

LEGAL STRATEGY

Overview of opportunities around the use of strategic litigation for industrial decarbonization, specifically in the steel sector in Bosnia and Herzegovina

I. Objectives to achieve

To identify possible gaps that might have occur in legal recourse initiated by the local organisation, and to explore additional legal possibilities.

II. Legal goals

Additional legal mechanisms utilised in the case, with focus on access to environmental justice in relation to environmental crime, accountability and effective prevention.

III. Access to information

III.1. Potential legal obstacles

The relevant documentation was provided by the federal authority, in online form, and/or by local partner organisation (EkoForum, Zenica) which obtained all relevant documents earlier. Access to information, in relation to status of operation and/or ongoing procedure in relation to revision of the environmental permit, was provided by the relevant authority according to the law.

III.2. Suggested legal responses (e.g. access to information requests, legal remedy)

No legal procedure was necessary in relation to access to information.

IV. Public participation

IV.1. Potential legal obstacles

The environmental permit revision procedure is currently pending before the relevant authority, which was initiated upon notification on changes in operation filed by the operator in May 2024. The operation was significantly changed after ultimate closure of Coke facility on 26th April 2024. Currently, the revision procedure is pending since the authority requested additional documentation from the operator. The operator is taking steps to supplement the original notification.

IV.2. Suggested legal responses (e.g. legal remedy, complaints)

Monitoring of revision of environmental permit, and possible public participation in the permitting procedure, is very much advised. Additionally, while the changed conditions of

operation are being revised, and before eventual approval, submission of requests for extraordinary supervision of operation by relevant inspectorates is also advised.

V. Access to justice

V.1. Summary of the main non-compliances with the relevant BAT conclusions

Out of a total of 95 best available techniques, 69 apply to Arcelor Mittal Zenica Ltd. (the production process does not include palletisation, to which 9 techniques apply, and 17 techniques related to that facility were also eliminated by shutting down the coke oven). For 9 techniques, certain measures were foreseen in the IED permit, but they were never implemented.

Before shutting down the Coke oven, 55 techniques (64%) complied with the recommendations from the best available techniques, 24 (28%) were seriously non-compliant, 3 (3%) were significantly non-compliant, and 4 (5%) were slightly non-compliant.

After shutting down the Coke oven, 55 techniques (80%) followed the recommendations from the best available techniques, 7 (10%) were seriously non-compliant, 3 (4%) were significantly non-compliant, and 4 (6%) were slightly non-compliant.

After closure of the Coke facility the overall emissions of the operator were reduced by app. 80%. This resulted that, if operating under approved conditions, now there are no major non-compliances with the relevant BAT.

V.2. Short description of the potential legal responses

Submission of requests for extraordinary and control supervision of operation by relevant inspectorates is advised, especially if pollution and incidents occur.

In cases of major pollution and incidents and/or too frequent non-compliance with approved conditions of operation, submission of criminal charges would be necessary.

However, a criminal charge was already submitted against the operator in 2018. EkoForum, a local environmental organisation, operating as local Aarhus Centre, submitted a criminal charge against Arcelor Mittal Zenica Ltd. and responsible director, for committing an environmental crime – severe pollution of the environment, especially air pollution. Although admissible, the criminal charge was ultimately rejected by the Prosecutors Office of Zenica-Doboj District in 2019, due to lack of concrete evidence. Against such decision, EkoForum filed a complaint to the second-instance body, the Prosecutor Office of FBiH. However, 2020 ultimately the criminal charge was turned down and District Prosecutors Office decision was upheld. The major argument behind such decision-making lied in *insufficient legal causality*

between Arcelor Mittal Zenica Ltd. operation and air pollution in the City of Zenica. This was especially problematic since local households, transportation and other traditional sources of air pollution – that are independent from the concerned operator, were also considered to be significant contributors to a complex environmental issue such as air pollution.

The second instance prosecutorial decision was final in this matter, so in relation to reporting environmental crimes of Arcelor Mittal Zenica Ltd., except multiple requests for inspection revision, EkoForum did not press additional criminal charges since 2020.

However, due to such prosecutorial reasoning – that effectively disabled EkoForum to exercise its equal right to access to environmental justice before a criminal court, that otherwise might have been initiated, exercising international legal mechanism might still be possible.

Apart from the above, EkoForum, and/or any other group of citizens or affected individual, have the right to initiate an *actio popularis* case against the Arcelor Mittal Zenica Ltd., a specific litigation procedure before a relevant civil court. In fact, in case of exercising such legal mechanism, relevant local and/or regional authorities might be included in the lawsuit in case of unlawful action of harmful omission. In case of *actio popularis*, obtaining additional evidence (e.g. medical, relevant court experts' analysis, etc.) would be ideal, especially for proving sufficient causality between operation and its harmful impact on the environment and public health.

V.3. Comparison of efficiency of possible legal actions, legal and other barriers, risks

However, main drawback to assess the potential of *actio popularis* lawsuit is lack of judicial practice. Simply, in BiH there were so far practically no known court cases that could qualify as *actio popularis*, so any assessment of efficiency, duration and cost are theoretical.

However, in comparative jurisdictions, an *actio popularis* case that was raised by a local environmental law CSO (RERI) against Serbian utility provider (EPS) proved to be successful. The court ruled in favour of the CSO and ordered significant emissions reduction and compliance with NERP. The court decision was later upheld, and its implementation is currently pending. Although Arcelor Mittal Zenica Ltd. does not fall under NERP, the RERI v. EPS case can be consulted in greater detail, as a first-off environmental *actio popularis* case in the Western Balkan.

In relation to reporting of the environmental crime, that was raised against the operator but ultimately rejected in 2020, main shortcoming to follow-up legal action might be the „resting” time of the Arcelor Mittal Zenica Ltd. criminal accountability case. However, decision of

Prosecutors Office of FBiH, in relation to criminal investigation, was final and there was no available legal remedy to exercise on national level. Thus, there should be no limitations to raise the case before relevant international mechanism – especially for preventive cause.

V.4. Conclusion, recommended legal action(s)

Since major contribution to environmental pollution in Zenica, especially in relation to air pollution, to which Arcelor Mittal Zenica Ltd. contributed to a great extent, was never a subject of an adequate criminal court procedure, this left the right to a clean, healthy and sustainable environment, as well as and the right to enjoy protection of the public health and respect of private and family life, of indefinite number of citizens of City of Zenica – effectively as unprotected.

EkoForum Zenica, effectively acting in public interest of indefinite number of Zenica area inhabitants, was ultimately not granted equal access to environmental justice by relevant national authorities. This is why protection mechanisms set under the UNECE might still be utilised, and submission of elaborated Communication to the Aarhus Convention Compliance Committee (ACCC) is worth considering as viable legal action.

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