal or storage of nuclear waste. This topic provoked great reactions from the public, both general and professional, and represents a complex political issue. (Popović, 2021, 447).

In addition, this issue has a significant impact on the economic aspects of municipal development in the territory of BiH, and primarily in the territory of the Republic of Srpska and part of the territory of the Federation of Bosnia and Herzegovina.

2. ECONOMIC AND LEGAL CONSEQUENCES OF NUCLEAR WASTE DISPOSAL IN TRGOVSKA GORA

The Croatian government has decided to cede the former military barracks Čerkezovac, built by the Yugoslav People's Army, to the Fund for Financing the Decommissioning and the Disposal of Radioactive Waste (RAW), located at Trgovska Gora, about 900 meters as the crow flies from Bosnia and Herzegovina. This is a political decision and has not been harmonized with Bosnia and Herzegovina. This has disturbed the population that lives or has property in this area. Survival in this area is also uncertain, considering that nuclear waste and its disposal at this location could cause inconceivable damage and consequences to the economy and the population.

Republic of Srpska and the Federation of Bosnia and Herzegovina would lose the Una Nature Park and the Una National Park, which were the mainstay for the development of tourism, agriculture and the production of healthy food. Without the population living in this area, it could not survive, because it relies exclusively on these economic activities. Economic survival as well as the real potential danger posed by the storage of radioactive nuclear waste would cause the eviction of over 650,000 people living in this area, while those who remained there would risk being affected by the aftermath of Hiroshima and Nagasaki after the atomic bomb and Chernobyl after a failure at a nuclear power plant (Popović, 2021: 447). Since certain radioactive materials have a very long half-life, it is necessary to control radioactive waste over a very long period of time, measured in centuries. (Ciraj-Bjelac & Vujović, 2017: 8).

Croatia needs to take over its share of 2,000 tons of radioactive waste from the Krško NPP. Selected location, Čerkezovac barracks as a possible nuclear waste disposal site is located at an altitude of more than 50 meters in relation to watercourses and water supply sources of about 250,000 inhabitants of Republic of Srpska and the Federation of Bosnia and Herzegovina, so in case of

any incident of watercourse contamination it would mean pollution of the entire water basin that flows into the river Una. Una, as one of the most beautiful natural pearls in Europe, flows into the Sava River, the Sava into the Danube, and the Danube into the Black Sea, which could cause unforeseeable consequences not only for the residents in the immediate vicinity of this landfill but much wider. It should be noted that the Republic of Croatia stated that one of the main reasons for discussing the disposal of this waste at the Vrbina site in Slovenia, which served as the Krško NPP landfill, was that Vrbina is located along the Sava and could pollute the water intake supplies in Zagreb. This is another proof that the choice of the location at Trgovska gora is a political decision of Croatia without taking into account the environmental impact of the municipalities in Bosnia and Herzegovina and the economic consequences that will result from it.

With the announcement of the construction of this landfill and the beginning of works by the Republic of Croatia, there was a complete decline in the economic value of property in this area and interest in any investment in its increase not only by locals but also by foreign investors, to other states or other areas of the Republic of Srpska and the Federation of Bosnia and Herzegovina, which in the long run reduces this area to a minimum for the possibility of survival. The importance of foreign investments is manifold, and with the very announcement of the construction of RAW landfills, they have fallen in Bosnia and Herzegovina. Investments affect the volume, structure and direction of international trade, as well as the position of companies in which investment funds are invested and the location of their business. According to statistical data, foreign investments are mostly invested in countries in transition because those markets are the most attractive to them, which includes Bosnia and Herzegovina (Jović, 2016: 138).

The place where the construction of this landfill is planned is one of the worst chosen from the aspect of geology, hydrology and seismology. The terrain is composed of limestone, and in the lower layer of alluvial deposits of sand from the Una and other watercourses. These are permeable layers. Such facilities are built on impermeable terrains of clay and granite. In addition, Čerkezovac is located between the seismic areas between Banja Luka and Zagreb and it is not possible to predict the impact of future earthquakes on this facility (Subašić, 2020).

The territory where the construction of this landfill is planned, as well as parts of the territory that could affect the consequences of this construction, is mostly inhabited by Serbs and Bosniaks, so the question is justified by refusing to dispose of nuclear waste at the Vrbina site in Slovenia, located next to the Sava River, which could pollute the water intake of this river and endanger the

inhabitants of Zagreb fed from the Sava River, and could not pollute the water intake of the Una River and its tributaries from which the population of Novi Grad, Dvor na Uni, Kostajnica, Dubica, Gradiška, Cazin, Bužim, Krupa, Potok and other places and settlements. There are too many inhabitants who could be endangered in this way (Popović, 2021: 449). This is a very seismic area, which is confirmed by the fact that this area was hit by a series of earthquakes in 2020. The earthquake continued in 2021 and probably will in the future. The consequences of the disposal of nuclear waste at the specified location would absolutely jeopardize the survival of not only the population but also the flora and fauna, without which this population could not survive in the specified area. All road infrastructure in this area is mainly located along the Una River and its tributaries, and the transport that would transport waste from NPP Krško would take place mainly by road and any accident during this transport would directly endanger the Una River Basin and beyond, therefore the potential dangers and risks are not only related to the landfill itself but also to the transport of the said nuclear waste.

The sources and the mentioned research agree with the hypothesis that the construction of a radioactive waste storage facility in Trgovska gora is economically, legally and especially ecologically unsustainable and harmful for Bosnia and Herzegovina.

In addition to these, there are other reasons that justify the fact that Croatia, as the neighboring state of Bosnia and Herzegovina, which has the longest border with it, should respect and immediately suspend all work and activities on the construction of the landfill. In that direction, by the decision of the Council of Ministers, BiH has formed a legal team that is working on the Methodology for drafting a legal strategy. Documents from certain municipalities on the territory of Republic of Srpska are also important, such as the Resolution on opposition to the activities of construction of low and medium radioactive waste dumps in the Municipality of Dvor - Republic of Croatia at Trgovska gora, adopted by the Municipality of Novi Grad in 2015.

3. RESULTS

Decommissioning of NPP Krško, disposal of radioactive waste (RAW) and spent nuclear fuel of NPP Krško are regulated by an intergovernmental agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia on regulating status and other legal relations related to investment, exploitation and decommissioning of NPP Krško. Croatia has been

the co-owner of NPP Krško since 2002. The Spatial Planning Program of the Republic of Croatia from 1999, with the changes from 2013, determined the location of Trgovska gora as a space for the construction of a landfill. In this regard, Croatia has adopted strategic documents and regulations, established institutions and practically started the legal procedure related to the disposal of nuclear waste. Regulations on the part of the Republic of Croatia concerning this matter are informative: Law on Radiological and Nuclear Safety, Law on Transport of Dangerous Substances, Law on Environmental Protection, Law on Fund for Environmental Protection and Energy Efficiency, Law on Fund for Financing Decommissioning and Disposal of Radioactive waste and spent nuclear fuel NPP Krško, Strategy for Disposal of Radioactive Waste, Spent Sources and Spent Nuclear Fuel, as well as various bylaws (Popović, 2021: 450).

The Republic of Croatia, as a member of the European Union, and Bosnia and Herzegovina as a signatory to the Stabilization and Association Agreement, are signatories to a number of international conventions and a number of other legal instruments regulating nuclear waste disposal and binding them as such. The most important international documents that are important for solving the problem of nuclear waste landfills are: Vienna Convention on Nuclear Safety, 1994; Vienna Joint Convention on the Safety of Spent Fuel Management and Disposal of Radioactive Waste, 1997; Convention on Environmental Impact Assessment in a Transboundary Context, the so-called ESPO Convention, 1991; Protocol to the so-called ESPO Convention on Strategic Environmental Assessment, Kiev, 2003; Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998. In addition, for Croatia as a member of the European Union, the Council Directive 2011/70/EURATOM from 2011 on the establishment of a framework for responsible and safe management of spent fuel and radioactive waste is also important.

The international sources of law mentioned above promote mutual cooperation of states, timely information, and mutual consultation, and enable the public of border states to participate in the debate, etc. The procedure of choosing this location by the competent authorities of the Republic of Croatia lasted more than 20 years, and in that sense the Republic of Croatia not only did not provide any official data and information to BiH as a border state, but it turned a deaf ear to it even after the election of Trgovska gora or the former barracks Čerkezovac as a landfill for this waste.

Namely, according to Article II of the Convention on Nuclear Safety, nuclear safety lies with the state that has jurisdiction over the nuclear facility and it must achieve and continuously implement a high level of nuclear safety worldwide

by promoting national measures and international cooperation. Article 17, paragraph 1, indent iv) of the same Convention stipulates that “each Contracting Party shall take measures to ensure that procedures for consultation with the Contracting Parties in the immediate vicinity of the proposed nuclear installation are carried out, to the extent that they are endangered by that installation, and to provide, upon request, the necessary information to those Contracting Parties to enable them to assess and make their own assessment of the safety impact on their territory of that nuclear installation. The Aarhus Convention provides the right of all natural and legal persons (regardless of nationality or seat) to request information on the environment without emphasizing a legal interest (Articles 4 and 5). The Aarhus Convention prescribes the right of the public to participate in environmental decision-making, but with the obligation that the interested public must be informed at an early stage of the environmental decision-making process.... (Article 6). The Aarhus Convention also guarantees the right of access to justice in the event of a violation of the aforementioned two rights (Article 9).”

Article 2, paragraph 6 of the ESPO Convention (Convention on Environmental Impact Assessment in a Transboundary Context) prescribes the obligation of the country of origin to provide the public with an opportunity in areas that could be affected to participate in the environmental impact assessment and the affected countries should do the same. Article 3 of the Convention stipulates that the country of origin should inform each signatory as soon as possible of the planned activity (which it considers may be affected) and at the same time inform its public. Article 6 of the Joint Convention affirms the obligation of the contracting parties to establish procedures for assessing all relevant location factors that may affect the safety of a spent fuel management facility, for assessing the impact of such a facility on persons, society and the environment, and providing information on the safety of such a facility available to the public and for consulting the contracting parties in the vicinity of such a facility.

The European Union Directive, such as Council Directive 2011/70/EURATOM 2011 on establishing a framework for responsible and safe management of spent fuel and radioactive waste that directly obliges the Republic of Croatia to apply it, also prescribes a number of obligations of the Republic of Croatia to Bosnia and Herzegovina. From all the above, it follows that the Republic of Croatia was obliged much earlier, i.e. before February 10, 2016, as the date of selection of Trgovska gora as the site for nuclear waste disposal, inform Bosnia and Herzegovina about the site selection procedure, taking into account the time when Bosnia and Herzegovina ratified the above-mentioned international conventions. If it had acted in the stated way, Bosnia and Herzegovina would have had the opportunity to make its own assessment of the security impact

on its territory and to provide arguments to the Republic of Croatia why the location of Čerkezovac in Trgovska Gora is not a good choice for Bosnia and Herzegovina. On the contrary, the Republic of Croatia not only disobeyed the stated norms and prescribed standards of international conventions, but also carried out the procedure and started the construction of the said nuclear waste dump in Trgovska gora, which further caused insecurity in the region and its uncertainty in survival. In other words, Croatia continued to act on the principle that it is its territory and that it does not have to consult with anyone, not only regarding the obligations under international conventions, but also ignoring the fact that such consequences will mostly affect the population living in this area.

Having in mind the fact that the previous attempt and effort of Bosnia and Herzegovina as an affected country to participate together with Croatia in the work and all activities related to the construction of the landfill, to protect its environment and the interests of citizens living in this area, BiH is forced to change the current behavior and start looking for other solutions in order to put pressure on Croatia to definitely give up the location in Trgovska gora (Popović, 2021: 452).

In addition to legal arguments, an adequate economic study on the consequences in BiH has not been conducted yet, especially on the economy of Republic of Srpska and its northern municipalities bordering the Croatian municipality of Dvor, where Trgovska gora and Čerkezovac barracks are located. It is certain that there will be a decline in real estate values and a further decline in foreign investment in these municipalities.

4. DISCUSSIONS

The problem with Croatia and BiH can be resolved through negotiations, diplomatic and peaceful means in the mutual interest of both the Republic of Croatia and Bosnia and Herzegovina. In this way, the Republic of Croatia would make it clear to the international community that it respects all international norms and standards contained in international conventions, EU directives and other regulations governing this area and at the same time represent a good neighbor of Bosnia and Herzegovina with which it has the longest border and a safer and brighter future that should be nurtured in the mutual interest.

However, it is obvious that the behavior of the Republic of Croatia so far has not only not gone in this direction in terms of providing any information and cooperation, but Croatia has started and continued with the construction of the landfill as if it does not concern anyone except it. Such behavior not only represents

a serious precedent in international law, but will further disrupt relations with Bosnia and Herzegovina in the long run, and the eventual completion of works and the beginning of radioactive waste disposal will cause inconceivable harmful consequences for Bosnia and Herzegovina in this area.

As an alternative, Bosnia and Herzegovina has the option of resolving the dispute before arbitration or an international tribunal. Thus, Article 15, paragraph 1, of the ESPO Convention explains that “if a dispute arises between two or more Parties concerning the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other method of dispute settlement acceptable to them. Paragraph 2 (a) and (b) of this article provide the possibility of referring a dispute to arbitration or to an international tribunal, depending on the signatory’s statement to the Depository of the Convention as to which the method of resolving the dispute the signatory accepts. Since the activities of the Republic of Croatia so far unequivocally have confirmed that this disputed issue cannot be resolved through negotiations, the only remaining option is to resolve this disputed issue through arbitration or an international court.

Also, Bosnia and Herzegovina citizens living in this area, whose property or any other rights violated by the European Convention for the Protection of Human Rights and Freedoms and its Protocols, could initiate appropriate proceedings against the Republic of Croatia before the European Court of Human Rights in Strasbourg. This would certainly imply their obligation to seek protection of their rights for human rights violations before the competent courts of the Republic of Croatia and to exhaust all legal remedies available to them as a condition for applying to the European Court of Human Rights in Strasbourg. However, having in mind previous experiences, it is realistic to expect that Croatian courts would not accept to resolve these human rights violations to the detriment of their country or would procrastinate with this resolution. The appellants would be obliged to prove in Strasbourg that in the Republic of Croatia they are not able to exercise effective legal remedies, so that this court can approach the resolution of their appeals. However, the Republic of Croatia has not given any statement to the Depository of the Convention on the Acceptance of Disputes before Arbitration or an International Court of Justice, so litigation of citizens before the European Court of Human Rights would be the final solution.

Bosnia and Herzegovina can take deterrence mechanisms in order for the Republic of Croatia to give up the construction of a nuclear waste storage facility in Trgovska Gora. It can make a reciprocal decision on the basis of which it will build this or a similar warehouse on the border with the Republic of Croatia in the part where the smallest population of BiH lives, choosing this location in

the manner and under the conditions of the Republic of Croatia (Popovic, 2021: 454). Having in mind the legal documents and political positions, it is certain that there will be a dispute with Croatia and that lawsuits will be filed with the International Court of Justice in The Hague or individual lawsuits with the European Court of Human Rights in Strasbourg.

In any case, Bosnia and Herzegovina should declare Una Nature Park and Una National Park a protected area, thus preventing Croatia from further work related to the construction of RAW landfills in Trgovska Gora.

5. CONCLUSIONS

Radioactivity is a process in which the nuclei of unstable atoms decay spontaneously, their decay produces other nuclei and releases energy in the form of radiation. The process is random and it is not possible to know exactly when individual nuclei will disintegrate. Therefore, the potential disposal of radioactive waste in Trgovska Gora, on the border with Bosnia and Herzegovina, causes controversy and possible far-reaching consequences for the population, economy, flora and fauna, and the environment itself, and it poses a legal problem.

In terms of mutual cooperation of states and their timely information, mutual consultation and enabling the public of border states to participate in the debate, there are a number of international documents and Croatia should take them into consideration. Bosnia and Herzegovina has at its disposal several options, such as the filing of lawsuits or the application of various deterrent mechanisms. BiH has approached this problem through expert teams and finding the best legal option and mechanism. However, the final effects are questionable, bearing in mind that there is no functional structure in BiH that would complete the task of protecting Bosnia and Herzegovina in this case.

So far, the Council of Ministers of Bosnia and Herzegovina has not proven itself in these activities as a body that could and should lead activities with the Republic of Croatia in connection with the construction of a landfill in Trgovska Gora, especially, having in mind the decision-making process in which the existence of a consensus of all three constituent peoples is required for a whole series of issues. Analogously, it is not possible to expect or demand a more efficient way of working and functioning from the commissions formed by the Council of Ministers.

The Republic of Croatia continues unhindered with the construction of this warehouse, i.e. landfill, neglecting its international obligations determined by

international standards and conventions, as well as good neighborly relations with Bosnia and Herzegovina.

Since the management of this dispute falls within the competence of the Presidency of Bosnia and Herzegovina, it should exclude these activities from the Council of Ministers, i.e. the Ministry of Foreign Trade and Economic Relations, and take all possible actions in accordance with its activities. Otherwise, the Republic of Croatia will complete the construction of the said warehouse, i.e. landfill, and start disposing of radioactive waste to the detriment of Bosnia and Herzegovina.

The economic consequences are already being felt, but over time their impact will become more pronounced.

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Conflict of interests

The authors declare there is no conflict of interest.

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СЛУЧАЈ ОДЛАГАЊА НУКЛЕАРНОГ ОТПАДА НА ТРГОВСКОЈ ГОРИ У РЕПУБЛИЦИ ХРВАТСКОЈ: ЕКОНОМСКЕ И ПРАВНЕ ПОСЉЕДИЦЕ НА БОСНУ И ХЕРЦЕГОВИНУ

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САЖЕТАК

Складиштење нуклеарног отпада које има у плану Република Хрватска на Трговској гори која се налази на граници са Босном и Херцеговином у њеном сјеверном дијелу, изазива контроверзе и повлачи могуће далекосежне посљедице за становништво, биљни и животињски свијет, односно за саму животну средину. Паралелно са овим посљедицама одразиће се и на економски развој 13 општина унског слива у Босни и Херцеговини. Хрватска је већ извршила дио истраживања, испитала терен и прешла на геолошка испитивања а у плану је и студија утицаја на животну средину која треба да се заврши до 2023. године. Босна и Херцеговина се ангажовала да дипломатским путем са Републиком Хрватском нађе рјешење насталог

проблема путем примјене међународних правних стандарда у овој области, правних опција које стоје на располагању Босни и Херцеговини ради заштите њених интереса и механизма одвраћања Хрватске од реализације одлагања нуклеарног отпада на том локалитету. У случају да Хрватска реализује овај пројекат и направи одлагалиште нуклеарног отпада на Трговској гори поред еколошких посљедица, одразиће се и на привреду општина у Републици Српској у виду пада цијена некретнина, довешће у питање обрадивост пољопривредног земљишта и настаће значајан одлив становништва.

Кључне ријечи: *нуклеарни отпад, економски и правни аспекти, животна средина, међународни односи, Трговска гора.*

