

THE RIGHT TO ACCESS TO INFORMATION ON ENVIRONMENTAL MATTERS

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Abstract: The environmental policy aims to promote sustainable development and protect the environment for present and future generations. It is based on the integration of environmental protection into other policies and preventive actions. The paper deals with main international sources of law, particularly the Convention on the Access to Information, the Participation in Decision-making and the Access to Justice in Environmental Matters (the Aarhus Convention) and the Council Directive 90/313/EEC on the Freedom of Access to Information on the Environment. As the Republic of Croatia has applied for membership in the European Union, the domestic sources of law concerning the access to information on environmental matters are elaborated. The authors have proposed ratification of the Aarhus Convention and harmonization of the legislation and public awareness raising concerning the importance of public participation in environmental matters.

Key words: access concerning environment information, public participation in environmental decision-making, access to justice, harmonization of legislation

1. INTRODUCTION

The paper focuses on the legal issues concerning the right to information on the environmental matters pointing out that the public access to information, as an integral element of human rights, today represent a valid instrument for environmental protection. Namely, without easily accessible and reliable information, it is impossible for citizens to take an active part in the procedure of decision-making in environmental matters. Elements of a legislative framework are discussed in order to enable Croatia to pursue alignment with acquis of the European Union.

2. THE CONVENTION ON ACCESS TO ENVIRONMENTAL INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

The Convention on Access to Environmental Information, Public Participation in Decision-making and Access to Justice in Environmental Matters has been signed in Aarhus in 1998, as a result of two years of difficult negotiations, initiated and organized by the United Nations Economic Commission for Europe and is equally important for environmental protection and human rights protection. The Aarhus Convention, which entered into force on 30 October 2001, regulates three important sectors (so called three main pillars of the Convention) access

to environmental information, public participation in decision-making and access to justice in environmental matters. The text of the Convention is a compromise between those who were in favour of total freedom of environmental information (non-governmental organizations) and some States that wanted to preserve the right to refuse the information in certain cases.

The Aarhus Convention is the first international document that enables public direct access to information, public participation in decision-making, and better access to justice in environmental protection issues. According to the Convention, the Governments are obliged to collect and disseminate information on the environment. Aarhus Convention is a new kind of environmental agreement. It links environmental rights and human rights and acknowledges that we owe an obligation to future generations. It establishes that sustainable development can be achieved only through the involvement of all stakeholders, links government accountability and environmental protection and focuses on interactions between the public and public authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements.

The Aarhus Convention establishes a number of rights of the public (citizens and their associations) with regard to the environment. Public authorities (at national, regional or local level) are to contribute to allowing these rights to become effective. The Convention provides for the right of everyone to receive environmental information that is held by public authorities in the so-called access to environmental information. This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment.

Citizens are entitled to obtain this information within one month following the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession. The Convention provides for the right to participate from an early stage in environmental decision-making. Arrangements are to be made by public authorities to enable citizens and environmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it (public participation in environmental decision-making) and the right to challenge, in a court of law, public decisions that have been made without respecting the two aforementioned rights or environmental law in general (access to justice).

3. EUROPEAN UNION LEGISLATION CONCERNING ACCESS TO INFORMATION ON ENVIRONMENTAL MATTERS

Since the signing of the Convention in 1998, the European Union has taken important steps to update existing legal provisions in order to meet the requirements of the Aarhus Convention by means of legislation directed to the Member States, but also for its own institutions. In particular, two directives concerning access to environmental information and public participation in environmental decision-making (first and second pillar of the Aarhus Convention) have been adopted by the European Parliament and the Council earlier in 2003. They have to be implemented in national law by 2005.

The main instrument to align Community legislation with the provisions of the Aarhus Convention on public access to environmental information is Directive 2003/4/ EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/ EEC (OJ L 41 of 14.02.2003, p. 26). This recently adopted Directive is not the first Community Directive on public access to environmental information. Indeed, in the European Union Member States, the legislation on public access to environmental information is in place since 1993 (Directive 90/313/EEC).

The new Directive will replace the previous one and, compared to it, imposes some stricter obligations upon Member States, notably as regards the active dissemination of environmental information by public authorities and extends the right of access to information from citizens of the European Union to any person, regardless of its residence. The Directive also obliges the Member State to provide for an administrative "appeal"(optional in the Aarhus Convention) that is a procedure that has the advantage of being rapid and free of charge. This new Directive obliges Member States of the European Union to have their legislation in place at the latest by 14 February 2005.

The main instrument to align Community legislation with provisions of the Aarhus Convention on public participation is Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice council Directives 85/337/EEC and 96/61/EC (OJ L 156 of 25.06.2003, p 17). The Directive updates provisions on public participation in the permission issuing procedures at national level under legislation on environmental impact assessment and integrated pollution prevention and control, and it introduces rules on access to justice. Furthermore, it contains rules on public participation in the preparation of a number of environmental plans and programmes under directives on waste, air pollution and protection of waters against nitrate pollution. Member states are obliged to adopt their laws and other provisions to comply with this Directive by 25 June 2005 at the latest.

In addition, provisions on public participation in environmental decision-making are to be found in a number of other environmental directives, such as Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p.30) and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p.1)

Directive 2003/4/ EC on public access to environmental information and Directive 2003/35/EC on public participation contain provisions on access to justice that are in line with the requirements arising from the Aarhus Convention. The Commission has adopted a proposal for a Directive to fully address the requirements of that Convention on access to justice in environmental matters. This proposal covers a double objective. Firstly, it will contribute to the implementation of the Aarhus Convention. Secondly, it will fulfil the shortcomings in controlling the application of environmental law. The shortcomings of enforcement of environmental law are pointed out, inter alia, in the 6th Community Environment Action Programme (OJ L 242, 10.9. 2002, p.1) where it was recognised that better access to courts for non-governmental organisations and individuals would have a beneficial effect on the implementation of Community law.

4. ACCESS TO INFORMATION ON ENVIRONMENTAL MATTERS IN CROATIA

The Act on the Government Administration System specifies that the government administration bodies have the obligation to make the public acquainted with the performance of activities falling within its scope and inform it about its operations through the mass media or in any other appropriate way.

The Public Information Act (OG No 22/92) and the Public Notification Act (OG No. 83/96) contain provisions specifying that the information held by executive and judicial bodies, legal persons having public authority and the local self-government administrations should be available to journalists pursuant to regulations on the operation of those bodies. The indicated Acts relate only to journalists and other professionals from that branch, and it cannot be said that non-governmental organisations or citizens can particularly and directly benefit from them.

The basic environmental protection objectives of the Environmental Protection Act (Official Gazette No. 82/94 and 128/99) are accomplished by informing the public on the environmental situation and its participation in the environmental protection, by connecting the environmental protection system and institutions of the Republic of Croatia with international institutions, by adopting legal regulations relating to the environmental protection, by raising the consciousness of the necessity of environmental protection in the education process and by promoting the environmental protection, promoting the use of renewable natural resources and energy, promoting the use of products and manufacturing operations that are most favourable for the environment.

The Environmental Protection Act states that the environmental protection in the Republic of Croatia is based on the compliance with principles of the international environmental protection and the generally accepted principles, recognition of scientific perception and good practice. One of the most important principles is that of public participation principle. Public participation principle ensures the right of citizens to be duly notified about the environment pollution, about the measures that have been undertaken and, with respect to that, the right to a free access to the data on environmental state, in accordance with the Environment Protection Act and other regulations. Government administration bodies and units of local government and self-government in a way prescribed by the Environmental Protection Act and other regulations ensure the participation of interested parties in institutional dealing with environmental protection issues. Furthermore, government administration bodies and local self-government authorities, legal persons having public authorities, legal persons performing activities relating to environmental protection and legal persons polluting the environment in performing their activity and administrating the data on the environment situation, on the impact of foreseen and made interventions in the environment, on the environment safeguard measures and other data relevant for environmental protection, are obliged to provide the public access to such data. Stated entities are obliged to notify the public without delay about the prescribed pollution level overruns and notify the public about environmental pollution periodically.

Key provision with respect to the access to data on the environment in Croatian legal system is prescribing the obligation of informing the public about the environment, the obligation of replying to the request for information about the environment and the obligation of ensuring the public access to data on the environment. The Croatian Parliament, the Government of

the Republic of Croatia and local self-government authorities by adopting the environmental protection strategy, environmental protection programmes and other environmental protection documents, provides the efficiency of the environmental protection. A local self-government authority has to provide the conditions for keeping the environmental pollution inventory, the register on the environment situation and environmental protection measures, as well as on the way of informing the public. The citizens, as individuals or organised for the purpose of environmental protection in the society, as well as the professional and other nongovernmental organisations contribute to realisation and implementation of the effective environmental protection.

The Environmental Protection Act prescribes the adoption of intervention plans in case of an ecological accident or an extraordinary event, particularly endangered conditions of the environment, human life and health danger. Pursuant to that Article, one adopted the Contingency Plan in Case of a Marine Pollution in the Republic of Croatia (OG No. 8/97), which specifies that the public has to be informed by the operative centre headquarters about the pollution that suddenly occurred, about the necessary warnings and about the navigation ban in the zone in which the pollution occurred. The Regulation on Organisation and Functioning of the Monitoring and Information System in the Republic of Croatia (OG No. 11/93) regulates the system of specially organised bodies that, among other things, inform and alert the citizens in case of ecological hazards.

The Act on the Environmental Protection and Energy Efficiency Fund (OG No. 107/03) also specifies that the operations of the Fund are public. Furthermore, it specifies that the Fund has to inform the public in due time and truly about the activity for which it was set up in a way prescribed by the Fund's Statute, and that the Fund is obliged to provide the public, both through the mass media and upon request, with information about the performance of its activity and to provide access to the requested documentation.

The Regulation on the Setting up the Agency for the Environmental Protection (OG No. 75/03) stipulates the reporting on the environment as one of the Agency's activities and, furthermore, the Agency provides for delivery of and access to information on the environment by using modern technologies and communication standards in accordance with European requirements and provides the access to information on environment in the Republic of Croatia and permits their use and exchange. The stated Regulation specifies that the work of the Agency is public.

The Nature Protection Act contains provisions on informing the public in accordance with the Aarhus Convention and the Protocol on Bio-safety along with the Bio-Diversity Convention.

The basis for governing the environmental protection and civil law liability for environmental pollution and damage in Croatian environmental legal order is set out in the Constitution by which citizens' right to a healthy environment is guaranteed. When the environment is endangered, everybody, even those who are not directly endangered, can request that appropriate measures be undertaken preventing the damage to the environment i.e. eliminating the source of danger. In order to enable public participation in the issues of environmental protection, the Environmental Protection Act regulates that the State shall ensure public participation and support in resolving international environmental protection issues based on international treaties (agreements) and in informing other States on environmental hazards or ecological accidents. It sets out that ~~local government and self-~~

government units shall enable the public to resolve regional and local environmental protection issues.

One must also mention the Act on Access to Information (OG No. 172/03) pursuant to which any natural or legal person requesting the access to information shall be authorised to the right to access to information with this right also encompasses the obligation of the public authority body to provide for access to requested information, that is the public information when there is no specific request but such publishing constitutes their obligation set out by law or other general act.

The Ordinance on Environmental Impact Assessment (OG No.59/00) is the most significant regulation on public participation in the decision-making on certain activities in the Republic of Croatia. The basis of this Ordinance is the obligation of producing an environmental impact study for certain interventions in space stated in the Intervention List, which is a constituent part of the Ordinance.

5. CONCLUSION

The Convention on the Access to Information, the Participation in Decision-making and the Access to Justice in Environmental Matters closely links environmental and human rights. It stresses that the sustainable development can be achieved only through the involvement of all stakeholders. The subject of Aarhus Convention relates to the essence of the relationship between people and governments. The Convention not only represents environmental accountability, transparency and responsiveness. The Aarhus Convention grants public rights and imposes on parties and public authorities the obligations regarding access to information and public participation and access to justice. In our opinion the Convention goes well beyond the norms existing in international law and national environmental legislation in many countries.

At regional level the European Union has taken important steps to align Community legislation with provisions of the Aarhus Convention. Namely, Community environment policy is based on integration of environmental protection into other policies and aims to protect the environment for future generations.

The Republic of Croatia has not yet ratified the Aarhus Convention although some work has been done concerning certain laws regarding the first pillar on the access to information and the second pillar on public participation. In authors' opinion the implementation of the Aarhus Convention is of ultimate importance and will be a contribution not only to the overall effort to regulate better the environmental protection but also to the process of improved protection of human rights and of further democratisation. Therefore, we urge the implementation of this international legal document as a requirement for membership, as Croatia is a candidate country for the European Union.

Although environmental protection is given significant increase in priority, Croatia will have to make considerable efforts to align its legislation with the *acquis* and to efficiently implement and enforce it in due time in order to fulfil the need for citizen's participation in environmental issues as well as for access to information on the environment as an important venture in the area of environmental democracy and raising of public awareness. In that sense

the forthcoming ratification of the Aarhus Convention is needed, particularly in the part of the access to justice.

REFERENCES

- [1] The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998, ECE/CEP/43.
- [2] Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41 of 14.02.2003.
- [3] Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice council Directives 85/337/EEC and 96/61/EC, OJ L 156 of 25.06.2003.
- [4] European Commission, The Sixth EC Environmental Action Programme, <http://europa.eu.int/comm/environment/actionpr.htm>.
- [5] *Zakon o zaštiti okoliša*, Narodne novine, 82/94., 128/99.
- [6] *Zakon o javnom informiranju*, Narodne novine, 22/92.
- [7] *Zakon o javnom priopćavanju*, Narodne novine, 83/96.
- [8] *Zakon o fondu za zaštitu okoliša i energetske učinkovitost*, Narodne novine, 107/93.
- [9] *Zakon o pristupu informacijama*, Narodne novine, 172/03.
- [10] *Pravilnik o procjeni utjecaja na okoliš*, Narodne novine, 59/00.
- [11] *Uredba o ustroju i djelovanju sustava motrenja i obavješćivanja u Republici Hrvatskoj*, Narodne novine, 11/93.
- [12] *Uredba o osnivanju Agencije za zaštitu okoliša*, Narodne novine, 75/03.

PRAVO NA PRISTUP INFORMACIJAMA KOD EKOLOŠKIH PITANJA

Sažetak: Ekološka politika ima za cilj održivi razvoj i zaštitu okoliša za sadašnje i buduće generacije. Temelji se na uključivanju zaštite okoliša u druge politike i preventivnim djelovanju. Rad obrađuje glavne međunarodne izvore prava, posebno Arhušku konvenciju o pristupu okolišnim informacijama, sudjelovanju javnosti u odlučivanju i pristupu pravosuđu kod ekoloških pitanja. i Direktivu Vijeća 90/313/EEZ o slobodi pristupa informacijama o okolišu. Budući da je Republika Hrvatska pristupnik za članstvo u Europskoj uniji, raspravlja se o domaćim izvorima prava koji se bave pristupom informacija kod ekoloških pitanja. Autori predlažu ratifikaciju Arhuške konvencije i usklađivanje zakonodavstva, kao i razvijanje svijesti o značaju sudjelovanja javnosti kod ekoloških odluka.

Ključne riječi: pristup ekološkim informacijama, sudjelovanje javnosti u ekološkim odlukama, pristup pravosuđu, usklađivanje zakonodavstva