

**ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS:  
STANDING, COSTS AND AVAILABLE REMEDIES**

in relation to

the Convention on Access to Information, Public Participation in  
Decision-making and Access to Justice in Environmental matters

**South-Eastern Europe**

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## **Note**

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<sup>1</sup> Environment and Security Initiative (ENVSEC) is a partnership of the OSCE, UNDP, UNEP, UNECE, REC, and NATO as an associate partner. ENVSEC aims to contribute to reduced environment and security risks, through strengthened co-operation both among and within countries in Central Asia, Eastern Europe, Southeast Europe and the South Caucasus.

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## I. Introduction<sup>2</sup>

1. The purpose of the current study is to analyze the implementation of article 9 (paragraphs 1 to 4) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention or the Convention). The objectives of the study are to identify any impediments encountered in meeting the requirements of the Convention, to provide ideas and suggestions on how such impediments may be overcome and to contribute to improving governance and environmental protection.

2. The study was carried out at the request of the Aarhus Convention Task Force on Access to Justice to assist in the implementation of its mandate, set out in decision IV/2 of the Meeting of the Parties to the Aarhus Convention and adopted at its fourth session.

3. The project was implemented by the Regional Environmental Centre for Central and Eastern Europe, United Nations Economic Commission for Europe and Organization for Security and Co-operation in Europe, within the Environment and Security Initiative<sup>3</sup>.

4. The study is focused on national legislation and law enforcement practice in the South East European (SEE) region, namely in Albania, Bosnia and Herzegovina, Kosovo ((United Nations administered region, Security Council resolution 1244 (1999)), Montenegro, the former Yugoslav Republic of Macedonia, and Serbia. The research was complemented by a partial analysis on the situation in Croatia<sup>4</sup>.

5. For gathering the necessary information, the questionnaire was developed and completed in English by the national experts.

6. In the course of autumn of the same year, the completed questionnaires were partly translated in national languages and sent to national focal points of the Aarhus Convention for multi-stakeholder consultations and comments. Afterwards, national experts were requested to review their completed questionnaire on the basis of the comments received.

7. Synthesis of the provided material and guidance to the national experts on how to complete the questionnaire was provided by a consultant, Mr. Csaba Kiss. The preliminary findings and recommendations were discussed at the seventh meeting of the Aarhus Convention Task Force on Access to Justice, held in Geneva on 24-25 February 2014.

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<sup>2</sup> The study was not formally edited.

<sup>3</sup> More information about the initiative is available from <http://www.envsec.org/index.php?lang=en>.

<sup>4</sup> A comprehensive study on Croatia prepared for the European Commission can be accessed under the following link: [http://ec.europa.eu/environment/aarhus/access\\_studies.htm](http://ec.europa.eu/environment/aarhus/access_studies.htm)

## II. Analytical Summary

### A. Introduction to the analytical part

8. As was mentioned in the foregoing, the purpose of this study is to research and present the situation in the SEE region in relation to access to environmental justice. This sub-area of access rights guaranteed by the Aarhus Convention has been in the center of interest for many years, in the European Union and elsewhere alike. There are recent studies, discussions, events and legislative processes in the countries of the European Union and Eastern Europe, the Caucasus and Central Asia, and there are a number of projects and initiatives in the SEE region that focus on access to environmental justice.
9. The SEE is a region where the impacts of the EU pre-accession process can be felt to a large extent. The region benefits from EU-funded and -managed projects in a number of ways, and some countries even made considerable progress on joining the EU. Croatia is an example of a successful membership application, and other countries have also made efforts to become EU members in the long run. The question that arises is whether this has had an impact on access to environmental justice.

### B. Legislation and administration

#### a) Environmental legislation in SEE

10. Partly as a consequence of a relatively developed environmental legislation of the former Yugoslavia, partly stemming from the organic legal development in the region and partly as an impact of the aspiration of the SEE region to join the European Union, there is a considerable body of environmental legislation in force today.
11. There are Constitutions in each entity of SEE that also in a majority of the cases include the right to a healthy environment. Exceptions are Bosnia and Herzegovina, where this right is not enshrined in the Constitution and Kosovo ((United Nations administered region, Security Council resolution 1244 (1999)), where, while the protection of the environment is one of the basic constitutional values, the Constitution itself failed to recognize this as a human right, but rather applies an obligation concept, declaring that the protection of the environment, nature and biodiversity is everyone's responsibility. This latter concept is also applied by the Constitution of the former Yugoslav Republic of Macedonia, which also includes the obligation of public authorities to ensure conditions for citizens to live in and promote a healthy environment. A special case is that of Montenegro, where the Constitution declares the *country* an "ecological state". In Serbia, the right to environment is combined with everyone's obligation to preserve the environment and the responsibility of the state and its autonomous provinces for environmental protection.
12. As regards access rights (such as access to information, participation in decision-making and access to justice in environmental matters), some researched Constitutions also have provisions

on these questions. The Constitution of Montenegro, for instance, includes both the right to access information and a special right to receive environmental information. As for participation, the Constitutions of Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and of Montenegro acknowledge that the public should be involved and heard in decision-making processes. Finally, as regards access to justice, the Constitution of Bosnia and Herzegovina refers to the human right to have a fair trial, and that of Montenegro includes the right to access to justice.

13. There is a long and exhaustive list of general as well as sectoral environmental legislation. A major Environmental Protection Act was adopted quite recently: Albania 2011, Bosnia and Herzegovina (entity of Federation of Bosnia and Herzegovina 2003, entity of Republika Srpska 2002), Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) 2005, Montenegro 2008, Serbia 2004 and the former Yugoslav Republic of Macedonia 2005. All major issues are covered in these places by separate laws, such as air, water, waste, nature conservation, fishery, mining, environmental impact assessment (EIA) and integrated pollution prevention and control (IPPC), strategic environmental assessment (SEA), and the like.
14. It should be mentioned here as being relevant for the entire study, for both legislation and implementation related issues, that one country has a special federative structure instead of a unitary state structure. In Bosnia and Herzegovina, as a state, there are two entities called the Federation of Bosnia and Herzegovina and the Republika Srpska. Besides these two constituent entities, a separate territorial unit called Brcko District also enjoys considerable autonomy in managing its own matters. All information, findings and recommendations regarding Bosnia and Herzegovina apply to both entities (the Federation and the Republika), unless otherwise specified. Therefore, there is no separate discussion of the two entities unless their specific circumstances so require.

#### **b) Overview of public authorities in environmental protection**

15. There are elaborate systems of environmental public administration in each case examined. There are ministries of the environment (using specific names on each occasion) responsible for environmental policy-making and coordination of the environmental administration. These ministries are divided into departments, and frequently, there are specialized institutions under the ministries (e.g. the Office of Environment within the Ministry for Environment and Physical Planning in the former Yugoslav Republic of Macedonia).
16. In Bosnia and Herzegovina, there is a special organizational system stemming from the unique feature of the country encompassing two entities and a special district, with their respective governmental structures. On the state level, the Ministry of Foreign Trade and Economic Relations has a Sector on Natural Resources, Energy and Environment, while environmental protection is mostly the competence of the two entities. In order to facilitate cooperation between the entities, there exists an Inter-Entity Steering Committee for the Environment with the major task of harmonizing environmental legislation within Bosnia and Herzegovina. In the two entities, there are independent environmental ministries respectively.
17. In Serbia, the autonomous provinces have the capacity to implement national environmental laws according to their subordinate legislation.

18. Actual implementation of environmental legislation, such as issuing of permits and performing inspections, is entrusted to centrally organized national environmental agencies and regionally organized offices/branches. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), there is only a central institution, the Kosovar Environmental Agency, with no regional offices. Regulatory enforcement and environmental inspections are carried out by inspectorates that are either merged with other environmental agencies (in Montenegro and in the entity of Republika Srpska within Bosnia and Herzegovina) or are separately organized (in Albania, Brcko within Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia and Serbia).
19. National studies mention the competence of municipalities / local governments in applying environmental legislation but do not attach a major significance thereto, with the exception of the former Yugoslav Republic of Macedonia where these are able to issue the so-called B type environmental permits.
20. Public prosecutors are known and functioning institutions, however, their powers is almost exclusively limited to representing charges in criminal proceedings. Consequently, they do not have a role of overseeing the legality of the public administration's conduct, except in the former Yugoslav Republic of Macedonia, where public prosecutors can file an appeal against a decision that violates the law to the detriment of the public interest and can submit a request for protection of the lawfulness at the court against an administrative decision. Also in Serbia, the prosecutors may be entitled by law to protect legality and public interest and to this end have the capacity to be parties to remedy (administrative and judicial) procedures or to file lawsuits against administrative decisions that are detrimental to the public interest.
21. Finally, as regards the protection of human rights by specifically elected parliamentary commissioners (ombudspersons), there are ombudsmen in each place examined, under different names. In Bosnia and Herzegovina, this institution operates on the state level. Commonly, their tasks are to investigate maladministration of public authorities, prepare reports and issue non-binding recommendations to the affected administrative organs, and ultimately report its activities to the Parliament and the public. In some cases, they have also special powers, e.g. in the former Yugoslav Republic of Macedonia, they can request an injunctive relief in case an implementation of a disputed administrative act may cause irreparable damage to the right of the interested party.

### **c) Aarhus Convention – transposition, implementation, enforcement**

22. Albania, Bosnia and Herzegovina, Croatia, Montenegro, the former Yugoslav Republic of Macedonia and Serbia have ratified the Aarhus Convention and are parties thereto. National level public authorities usually do not apply the Convention directly, partly due to the need for national implementing legislation (Albania, Montenegro), partly due to practical reasons but also for questionable interpretation of constitutional provisions on direct applicability of international conventions. In Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia, international law is considered superior to domestic law, therefore public authorities are in a position to directly apply the Convention. However, there are no instances in practice yet where this would have happened. In Serbia, international norms are an integral part of the domestic legal system and as such, are directly applicable.

23. Generally, there is frequent mention of the lack of relevant case law regarding the direct or indirect application of the Aarhus Convention from almost all the region.

### **C. Administrative decision-making**

24. In all instances examined, the state administration is in charge of overseeing the environmentally relevant activities or human activities having environmental impacts. The system of environmental authorities was already detailed in the foregoing. The process and the results of environmental decision-making on the administrative level are addressed here.

#### **a) Administrative decisions relevant for the environment**

25. In Albania, there is a separate law on environmental permitting, dividing the possible human activities into 3 categories and assigning respective permit types thereto, such as A, B and C. A and B type permits are issued by the Minister of the Environment while the C type permits are issued by regional environmental agencies. Albania is unique in operating a single unified National Center of Licensing where all permit applications have to be submitted. In Bosnia and Herzegovina, permits for activities with significant environmental impact falling under the Annex I of the Aarhus Convention are issued by the ministries of the Environment of the entities, just like in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and the former Yugoslav Republic of Macedonia, and unlike Montenegro, where the Environmental Agency is in charge of issuing such permits. In Serbia, such permits can be issued by the Environmental Agency, the autonomous provinces and local self-government units.
26. National experts have mentioned that the principal laws applying to such decision-making processes are the general Administrative Procedure Acts, and other environmental acts or lower level norms define only the specific features of the foregoing procedures.

#### **b) Possible non-judicial remedies**

27. In every case there is some kind of administrative appeal procedure available for those willing to challenge the aforementioned environmental decisions. In Albania, such an appeal has to be submitted to the same level authority that made the decision. This may take the form of either an informal request to the administrator of the case or the administrative agency taking decision in the case, or a formal appeal to the decision-making body. Such an informal request has no time limit for submission, and the public is entitled to receive a reasoned answer within 1 month from the day of submission. If the decision was made by the regional environmental agency, an appeal can be submitted to the superior authority. In Bosnia and Herzegovina, this can be submitted as an appeal to the same level or to the superior authority. In Croatia, there is no appeal against the decisions of the ministry of the environment but a direct court process can be initiated. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), such request for remedy can either be submitted to the public authority in the form of so-called request for reconsideration. Also it can be submitted as an appeal to the superior authority; with this solution Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) is unique in making it possible for complainants to choose between available forums. In Montenegro, environmental administrative decisions are appealed to the Ministry of the Environment (if the decision was made by the Environmental Protection Agency) or the Chief Administrator (if the decision was made by the local government). In Serbia, there is



an appeal against environmentally relevant first instance administrative decisions. However, there is no appeal against permits that relate to activities included in Annex I of the Aarhus Convention, EIA decisions and permits for discharges and emissions; in such cases there is an option of a direct court procedure against such decisions.

28. There are no independent and impartial bodies to challenge the said administrative decisions in Albania, Bosnia and Herzegovina and Montenegro. In the former Yugoslav Republic of Macedonia, however, there is a unique solution since December 2011, i.e. a single authority called State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance that is formally independent and impartial, and is entrusted with making second instance decisions in all kinds of administrative matters.
29. There is no chance for forum shopping, i.e. choose what remedies (administrative or judicial) to apply against a first instance administrative decision, in the examined SEE region with the slight exception of Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), where the types of administrative remedies can be selected by the complainant.
30. Separate kind of administrative procedures are those that are initiated by the members of the public to target breaches of environmental law by private persons and public authorities. These procedures are the manifestations of Article 9, paragraph 3, of the Aarhus Convention that requires Parties to the Convention to ensure that “members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment”. In this regard, most of the national experts indicated some kind of possibility when members of the respective public can report threats or damage to the environment and request the competent environmental authorities to act in the environment’s favor.
31. There is a possibility to report a case to the respective environmental agency in Albania, the former Yugoslav Republic of Macedonia and Montenegro, while in Bosnia and Herzegovina such requests have to be submitted to the ministries of the environment of each federal entity. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), this is an administrative complaint that can be submitted to competent authorities, and specifically their units called the Committee for Appeals. In Serbia, the Environmental Protection Act stipulates that a citizen or groups of citizens, their associations, professional and other organizations are entitled to exercise their right to a healthy environment before the competent authority or the court, in accordance with the law.
32. The possibility of the third party intervention into administrative procedures might be also relevant to consider. In Albania, it is allowed for those having a legal interest in the matter of the case to intervene into the appellate procedure. It is also possible in Bosnia and Herzegovina and Kosovo (United Nations administered region, Security Council resolution 1244 (1999)). In the former Yugoslav Republic of Macedonia, the condition for such intervention is that the third party intervening should be directly harmed by the annulment of the disputed administrative act.

### **c) Availability of decisions of public authorities**

33. Decisions of public authorities and appellate authorities have to be published online in a number of places of the SEE region, e.g. in Albania via the homepage of the National Center of Licensing. In Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and Serbia that is not a legal requirement but still the ministries of the environment publish major environmental decisions via electronic and print media. Comments of the national experts doubted that a full range of information was made available on the designated websites in Albania and Kosovo (United Nations administered region, Security Council resolution 1244 (1999)). The responses of the experts call attention to the fact that administrative decisions are rarely available online and that even if so, this is only a recently established practice of the ministries of the environment. In Montenegro, the competent authority is obliged to notify the public about its decisions within eight days in at least one local newspaper in each of the official languages, or online. No such obligation is in place in the former Yugoslav Republic of Macedonia.

## D. Access to justice

### a) The judiciary

34. There are elaborate systems of judicial organizations and bodies that include a judicial hierarchy of basic courts, appellate courts and the Supreme Court almost everywhere. In Bosnia and Herzegovina, these are called municipal and cantonal (in the Federation) and basic and district (in the Republika) courts. When challenging a decision of a state level administrative organ in Bosnia and Herzegovina, the state level court of Bosnia and Herzegovina is the competent judicial body for reviewing.
35. Environmental cases normally fall under the jurisdiction of the basic courts in the first instance. These courts are in charge of adjudicating legal disputes where administrative decisions are involved.
36. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), for instance, there is only one court in the entire territory to adjudicate administrative disputes, i.e. the Administrative Department of the Pristina Basic Court. In the former Yugoslav Republic of Macedonia, the Supreme Court is specifically entrusted with adjudicating “fair trial” claims i.e. those complaints that parties to judicial proceedings raise for court processes not finished within a reasonable timeframe. There are separate administrative courts in a number of countries, such as Albania, Montenegro, the former Yugoslav Republic of Macedonia and Serbia. In the former Yugoslav Republic of Macedonia, the appellate powers are vested in the Higher Administrative Court.
37. As a special judicial body, all examined court systems have Constitutional Courts that have the competence to adjudicate the constitutionality of norms (so-called abstract norm control). Depending on who can initiate such a norm control procedure, *actio popularis* (i.e. any member of the public can participate in a judicial proceeding) is usually not granted in the SEE region with the exception of Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia (in Croatia, however, the decision to start such a procedure is at the discretion of the Constitutional Court). In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), for instance, the circle of those who can start such a process is limited to a few state

functionaries. Apart from that, Constitutional Courts are entrusted with adjudicating individual constitutional complaints in which specific violations of constitutional rights can be claimed.

38. The types of procedures that can be initiated before the judiciary are administrative and civil disputes. The former ones aim at challenging the legality of administrative decision-making, while the latter ones at posing claims against other individuals, organizations, etc. There are no special rules for these disputes according to who started them (individual, NGO, group of individuals, other entity, etc.). When reviewing the legality of administrative decisions, the courts look both into the procedural and substantive legality of administrative decisions with the exception of Montenegro, where the primary focus of the courts is to adjudicate procedural legality. In Serbia, the extent of jurisdiction is decided by how the administrative court decides, i.e. in full jurisdiction it has a reformatory power. Nevertheless, there have been only 4 cases for the last 20 years (and none of them environmental) when the court sat in full jurisdiction.
39. There are no lay persons or jurors involved in judicial benches. One exception is the former Yugoslav Republic of Macedonia, where there are lay persons sitting in criminal benches. However, even they must pass a mandatory specialized training organized by the respective judicial academy. There is no chance to involve technical experts as members of the judicial bench into the adjudication. This, however, does not prevent the mandating of court-appointed technical experts to give reasoned expert opinion on certain issues of importance (see sections 95 to 100).
40. Judicial independence is ensured in a way that no member of the executive branch can overrule or cancel judicial decisions anywhere in the SEE region.
41. One specific and important issue is the publicity or public availability of court decisions. One type of solution is the publication of the judgment on the website of the court, however, only at discretion. This is applied in Albania where there is no legal obligation to do so and in Montenegro, although in the latter country, the administrative judicial decisions are still regularly published in practice. Another solution is the mandatory publication of the decisions on the court's website, which is the rule in the former Yugoslav Republic of Macedonia (the deadline for publishing is 2 days from the signature of the judgment) and in Serbia (the most important decisions of the Supreme Court of Cassation are on its website). In addition, in Serbia, a bulletin is published by the Supreme Court of Cassation, and also the Constitutional Court has an online database of case law. Finally, a lack of published case decisions can be seen in Bosnia and Herzegovina or Kosovo (United Nations administered region, Security Council resolution 1244 (1999)).
42. The disclosure of court decisions can be achieved within the Freedom of Information Regime of a country. This applies to all examined cases with certain limitations regulated by the Freedom of Information Acts (see sections 45 and 46). It is not applicable in Montenegro, where the Supreme Court explicitly declared that Freedom of Information did not encompass judicial decisions.
43. Eventually, a specific characteristic of a judicial system is to what extent judges are knowledgeable in environmental matters and whether the high and supreme courts have engaged in publishing mandatory or advisory opinions in environmental or access rights matters. Also it is important to see whether there is any mandatory or optional training for judges in

environmental matters. In Albania, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and the former Yugoslav Republic of Macedonia, there is not yet any leading opinion of the courts in environmental matters. While environmental education is part of the court curriculum, it is only optional. In Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia and Montenegro, the level of knowledge of the judges in environmental matters is reported to be low. Training on environmental issues, including the Aarhus Convention, was integrated into the judicial academy training curriculum in Albania and Bosnia and Herzegovina. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), environmental law is an elective course only at the Masters level, and judges receive training on the Aarhus Convention in the respective judicial academy. In the former Yugoslav Republic of Macedonia, there is a training in environmental law envisaged for judges for 2013-2014. In Serbia, there has been and still is an ongoing judicial reform, and as a part of it, the training of judges in the Judicial Academy is available, although the continuous training of judges is voluntary.

## **b) Access to information cases**

### *Access to information legislation*

44. Access to environmental information is the cornerstone of public participation because of the common sense wisdom: there is no meaningful participation without proper access to environmental information.
45. Access to (general, thus not only environmental) information is frequently enshrined in the Constitutions. Freedom of Information Acts were adopted everywhere; however, none of them has a specific access to environmental information regulation. In addition, legal enactments on transposing the Aarhus Convention, environmental protection, Environmental Impact Assessment, on administrative procedure and etc. also contain relevant provisions on access to environmental information. Active access to information (i.e. to make available environmental information to the public through public telecommunications networks) obliges public authorities, as well as those bodies and organs that fall under the scope of the definition, i.e. natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of public authorities to disclose environmental information.
46. In Croatia, if a requested information cannot be disclosed based on the Environmental Protection Act, the public authorities are still bound to consider whether the information can be disclosed based on the general Freedom of Information Act. In Montenegro, authorities are bound to draw up and publish a guide for access to information, and also to make available the list of information (as a metadata) possessed by the respective authority. In Serbia, environmental information and that relating to public health have a special position so public authorities cannot refuse their disclosure. In addition, if the requested information relates to the protection of life and liberty of individuals, threats or protection of public health and risks of environmental protection, the authority is obliged to fulfill the request within 48 hours of receipt.

### *Remedies available for the refusal of access to information*

47. In case holders of (environmental) information refuse to satisfy a request for disclosure, there must be certain remedies available against such situations, as required by the Aarhus Convention. There must also be remedies applicable for the cases called “silence of the administration”, i.e. the lack of response to requests from the holders of information.
48. First of all, refusals of request for information have to include a clause on the available remedies, thus orientating the applicants how to appeal such refusals.
49. As regards remedies against refusals of information, the examined places seem to be quite similar. In case a request for information is refused, the applicant has to apply the regular administrative appeal avenues in order to obtain a superior administrative decision on the disclosure or refusal.
50. The silence of the administration entitles the applicant to use the regular remedies. If the information is not held by the public authority in Serbia, it has to refer the request to the Commissioner for Public Interest Information (to be detailed below); the Commissioner verifies if that is true and refers the request to the public authority that holds the information.
51. In Albania, the authority refusing the request cannot be approached to reconsider its standpoint. In Croatia, any refusal, wrongful or inadequate answer, etc. in freedom of information cases can be appealed to the Information Commissioner whose position was created in 2013. The former Yugoslav Republic of Macedonia uses a specific regime, i.e. in case of a refusal, a Commission for the protection of the right to free access to public information has to be approached first. There is a special rule applying to refusals made by municipalities and legal entities with public responsibilities or functions, or providing public services, relating to the environment. In this case the appellate authority is the Ministry of the Environment, however, in practice, applicants still turn to the Commission which accepts such appeals and makes decisions on the merit of the case. The same specific regime is used in Montenegro, where the Agency for the protection of personal data and access to information fulfills the role of appellate authority where the appeal against a refusal has to be submitted first. In Serbia, the applicant may lodge a complaint with the Commissioner for Public Interest Information if a public authority refused a request for information or failed to reply to a submitted request within time limits set for the access to environmental information.
52. Once the superior administrative decision is made, there is a judicial remedy against it. Courts in the entire region are allowed to order the disclosure of information. In Croatia, the lawsuit has to be filed against the Information Commissioner. While the lawsuit is pending, the decision of the Commissioner granting access to information cannot be executed. In Montenegro, there is a chance to turn to the court directly for remedies in case of refusal if it was based on the fact that the requested information was a secret. In Serbia, it is again the Commissioner that can be taken to court in an administrative judicial dispute. In case the refusal was done by the National Assembly, the President of the Republic, the Government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court and the Republic Public Prosecutor, immediately an administrative judicial dispute may be initiated, in addition to notifying the Commissioner by the relevant court *ex officio*.
53. There are no independent and impartial bodies to investigate the refusals of requests in Albania, where the Ombudsman takes part in access to environmental information issues but cannot

ensure it. Contrarily, in Croatia and in Serbia, the Information Commissioner is independent and impartial, and in Bosnia and Herzegovina and in the former Yugoslav Republic of Macedonia, the Ombudsman is available for such procedures and can – besides their regular powers – also initiate a misdemeanor procedure against those officials who have unlawfully withheld public interest information. Also in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and in Serbia, the Ombudsman is in charge of ensuring proper access to information.

### *Deadlines for remedies against refusals and other procedural rules*

54. Deadlines for submitting an appeal against a refusal are 30 days (Albania, Kosovo (United Nations administered region, Security Council resolution 1244 (1999))) or 15 days (Croatia, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Montenegro). The silence of administration can be established after 3 months from the initial request for information in Albania, 60 days in Bosnia and Herzegovina and in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and in 15 + 7 days in the former Yugoslav Republic of Macedonia. The silence of administration can be established in Croatia when the deadlines for providing information or issuing a decision have passed; there is no deadline for appeal in such cases. The court procedure has to be initiated within 30 days from the delivery of the second instance decision in Albania, in Croatia, in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), in the former Yugoslav Republic of Macedonia and within 15 days in Montenegro. According to the law, the judicial decision has to be made within 30 days in Albania, in 90 days in Croatia, but the court procedures are expedited almost everywhere else in the region.
55. The court has access to the information that is disputed, i.e. the court can make a judgment while knowing the information that was refused, in Albania, Croatia, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and the former Yugoslav Republic of Macedonia. In Bosnia and Herzegovina, the court has access to this information only in case the applicant has filed a motion in this regard. In Montenegro, courts do not have access to the information which disclosure they order through a judgment. In Serbia, the Information Commissioner and the court can ask for the disputed information, which confidentiality still has to be ensured by the public authority. If the public authority fails to provide the requested information, the court can demand an explanation.
56. National experts have identified the following largest problems in relation to access to environmental information in their respective legal systems: Albania – lack of response from the public authorities; Croatia – absence of timely response; Bosnia and Herzegovina – the requirement towards NGOs to show legal interest for access to information (contrary to the Aarhus Convention) and the low level of agility of the courts to adjudicate in these matters; Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) – lack of legal awareness and insufficient legal aid; the former Yugoslav Republic of Macedonia – unwillingness of public administration to disclose information and the lack of coercive measures against non-compliance with second instance rulings; Montenegro – restrictive legal position of the Supreme Court towards information disclosure.

## c) Public participation cases

### *Criteria of legal standing*

57. The criteria of legal standing in administrative appeal cases are fundamental because they may have long-term implications on the chances of starting a future lawsuit against the final administrative decision.
58. As regards legal standing to appeal an administrative decision, in Albania, Bosnia and Herzegovina, Croatia, Montenegro and Serbia, individual members of the public have the right to appeal if they demonstrate the affectedness of their rights or legal interests (in Albania, this has to be direct or indirect, individual or collective; in Serbia also obligations can be affected). Legal standing for individuals in Croatia requires impairment of rights due to the location or nature of the impact of a project, and a prior participation in the preceding administrative process. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), such an appeal requires that the rights or legal interests of the subject are adversely affected. In the former Yugoslav Republic of Macedonia, the rights and interests have to be infringed, or it has to be demonstrated that the subject should have been a party to the first instance administrative procedure. In Serbia, the Constitution guarantees everyone's right to appeal or use other legal remedies against decisions on his/her rights, obligations and legal interests. Any natural person can be a party to an administrative procedure in case that infringes on his/her rights and legal interests. A special exception in Serbia is IPPC decisions where the members of the public have no legal standing, neither for an administrative appeal nor in an administrative judicial proceeding.
59. As regards standing to sue, in Albania, the Constitution guarantees everyone's right to protect his/her constitutional and legal rights, freedoms and interests before an independent and impartial court. This applies to challenging the procedural and substantive legality of administrative decisions as well. However, those wishing to apply judicial remedies have to have their rights or legal interests affected. In Bosnia and Herzegovina, those not satisfied with an administrative decision and having a right or legal interest affected can apply judicial remedies against administrative decisions; participation in the decision-making procedure is not a precondition of judicial recourse. In Croatia, any individual who deems that his or her rights or legal interests have been violated by a decision, by an act of the public authority, or by failure to adopt a decision or to act within the time limit prescribed by law, or by the conclusion, termination or enforcement of an administrative contract shall have the right to institute an administrative judicial dispute. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the same applies, i.e. those having a right or legal interest affected, have legal standing to sue. In the former Yugoslav Republic of Macedonia, the criteria of legal standing are affectedness of rights and legal interests for individuals; the Law on Environment defines the public concerned, i.e., those who have interest in a decision, as those who are likely to experience the effects of a particular decision. In Montenegro, those have legal standing in administrative judicial proceedings whose rights and legal interests would be adversely affected by the annulment of the disputed administrative decision. The violation/infringement of rights and legal interests is the criterion of legal standing at court in Serbia.
60. For NGOs, the respective laws define criteria of NGOs' legal standing to appeal or to start a judicial procedure. Characteristically, in almost the entire region, criteria of standing for

individuals or for NGOs are the same, i.e. also for NGOs the affectedness of rights and interests is required. It is the case in Albania, Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and Montenegro. In the former Yugoslav Republic of Macedonia, this affectedness is expressed with specific terms, i.e. the NGOs need to have an interest in the decision-making concerning the environment in order to be considered as members of the public concerned, however, the legal definition of the “public concerned” in the Law on Environment includes the environmental NGOs. The only countries where legal standing criteria for NGOs are regulated significantly differently are Croatia and Serbia. In the former, NGOs have to fulfill specific criteria to have legal standing in procedures regulated by the Environmental Protection Act. In the latter, in EIA procedures the public concerned includes non-governmental organizations that promote environmental protection and are registered with the competent authority.

61. A specific feature of the legal systems of some countries is the legal standing granted to groups not being legal persons or not being registered legal entities. In Croatia, organizations, business units or commercial organizations, settlements etc. or groups of persons, although they do not have the character of a legal entity, may institute an administrative judicial dispute if they have the capacity to be the holders of the rights and responsibilities which were the subject of the administrative proceedings. In the former Yugoslav Republic of Macedonia, NGOs and groups of people may be parties “if they can be considered as holders of rights and responsibilities subject to administrative procedure”. In Montenegro, any group of persons may institute an administrative dispute if they are entitled to be holders of rights and obligations decided on in an administrative or other procedure. Lastly, in Serbia, also a group of persons or other entities not being legal persons can have standing if they are holders of rights, obligations and legal interests that are decided in an administrative procedure.

Conditions of Legal Standing	rights or interests affected			
	individuals		NGOs	
	administrative	judicial	administrative	judicial
Countries				
Albania	■ <sup>5</sup>	■	■	■
Bosnia and Herzegovina	■	■	■	■
Croatia	■ <sup>6</sup>	■ <sup>7</sup>	8	9, 10
Kosovo (United Nations administered region, Security Council resolution 1244 (1999))	■ <sup>11</sup>	■	■ <sup>12</sup>	■
Montenegro	■ <sup>13</sup>	■ <sup>14</sup>	■ <sup>15</sup>	■ <sup>16, 17</sup>

<sup>5</sup> It has to be direct or indirect, individual or collective affectedness.

<sup>6</sup> Impairment of a right is required.

<sup>7</sup> Deems that rights and interests are violated.

<sup>8</sup> An NGO has a sufficient legal interest in a procedure if it fulfills the following requirements: 1. registered in accordance with special regulations governing associations and environmental protection is set out as a goal in its statute; 2. it has been registered for at least two years prior to the initiation of the public authority’s procedure, and 3. it can prove that in that period it actively participated in activities related to environmental protection on the territory of the city or municipality where it has a registered seat.

<sup>9</sup> Same as footnote No. 7.

<sup>10</sup> Also groups have legal standing with certain conditions.

<sup>11</sup> The rights have to be adversely affected.

<sup>12</sup> The rights have to be adversely affected.

<sup>13</sup> Rights and interests have to be adversely affected.



Serbia	■ <sup>18</sup>	■ <sup>19</sup>	20	21
The former Yugoslav Republic of Macedonia	■ <sup>22</sup>	■ <sup>23</sup>	■ <sup>24</sup>	■ <sup>25, 26</sup>

62. The public has a right to challenge in court the acts and omissions of public authorities and private persons contravening environmental law almost everywhere in the region. This can take the form of a right to initiate administrative procedures (the former Yugoslav Republic of Macedonia, Montenegro and Serbia) or to start lawsuits (Croatia, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia, Montenegro and Serbia).
63. Judicial remedies are available against administrative decisions only if the administrative remedies (appeal to the superior public authority) have been exhausted.
64. There are no regional or local variations in the regulation of legal standing across the SEE region, not even in the federatively structured Bosnia and Herzegovina or in Serbia having autonomous provinces. There are no sectoral variations in the regulation of legal standing, except in the former Yugoslav Republic of Macedonia, where a number of sectoral legislation limits legal standing to the applicant and the public authority, and in Serbia, where certain laws exclude access to justice (nuclear safety, air protection, water management).

### *Actio popularis*

65. When speaking about *actio popularis* in the study, it is referred to an action to obtain remedy by a person or a group in the name of the collective interest without being personally affected (however, this affectedness cannot be excluded either). There is no *actio popularis* in environmental matters in Albania, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), Montenegro and Serbia. There is *actio popularis* in Bosnia and Herzegovina. In Croatia, there is a provision in the Civil Obligations Act which grants the right to everyone to ask for the source of danger to be removed. It allows that even a person who is not in danger has standing to ask for the removal of the source of danger. There is, however, no reported case law based on this article. In the former Yugoslav Republic of Macedonia, the system where any member of the public may take an action in court against an operator who is an owner of a potential source of danger can be regarded as a true *actio*

<sup>14</sup> Rights or legally based interests have to be violated.

<sup>15</sup> Same as footnote No. 17.

<sup>16</sup> Same as footnote No. 18.

<sup>17</sup> Also groups have legal standing with certain conditions.

<sup>18</sup> Also obligations can be affected. It is needed that an administrative document infringes on their rights or legal interests defined by law.

<sup>19</sup> Violation of rights and interests is needed.

<sup>20</sup> In EIA procedures the public concerned includes non-governmental organisations that promote environmental protection and are registered with the competent authority.

<sup>21</sup> Same as footnote No. 24.

<sup>22</sup> Rights and interests have to be infringed.

<sup>23</sup> Same as footnote No. 12.

<sup>24</sup> NGOs need to have an interest in the decision-making concerning the environment.

<sup>25</sup> Same as footnote No. 14.

<sup>26</sup> Also groups have legal standing with certain conditions.

*popularis* legal instrument. Bearing in mind the opportunity to start a norm control process before the Constitutional Court, then there is *actio popularis* in Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia (in Croatia, however, the decision to start such a procedure is at the discretion of the Constitutional Court).

66. There is no opportunity for the third party intervention into judicial proceedings in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)). In Albania, the third party intervention can be primary (third party suing both litigants) and secondary (third party joining either side). In Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia, the third party intervention in court procedures is allowed if the third party has legal interest in the litigation. In the former Yugoslav Republic of Macedonia an *amicus curiae* (a friend of the court i.e. someone not being a party to the case but allowed to submit arguments to the court) is also allowed in such cases. In Serbia, the Ombudsman and the Information Commissioner may assist NGOs in bringing cases to the court.

***Procedural questions: possible decisions, suspension of enforcement, injunctive relief***

67. In Albania, the reviewing authorities can either confirm the challenged administrative act (reject the appeal), can annul the act (in full or in part) but can also modify the act, i.e. they apply full reformatory powers. This is also the case in Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) (where, in addition, the reviewing authority can also instruct the inferior authority to issue an unlawfully rejected administrative act), the former Yugoslav Republic of Macedonia, Montenegro and Serbia. In addition, in Serbia, the superior authority can also declare the decision null and void (which is different from annulling it).
68. The appeal has an automatic suspensive effect on the first instance administrative decision, with specific exceptions, e.g. the execution of the first instance decision is in the interest of the public order, the public health or other public interest, etc. This is the case in Albania, Croatia, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia and Montenegro. In Bosnia and Herzegovina, however, there is no such automatic suspensive effect attributed to the administrative appeal. Specifically, in the former Yugoslav Republic of Macedonia the appeal in SEA, EIA and IPPC cases does not have an automatic suspensive effect, but the appellant can request such suspension and the appellate authority is obliged to make a decision within 3 days. In Serbia, if the appeal has no suspensive effect, it has to be stated in the decision; this is the case *ipso iure* in EIA and IPPC cases where there is no appeal, except EIA screening and scoping decisions that can be appealed.
69. The environmental authority deciding over the appeal or the environmental inspection authority has also the powers to temporarily or permanently stop an activity if that contravenes environmental law in Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Serbia. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) they only have the power to temporarily stop an activity, just like in Montenegro.
70. Once the case is before the court, the motion initiating the court process does not have a suspensive effect on the applicability of the final administrative decision in Albania, Bosnia and

Herzegovina, Croatia, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia, Montenegro and Serbia.

71. However, the applicant in the court procedure can claim that the court suspend the enforcement of the administrative decision if the latter would cause an irreparable damage to the applicant and the suspension is not contrary to the public interest in Albania, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo (United Nations administered region, Security Council resolution 1244 (1999)). Such judicial suspensive decisions can be enforced by the bailiff office in Albania and by the court in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)).
72. Courts also have the powers to either temporarily or permanently suspend activities by their injunctions in Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia (in the latter even *ex officio*). In Croatia, however, this provision has never been applied to date. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), courts do not have such powers in administrative judicial proceedings, but can review such decisions of environmental authorities.

### *Compensation to the public for environmental damage*

73. The concept of the public enforcing a tort claim (damages claim) in the name of the public (or the environment as such) has not taken root yet in the examined SEE. None of the legal systems allows anyone else but the damaged party to claim damages in a tort law process. However, that legal possibility is certainly available, i.e. injured parties can claim compensation according to the general rules of civil law from the damaging parties even if the damage was done to the elements of the environment under the ownership of the damaged parties.
74. A special regime is applied in Croatia where within the administrative judicial proceeding the applicant can submit a claim for compensation that the court has to decide. However, there have not been any reported cases where this provision was used in practice, so the common procedure is to start a separate private law process for the damages. In Serbia, everyone may demand from someone else to eliminate a source of danger threatening considerable damage to him/her or to an unspecified number of persons, as well as to refrain from an activity causing disturbance or danger of loss, should the ensuing disturbance or loss be impossible to prevent by adequate measures.

### *Criminal judicial cases and public participation*

75. Criminal cases are usually more “closed” types of cases, and therefore, there is no significant public participation in their management, neither in the investigation or indictment phases (before the police and the prosecutor), nor in the judicial phase (before the court). If there is public participation, that is an exception even in the EU Member States (e.g. Spain).
76. Nowhere in SEE is there public participation in the processes before the prosecutor or the criminal court. In Albania, Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia, Montenegro and Serbia, the public can report a crime and be present at court trials but that is all that the public can do in criminal cases.

### *Mediation and other non-confrontational ways of problem solution*

77. Mediation as an alternative dispute resolution method could gain acceptance in environmental matters since it is able to channel in different interests and can manage parties to a dispute evenly and equally. Still, it is not very popular in environmental matters, but on a larger scale, does not have a real practice yet whatsoever in the examined places. It is partly due to its novelty, partly due to the continental legal systems' inherent inability to integrate instruments of negotiation into controversial legal disputes. For this reason, although there are laws on mediation in Albania, the former Yugoslav Republic of Macedonia and Serbia, there has not been any case in environmental matters yet that would have been decided by mediation.

#### **d) Practical features of access to environmental justice**

78. Legislation and practice may divert from each other and they certainly do in a number of countries, making the real access to justice situation different compared with the theoretical situation derived solely from the letter of the law. In this respect, this study is focusing on two major elements of access to justice in practice: time and money. The targeted SEE cases were examined in terms of the timeliness and costliness of their procedures in environmental matters.

#### *Timeliness*

79. Timely administrative and judicial procedures have major importance in ensuring proper environmental protection. It is a matter of fact that – as the popular saying goes – “justice delayed is justice denied”. It is true for access to information (the ultimately received environmental information loses its relevance over time) and participation in decision-making (comments made in a late phase of project development are more easily discarded) as well as access to justice (a favorable court decision after a facility is built and operating/an environmental damage has occurred is merely useless).

80. The time during which an administrative appeal can be submitted to the appellate authority is 30 days in Albania, 15 days in Bosnia and Herzegovina, 15 days in Croatia (if the decision is published on the internet, then the deadline starts only after 8 days of the online publication), 30 days in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), 15 days in the former Yugoslav Republic of Macedonia (with the exception of IPPC cases where this deadline is 30 days), 15 days in Montenegro and 15 days in Serbia.

81. A judicial review of the final administrative decision can be requested within 30 days from the announcement of the decision in Albania, 30 days in Bosnia and Herzegovina, 30 days in Croatia (or 90 days if the decision erroneously informed about judicial remedies), 30 days in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), 30 days in the former Yugoslav Republic of Macedonia, 30 days in Montenegro and 30 days in Serbia.

82. An appeal has to be decided by the appellate authority in a second instance administrative procedure within 30 days in Albania, 30 days in Bosnia and Herzegovina, two months in Croatia, 30 days in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), 60 days in the former Yugoslav Republic of Macedonia and 30 days in Montenegro. In Serbia, administrative procedures are to be conducted without delay, and if law does not specify the duration of such cases, the officer conducting the process sets the time limits in view of the

circumstances of the case. In EIA cases, the competent authority has to make a decision within 20 days upon a screening decision.

83. Setting a definite time limit for courts to reach a decision and manage the judicial process within a certain time span is a two-faced idea. On the one hand, it is welcome because it may prevent overly lengthy procedures that in itself endanger real justice. On the other hand, it may urge judges to come to a conclusion where the case is yet in a premature state, therefore it may lead to erroneous judgments. In most of the places examined, there is no deadline set for courts to make judgments except the general requirement stemming from the European Convention on Human Rights (ECHR) and the respective Constitutions that a right to a fair trial encompasses the right to have a court case finished within a reasonable timeframe. This reasonable timeframe is later interpreted and explained in relevant case law of both the European Court of Human Rights and the competent national courts. Despite this, there are some regulations in the examined SEE region on the duration of judicial procedures, e.g. in Albania, Croatia and Serbia. However, there are no timeframes set in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia and Montenegro.
84. According to the national experts, time limits are not reasonable and sufficient in Albania, Bosnia and Herzegovina, and Montenegro. Contrary to this, time limits in practice are reasonable and sufficient in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and the former Yugoslav Republic of Macedonia (but not in the more complex cases).

### *Costs*

85. Costs of remedies (in an administrative or judicial procedure) are in place so the state administration and the judiciary has to be financed not only from the redistributive state budget but also from the cases they manage. In this way, the case load and the income of these bodies become more proportionate. Actually, the idea of financing administrative or judicial procedures is not challenged whatsoever, and there is no initiative against reasonable costs of either access to information or access to justice. However, such costs should not be prohibitively expensive in accordance with Article 9 paragraph 4 of the Aarhus Convention.
86. The regular cost categories affiliated with an administrative appeal are the fee for the appeal, the expenses of gathering evidence, especially the costs of experts, and the fee paid to legal counsels in case involved by any of the parties.
87. There are absolutely no costs to be paid for an administrative appeal in Albania and Kosovo (United Nations administered region, Security Council resolution 1244 (1999)). In Bosnia and Herzegovina, these amounts can be approximately between EUR 50 in both entities as the lowest end and EUR 125 (in the Federation) or EUR 250 (in the Republika) as the highest end. In the former Yugoslav Republic of Macedonia, the administrative appeal fee is approximately EUR 5, similarly to Montenegro.
88. There is no need to involve an attorney/counsel for submitting an administrative appeal.
89. The judicial fees are defined by a joint order of the ministers of finance and of justice in Albania, however, they are defined on a case by case basis. In private law cases the court tax to be paid depends on the so-called value of the case in some circumstances. Either it is a flat rate of EUR

10 or it is 3% of the value of the case above the value of EUR 700. In Bosnia and Herzegovina, if the lawsuit has a value, i.e. in private law disputes, the entities' laws apply a complex system which gradually decreases, starting with approximately 3.5% at EUR 750 reaching 1% at EUR 50,000. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the courts apply a template issued by the Kosovo Judicial Council which sets the amounts of fees to be paid in EUR depending on the nature of the judicial proceedings. In the former Yugoslav Republic of Macedonia, the Court Fees Act applies two categories: a defined fee for cases not having a value and a court fee dependent on the value of the case where applicable. In Montenegro, the court tax for initiating an administrative judicial proceeding is EUR 20, while the fee for a court decision is EUR 10. A private law claim entails the payment of a fee proportionate to the value of the case according to a complex system, gradually decreasing from approximately 6% at EUR 500 reaching 3% at EUR 5,000. In Serbia, the administrative court fees also align with the value of the subject matter, but cannot be more than EUR 25. In case of private law disputes, the court tax is determined according to the value of the case, such as until EUR 85 it is 20% while above EUR 8,600 it is 5.5%, gradually decreasing in between these two extremes.

90. Low income citizens can be exempted from paying court fees in Bosnia and Herzegovina and in the former Yugoslav Republic of Macedonia, unlike NGOs. Certain lawsuit categories are exempted from the payment of fees, such as social law and labor law cases in Albania and in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), and also low income citizens are exempted from the court fees. Low income citizens can be exempt while humanitarian organizations are *ab ovo* exempt from court fees in Montenegro. The latter resulting in a situation where NGOs frequently include humanitarian work as a part of their statutes to benefit from this rule. In Serbia, also material conditions of parties allow the court to exempt them from paying court fees.
91. The court tax is to be paid before the start of the case and the other costs are to be paid before the judgment is made in Albania, and at their incurrence in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) (e.g. submission of motions, etc.). The same applies in the former Yugoslav Republic of Macedonia where the costs can be paid within 15 days of their incurrence. In Bosnia and Herzegovina, a recent Constitutional Court decision will make it possible to pay fees after the judgment is made. In Montenegro, the law does not allow delayed payment of court fees. In Serbia, the fees can be either paid in advance or afterwards.
92. While the "loser pays" principle applies in all SEE, there is little data on this available in Albania. In Bosnia and Herzegovina, this principle is also consistently applied just like in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia, Montenegro and Serbia. In Serbia, in case the public prosecutor joins a case, s/he is entitled to reimbursement of his/her costs but not a fee.
93. There is a requirement for mandatory counsel only in front of the Supreme Court in Albania, but not at any level of judiciary in Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) or Montenegro. In the former Yugoslav Republic of Macedonia, legal counsel is mandatory if the value of the case is above EUR 16,000. In Serbia, legal counsel is mandatory in the extraordinary judicial remedy procedures.

94. Legal representation fees follow two models, i.e. a centrally defined table of fees combined with the rules of free market or the total prevalence of free market logic. In the former regime, while the minimum attorney fees are defined (by the Tariff of the respective Bar Association), there is a possibility for attorneys to agree in higher amounts, however, courts normally award only those amounts to a winning party that are regulated in the table of costs. In the latter regime, the attorney and the client are free to define their relationship, including the price of the attorney's services, and the courts have discretion to award fees to the winning attorney. The former regime applies in Bosnia and Herzegovina in both entities, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia, Montenegro and Serbia. The latter regime applies in Albania.

### *Costs of evidence*

95. A major part of fees to be paid by prospective applicants, or members of the public, in case they resort to starting an appeal or a lawsuit, is the costs of evidence, including witness fees, costs of site visits and principal among them, expert fees.

96. Such expenses are prepaid by those parties who initiate such evidence, and eventually the costs are borne by either those who lost the case or those whom are obliged to pay by the court. This is the case in Albania, Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the former Yugoslav Republic of Macedonia, Montenegro and Serbia.

97. There are no determined amounts for each evidence category in Albania, so it is within the court's discretion to define the amounts. The same applies in Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and Montenegro, while in the former Yugoslav Republic of Macedonia, the experts themselves will determine the amount to be paid for the services. In Serbia, the fee to be paid to experts is defined by an officially released Rulebook on Compensation Costs in Court Proceedings.

98. A very specific cost category is the so-called bond or cross-undertaking in damages that an applicant has to pay in case the court issues an injunction dependent on the prepayment of this cost. In Albania and Bosnia and Herzegovina, this is only an option and the court enjoys a large extent of discretion as to the definition of the amount of such payment. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the law does not foresee the payment of such a bond in case an injunction is issued by the court. In the former Yugoslav Republic of Macedonia, such bond is to be paid upon the order of the court when the court considers that the injunction would cause damage to the defendant. There are no clear guidelines as to the definition of the amount of such bond, so it is largely within the court's discretion. In Montenegro, such payment is not an obligation but an opportunity within the court's discretion, and the court may involve an expert into defining the amount of the bond. In Serbia, this is again an option and if the applicant pays the defined amount, the court can order the injunction even if the applicant has not proven the likelihood of a claim or danger.

99. Generally, the national experts have mentioned that there is no sufficient case law/practice in this regard, therefore, there is no chance to formulate a definite opinion on this in Albania, Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) or the former Yugoslav Republic of Macedonia.



100. In an unlikely event, it may also happen that the defendant will sue the applicant for damages in case there was an injunction ordered and later lifted, or in case the case was lost by the applicant. Nevertheless, none of the national experts has reported on any such cases and this also reinforces the foregoing statement on the lack of solid case law on the matter.

*Legal aid*

101. There is some kind of state funded legal aid in all SEE except for Albania and Kosovo (United Nations administered region, Security Council resolution 1244 (1999)). There was also a project in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) between 2001 and 2005, however, not even that was specifically targeted at environmental issues. In Bosnia and Herzegovina, there is no special regime for legal aid in environmental matters, and while there is a legal aid scheme in the former Yugoslav Republic of Macedonia since 2009, it cannot be applied in environmental cases. There is legal aid in Montenegro based on a law from 2011.

102. Also there are no NGOs that would provide legal aid to the public in Albania, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) and Bosnia and Herzegovina. In the former Yugoslav Republic of Macedonia, there are a few such NGOs, but with limited capacities. In Montenegro, the parallel systems of state funded legal aid and NGO operated legal aid (assistance) coexist but there are no public interest environmental legal organizations so far. In Serbia, where there are the Bar Association and NGOs as well as law clinics providing free legal services, there is no comprehensive and effective system and the Law on Free Legal Aid is yet in its draft form.

*Comparative table with data on minimum wage and minimum old age pension in EUR*

103. The financial situation is somewhat illustrated in the examined instances by the following data. This is a rough comparison, however; it is able to show at least major trends and also includes data that make it possible to compare with the data of the EU average.

country/territory	Albania	Bosnia and Herzegovina	Kosovo (United Nations administered region, Security Council resolution 1244 (1999))	Montenegro	Serbia	The former Yugoslav Republic of Macedonia
minimum wage	156	178	110	193	175	129
minimum pension	85	165 (FBiH) 80 (RS)	n.a.	92	n.a.	96



### III. Conclusions

#### A. Evaluation of access to environmental justice

104. The South Eastern European region has been in the center of attention for more than 20 years due to intense political and economic as well as legal changes that took place on the Balkan Peninsula. Due to this high level of attention, there have been many initiatives and projects that targeted legal and institutional capacity building and technical assistance of the region and were implemented with the involvement of EU Member State experts and EU institutions. The same is true for the area of environmental protection and access to justice (in general and in particular, regarding environmental matters). As a result of this long process, which can be characterized as the harmonization of laws and institutions with European Union standards and approaching the legislative framework and administrative and judicial practice to the benchmark of the EU, these areas have advanced considerably in ensuring access to justice in the protection of the environment.

105. However, there is still a lot to do. Most of the SEE regulate critical issues (e.g. standing, conditions of remedies, bearing of costs and the like) in an overly conservative manner, not using alternative solutions that would favor either public participation or environmental protection over other interests. As examples, there are certain places and certain issues that are regulated in a creative manner, but there can be no systemic approach detected behind these solutions and thus they remain sporadic efforts in bringing about a transparent, inclusive and efficient system of environmental protection. Finally, the most striking shortcoming of the examined region is the sometimes total lack of case law, i.e. there is not even a chance to demonstrate the old saying – “the proof of the pudding is in the eating” – since laws enacted with the best intention and care are not at all implemented on the ground.

106. The most fundamental, as well as complex, improvement in the examined region would be remove the barriers that lead to the lack of practice, and to make efforts (by raising knowledge of the civil servants and by building capacities of the civil sector) to create a lively legal practice that later can reveal shortcomings of the legislation and catalyze changes in order to achieve an access-friendly infrastructure in environmental justice matters in the SEE region on the long run.

#### B. Summary of findings

107. The legal systems, as regards the foundations of access to environmental justice, are quite developed in all the examined instances. Their Constitutions are modern in terms of ensuring rights; most of them contain either the right to a healthy environment or some kind of state obligation to preserve the environment, or even both. Some constitutions in the region also allow the restriction of other fundamental rights in case they collide with the right to environment. Procedural rights, such as access to information and the right to remedies, also appear frequently in these Constitutions. The usual “norm pyramids” are present in all the examined legal systems, with a general Environmental Protection Act on the top, with major sectoral laws (water, waste, nature, etc.) in the middle and subordinate sectoral legislation implementing the two superior layers at the bottom. There are ministries

specifically for environmental protection in each examined place, and the environmental public administration system has at least two levels (regional and central), except if the size of the territory does not require so. Environmental inspection is entrusted to state agencies, and municipalities also have competence in environmental issues, although of lesser significance. Public prosecutors in almost all places have the traditional role of pursuing crimes, and only in a few instances are they entrusted with protecting broader public interest and oversee the functioning of state administration; in the latter cases, they have special powers also to participate in judicial proceedings. Ombudspersons are present in all examined instances and have their functions as usual, i.e. investigate breaches of human rights by state administrative bodies; they also possess the regular array of tools, such as recommendations, reporting and publicity.

108. The entire region except one has ratified the Aarhus Convention, some could even apply it directly, but there is no data on such direct application due to the lack of relevant case law.
109. As for administrative decision-making, they fall under the general administrative procedure acts of the examined legal systems, and none has a specific environmental procedural code or act in place. Decisions are made by state authorities and these are either below or within the ministry of the environment level. One occasion of an innovative solution is operating a single center where all licensing applications can be submitted, regardless of the eventual decision-making competent authority. Usually, there is either a request for reconsideration or an appeal available against environmental administrative decisions, and again, in one instance there is an innovative solution in one place where all appeals are decided, not by sectoral second instance agencies, but by a single independent and impartial appellate forum.
110. Members of the public are entitled to report environmental problems, breaches of environmental legislation, and potential or real harms to the environment to the competent authorities.
111. Third party intervention into administrative appeal procedures is allowed in some cases, with the condition of affectedness of the intervening party.
112. Public availability of the superior administrative decisions in environmental matters is not uniformly regulated in the SEE region so that some legal systems do not even make it an obligation. Nevertheless, public authorities in almost all the region still apply some kind of information provision system, however, that is not satisfactory, first because it is not exhaustive but selective in terms of decisions to be published, second because it is not necessarily online but use newspapers as channels.
113. There are elaborate systems of judiciary in all places examined, and in most of them there is a separate administrative court to adjudicate the procedural as well as the substantive legality of administrative decisions with the exception of one where only the procedural legality is examined. Courts are legally independent, mostly there are no lay persons involved into the judicial benches. Constitutional Courts are entitled to decide in both individual human rights cases (so-called constitutional complaints) and abstract norm control issues throughout the entire SEE. However, in abstract norm control, these courts do not grant *actio popularis*, except for four countries. There is no overall rule in the region for

the public availability of court decisions, whereas some legal systems have a mandatory system and some leave it at the discretion of the courts. Environmental and access rights knowledge of courts is reported to be quite low and there is no quick improvement expected, especially because targeted training courses are mostly optional and voluntary in all the SEE.

#### **a) Access to Information**

114. There are separate Freedom of Information Acts in place in all SEE, but there are none where there is a separate access to environmental information law. Refusals of access to information in all places must contain information on the available remedies. The regular remedy against refusals is the normal administrative appeal. However, in many instances this appeal has to be submitted to a specifically created, independent and impartial body, a so-called information commissioner. Against the decision of the appellate forums, there is a judicial remedy available. Ombudspersons are also relevant in promoting freedom of information including environmental information in the examined region, however, they cannot ensure such access by binding legal means.
115. The usual deadline for appeal against an initial refusal is 15 days in half and 30 days in the other half of the legal systems, while judicial remedies can be claimed within 30 days. Many legal systems define deadlines for the judicial decision that range from the unrealistic 30 days to a more proper 90 days. In most of the cases, the freedom of information procedures before the courts are somehow expedited. Courts in most of the region can have access to the information before they decide on its availability.
116. The biggest problems identified by the experts were the non-responsive public authorities, the inactive courts and the lack of legal support for those requesting environmental information.

#### **b) Public Participation**

117. As one of the most important issues in access to environmental justice, the regulation of legal standing seems quite alike in the examined region. All types of legal standing, i.e. the right to appeal an administrative decision or to go to court against an administrative decision, are based on the traditional concept of affectedness of rights and/or legal interests. In the administrative phase, the general administrative procedure act is applied in defining the positions of parties whether they have legal standing to appeal or not. In some cases, those who have no legal personality but can be holders of rights and interests can have legal standing as well. There are no in-country regional variations of legal standing criteria in any of the examined SEE but in some of them certain sectoral laws limit access to environmental justice to a narrower circle of claimants, e.g. only to immediate neighbors.
118. Exhaustion of the administrative remedies is a precondition to go to court against administrative decisions in the entire region.
119. Initiating a lawsuit against the infringement of national environmental law against public authorities or private individuals is linked to affectedness in half of the region, whereas in

the other half, laws allow members of the public to start lawsuits against environmentally damaging or endangering actors without personal affectedness, but with demonstrating the affectedness of the public or the environment. However, there is no real case law for these legislative provisions.

120. *Actio popularis* does not exist in half of the examined region, however, in the other half there are legal instruments that can be regarded as *actio popularis*, either stemming from the regulation of the Constitutional Court, or from environmental laws, or from the Civil Code. These provisions allow for the initiation of judicial proceedings for the protection of public interest, without having to prove personal affectedness.
121. The appellate public authorities in all cases examined exercise a full reformatory power to decide over appeals. Appeals have automatic suspensive effect in all countries but one, and in another one in a certain type of case only. In the entire region where the automatic effect takes place, there are conditions within which the first instance decision can still be enforced in case the public authority so decides.
122. Initiating a lawsuit does not have a suspensive effect on the enforceability of an administrative decision anywhere in the examined region. However, courts upon a motion can order the suspension. Conditions of the suspension usually include the following: the enforcement of the administrative decision threatens with an irreparable damage; there is no collision of the suspension with the public interest; no damage to other parties or even to subjects outside the legal dispute will arise from the suspension.
123. Members of the public cannot start a lawsuit to get compensation for damage done to the environment if they were not affected and only the public interest and the environment as such were harmed. While anyone can report a crime, there is no chance for public participation in criminal proceedings in any phase.
124. While there are laws on mediation in the entire region, there is absolutely no report on this legal instrument having been used, either excessively in legal disputes in general or in environmental disputes particularly.
125. In terms of timeliness, an administrative appeal can be submitted in the region either within 15 days or within 30 days from the notification of the first instance decision. Administrative appellate authorities are bound to make decisions within 30 days in normal circumstances upon the appeal. A court review can be initiated within 30 days or within 60 days from the notification of the final administrative decision. There are almost no legal time limits for court procedures within which the judiciary is supposed to make a judgment except the general expectation to finish the case within a reasonable timeframe, as part of a fair trial. Some procedures are regulated to be expedited but practice varies greatly. As exceptions, one legal system obliges courts to make judgments within 30 days, while the other does so within 3 and 6 months. National experts reported that these deadlines are usually not kept by the courts and in general, court cases may be called untimely. Generally, in most of the SEE region, time limits are evaluated as not sufficient and effective.
126. As regards costs, an administrative appeal has either no or very low expenses in the examined region. Also there is no rule for a mandatory counsel in submitting an

administrative appeal. Court fees (i.e. court taxes for initiating a case before the judiciary) are either flat rates that are not expensive or values that are proportionate to the value of the case (in private law disputes) ranging from 20% to 1%, respectively (for very low amounts can be 20% and for very high amounts can be 1%, with varying percentages in between the extremes and across the legal systems). Usually, those whose material conditions do not make it possible to cover fees can be exempted from paying court fees. In some places, certain types of cases are *ipso iure* exempt, while in others humanitarian NGOs are not paying court fees per se. The time of payment obligation varies, but in most of the cases it is possible to pay subsequently. The 'loser pays' principle prevails in all legal systems examined. Legal representation is not an obligation except in a few cases: before the Supreme Court or in cases with a value above a threshold. Clients and attorneys are free to define the fees for legal representation, however, in all but one place there is a table defined by the respective bar association with minimum tariffs to be applied; this is also guidance for the courts when awarding attorney fees.

127. Costs of evidence, unlike court taxes can be expensive, even prohibitively so, and these amounts are usually defined either by the court or by the experts themselves, or exceptionally, by a tariff issued by a ministry. Such expenses are to be pre-paid by those initiating the evidence.
128. Cross-undertaking in damages have to be paid in case the court so orders for an injunction, however, in one of the countries this legal instrument does not exist; where it does, it is only an option and not an obligation. There is hardly any case law on this matter, however, just like regarding claims of compensation against the members of the public for lifted injunctions or lost cases.
129. There is no legal aid in 3 out of the 7 examined SEE legal systems and even in those 4 where there is, they are not applicable for environmental cases. The environmental civil sector is weak, with only sporadic instances of public interest environmental law NGOs providing free legal help, and almost no mention of any solid funding earmarked for such purposes from anywhere in the examined region.

### c) Practical effectiveness of access to justice

130. The questionnaire also asked the experts to express their views on the practical effectiveness of real access to justice. So far, the answers were dominated by references to the obvious lack of case law. Most of the experts attributed this lack of case law to the lack of willingness of the members of the public to start lawsuits. This demonstrated that the public knowledge of legal instruments and the knowledge of environmental law by judges should be improved. The situation should also be solved by improving the legal aid mechanisms that would assist those few who would use legal means to protect the environment but have no sufficient means therefor. Another set of reasons were associated with the concern over the consequences of litigation, e.g. fear of a counter-claim by project developers, of a SLAPP case against the members of the public or other deterrent measures. The experts have answered the following.

131. In Albania, the main practical challenges associated with challenging administrative decisions in environmental matters are related but not limited to the lack of detailed public information guidelines, indicating all steps to be followed by the public in the case of an administrative appeal and limited popular knowledge of rights; the lack of free legal aid provided by the state (except in criminal cases); the lack of public interest lawyers; the lack of environmental law training modules for students/young lawyers. From a legal point of view, remedies in cases of challenging decisions/acts in court are adequate but there is simply no case law on how they work in reality. The application of injunctions is hindered by the danger to be sued for damages by a defendant, the lack of clear standards and consistent practices in granting injunctions, the wide discretion of judges in issuing an injunction and that judges lack the relevant knowledge of environmental law.
132. In Bosnia and Herzegovina, the main practical challenge for NGOs and other representatives of the public is to prove their legal standing. Also, authorities of second instance tend to decide in favor of first instance authorities, and in the rare contrary occasions they favor procedural reasons when annulling first instance decisions (instead of favoring substantive reasons). While remedies are adequate, they should be more effective in the evaluation of the national expert. The major obstacles concerning the application of injunctions are the lack of relevant knowledge of environmental law by the judges and the lack of consistent practices in granting injunctions.
133. In Croatia, recently there have been major reforms in the field of environmental protection and judicial review, mostly due to the process of harmonization with the EU *acquis*, as a condition for the membership in the EU. In the opinion of the national expert, it is too early to give any impressions on the effectiveness of the new system, since there have not been any final judgments reported yet.
134. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), the main practical challenges associated with challenging administrative decisions in environmental matters are: (a) the lack of legal awareness among individuals and NGOs to appeal administrative decisions; (b) the lack of free legal aid mechanisms to support the interested individuals or NGOs to refer administrative appeals in conformity with applicable laws; (c) the lack of competent lawyers/legal specialists to deal with administrative environmental complaints; (d) the lack of specialized courses in the area of environmental law at the higher educational level to develop students' legal skills in referring environmental law matters at the administrative or judicial organs. The remedies in the cases of challenging decisions/acts/omissions referred to in this study are adequate but in the absence of cases raised at the courts it is difficult to estimate their effectiveness. The major obstacle constraining the application of injunctions in environmental matters is that the law on administrative conflicts contains no provisions allowing for the issuing of an interim measure while an administrative case is pending before the court. This gap is particularly troubling because the law expressly states that an administrative lawsuit shall not suspend the execution of the administrative act against which it has been lodged.
135. In the former Yugoslav Republic of Macedonia, the public may face problems in procedures before the State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance, when appealing administrative acts adopted in the first instance. In many cases, the Commission is silent on the matter, but still

it is absorbing 60 days at least for the decision-making. Courts are overloaded with cases and it may take more than a year to adopt a decision, enough time for the decision even if it is favorable for the complainant to be not effective in practice. The extremely low use of alternative mechanisms for dispute resolutions is not easing the issue with the court congestion either. The criteria upon which the injunctive relief is granted are vague, and are left to the discretion of the court to determine if the injunction is necessary to prevent more harmful consequences. In addition, the complainant may be sued for damages that were caused by the injunctive relief, making its use financially risky. Also, the enforcement of the relief itself is questionable. Therefore, the remedies can hardly be adequate and effective, except in the simplest environmental cases.

136. In Montenegro, the national expert could not address in detail the practical effectiveness gaps due to the lack of information regarding practice in the field. However, she opined that the main problem is the lack of specialized NGOs or lawyers who would assist citizens in challenging environmental administrative decisions free of charge. In terms of injunctions that are determined relatively rarely, the major obstacle is the fear of the high costs to which the parties could be exposed.
137. In Serbia, the time limit for an appeal against EIA screening and scoping decisions is 15 days. There is serious inconsistency between time limits for access to environmental information, stipulated by the Law on Access to Information, and time limits for access to environmental information, stipulated by the Law on environmental protection. The Administrative Procedure Act stipulates that an organization, a local community, a group of people, etc., who do not have the status of a legal person, may be parties to the procedure if they are holders of rights and obligations or legal interests which are to be decided in the procedure. This should be defined more clearly, since today the public authority is to decide if a group etc. has legal interest in the environmental matter. The national expert has added a number of recommendations to the study suggesting that the remedies are neither adequate nor effective. The major obstacle constraining the application of injunctions is the lack of clear standards so that practice in granting injunctions in environmental matters is not established.
138. Altogether, the major problems are lack of clarity as regards criteria of application of injunctions and lack of willingness to sue, aggravated by the lack of knowledge in the judiciary on environmental matters.

## IV. Recommendations

139. After having analyzed the outputs of national experts, a number of diverse legislative frameworks and equally diverse practical situations can be detected on the Balkan Peninsula. This complicates making general recommendations that would generally fit the entire region.
140. On the other hand, giving specific nationally tailored recommendations would be beyond the mandate of this study. Therefore, it is suggested that the following should be implemented in the short to medium term (1 to 3 years) in order to meaningfully improve the access to environmental justice situation of the examined region:
- a. Legislation in general: more innovative, more civil-society friendly laws should be enacted using more freely the creative legal instruments available and used elsewhere, especially in the EU Member States, such as reversal of burden of proof, fee waivers, expedited proceedings, and the like in environmental matters;
  - b. Administrative and judicial transparency: environmental public administrative decisions should be made available to the public online, in a comprehensive system, in a mandatory fashion;
  - c. Judicial capacity building: environmental law and access rights (Aarhus Convention) should be made part of the judicial curriculum on a mandatory basis, as part of the knowledge transferred by the respective judicial academies;
  - d. Access to information legislation: specific legislative provisions on access to environmental information should be enacted, providing a special regime to this subset of data in accordance with the Aarhus Convention;
  - e. Access to information practice: the open culture of the public administration should be promoted and the non-responsiveness of the public authorities should be changed, parallel to raising the public's capacities in demanding environmental information;
  - f. Public participation legislation: more open criteria for legal standing should be defined, somehow departing from the traditional concept of personal affectedness; laws should acknowledge that citizens and NGOs are guardians of the environment and of future generations, and should give standing to people with an interest and environmental NGOs as representatives of the environment; perhaps the concept of standing used by the European Union legislator in consumer protection cases could be adapted to environmental matters;
  - g. Public participation practice: the aching gap between law and practice, the obvious lack of solid case law, should be eliminated, mostly by empowering the public and raising its capacities and soft skills to initiate cases, but also by supporting the necessary infrastructure (legal NGOs, pro bono lawyers, experts, financial support, etc.) that are needed for preparing lawsuits and cases;
  - h. Timeliness: administrative review bodies and courts should ensure expeditious procedures for cases in environmental matters, especially access to information cases and situations where an immediate risk of damage or an actual damage to the environment occurs;
  - i. Costs: innovative cost bearing solutions should be introduced, e.g. *sui generis* exemption categories from paying court taxes for environmental NGOs, establishing legal certainty concerning the costs via rules for capping costs, introducing possibility for the applicants to get separate decisions on the costs at an early stage of the proceeding, no cost



recovery for public authorities when being defendants, or a litigation and expert fee fund for civil society, etc.;

- j. Favorable environment for civil actions: SLAPP cases in which investors would claim loss of profit from litigating environmental NGOs should be banned;
- k. Injunctive relief: detailed criteria for when injunctions can and have to be granted should be developed in the spirit of the Aarhus Convention, allowing the courts to find a balanced and effective approach and secure certainty and predictability;
- l. Legal aid: there should be a specific legal aid category for environmental cases where NGOs can also benefit from free legal advice.

## V. Annexes / Country Studies

### ALBANIA

#### I. ENVIRONMENTAL LEGISLATION, ADMINISTRATION AND COURTS

##### 1.1. Environmental legislation and administration

1. The Albanian environmental legislation includes a large number (over 40 pieces) of legal acts<sup>27</sup>. The national institution responsible for environmental administration and protection including environmental policies and legislation application in Albania is the Ministry of Environment. The National Environmental Agency is the main public authority in implementing the environmental legislation as well as defining the conditions for environmental permits. The state Inspectorate of Environment, Forest, Water and Fisheries is the main authority with regard to the inspection and controlling of environmental protection. The Inspectorate is organized in two levels: central (as General Directorate in Ministry) and local (in each district). The Prosecutor's office exerts the criminal prosecution as well as represents the accusation in court on behalf of the state. The Albanian Criminal Code (Kodi Penal) provides for specific criminal offences related to the violation of land and criminal acts against the environment. Albania introduced criminal liability for legal entities that can be held criminally responsible for the conduct of individuals who act on their behalf and to their benefit. Any citizen or public official who acknowledges any element of a criminal offence provided in the Albanian Criminal Code, has the legal obligation to proceed with a criminal indictment against the offender. In Albania, the Ombudsman (Avokati i Popullit) may undertake investigations and formulate reports based on citizen complaints of actions taken by public authorities, including complaints regarding the environmental field. Public authorities and courts do not apply the Aarhus Convention directly. Albanian legislation stipulates the mediation in the civil field, including the environmental matters, but to date, there is not any case of mediation applied in environmental issues in Albania. This law does not provide the involvement of the public.

##### 1.2. Decision-making in environmental matters and administrative review

2. The Albanian Law stipulates 3 categories of environmental permits (A, B and C). Based on the law, the Minister of Environment is the responsible authority for signing the approval act for environmental permits of type A and B, after being prepared by the National Environmental Agency. The type C of the environmental permits is prepared and issued by Regional Environmental Agencies. The application of the subjects who are seeking to obtain environmental A permit is submitted in the National Center of Licensing. There are possibilities to challenge the referred decisions in an administrative review procedure, appealing to the authority that made the decision, to a superior authority in cases where the decision is taken by Regional Environmental Agency, but not to an independent and impartial body specifically created with responsibility to review of decisions. There is the possibility to complain to the Ombudsman, but this institution may give only recommendations, and cannot change the decision. The acts/omissions made by private persons and public authorities "which contravene provisions of law relating to the environment" (art. 9 par. 3 of the Aarhus Convention) can be

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<sup>27</sup> <http://www.qbz.gov.al>

challenged in an administrative review procedure, before the authority which has approved and issued the environmental permit. In cases where there is an activity without environmental permit, the public may challenge before the Inspectorate of Environment, Forest, Water and Fisheries. All the private persons (including NGO or other entities) are entitled to request the revocation, the abrogation or the amendment of administrative acts. This right may be exercised in the following ways:

a) By means of an informal request to the employee or the organ responsible for the act; the presentation of the informal request does not require taking into consideration any time limit or any procedural criteria. In this case, the public is entitled to receive a reasoned answer within 1 month from the day of submission of the informal request. The administrative body that receives the informal request shall inform the applicant about the legal effects of this request, especially about the difference between an informal request and administrative appeal. The informal request does not suspend either the execution of the administrative act, or the expiration of time limits.

b) By means of an appeal to the organ that has issued the appealed act; an administrative appeal shall be submitted within 1 month from the day when a) the petitioner has received notification about the act or the refusal to issue the act; b) the act was published. In case of omissions of the administration (refusal to issue the act), the appeal procedure begins three months from the day the initial request regarding the issuance of the administrative act was submitted. The administrative organ to which the appeal is directed reviews the legitimacy and the regularity of the contested act. The competent administrative body makes a decision within 1 one month from the date of submission of the appeal. There is the possibility of a third party to intervene into the administrative procedure. Everyone who has a legal interest has the right to participate in the administrative proceeding personally and/or be represented. The decision for approval of environmental permit has to be published in the official website of the National Center of Licensing ([www.qkl.gov.al](http://www.qkl.gov.al)). Interested parties may address the court only after using the administrative recourse.

### **1.3. Courts**

3. The judicial power is exercised by the first level Courts, Appeal courts and the Supreme Court. The Law can create courts in particular fields, e.g. the Administrative court established by the law. The Administrative courts are responsible for disputes dealing with individual administrative acts. The normative acts that have direct impact in the environmental field are in most of the cases administrative acts. The deadline for filing a lawsuit against an administrative act is 30 days from the date of the announcement of the decision, while reviewing the dispute should be completed within 30 days from the date of court registration. In judicial cases, most of the disputes judged by the Administrative sections are not completed within this deadline. The plaintiff may ask the court to suspend the implementation of the administrative act and the court may allow the suspension when there is a risk of causing serious and irreplaceable harm to the plaintiff. The court which tries the dispute must express an opinion on everything requested and only on what has been requested. So in case the plaintiff does not ask for such a thing before the court, then the court cannot decide even when there is a risk of causing serious harm to the public. The administrative claim can be raised when the plaintiff argues that the administrative act is unlawful and that his interests and rights have been violated either directly or indirectly, individually or collectively. Courts look into the procedural legality of the case and they also scrutinize the substantive legality or even the merits of the case. The court can only quash the unlawful decisions. The Albanian legislation does not require the participation of

jurors or other lay persons or non-legal experts in the adjudication of cases (judicial proceedings) relating to the environment. When the determination or clarification of facts related to dispute at trial requires special knowledge in the fields of science, technology or art, the Court may appoint one or more experts. Courts do not have a responsibility to investigate the particulars of the case (*ex officio* principle) and the parties bear the obligation to show evidence. The President, the Government or another public authority of the executive cannot cancel/revoke court decisions or waive enforcement of court decisions in environmental matters. In principle, the public has access to court decisions. Some of the Albanian courts publish their decisions on their official site. In addition, based on the right to information, the court decisions should be made available to the public, except in particular cases (when decisions contain confidential information, state secrets, etc.). There is no law making mandatory the publication of the court decisions. There are not any advisory or mandatory opinions of the higher judiciary (Supreme Court) on environmental matters. Education in environmental law and procedure is part of the curriculum of judicial training institutes. Education regarding the environmental law and procedures includes optional courses as well as continuous professional training.

## **II. CHALLENGING THE REFUSAL OF ACCESS TO ENVIRONMENTAL INFORMATION**

4. The Constitution of the Republic of Albania and a number of laws regulate this issue. The individuals, their groups and NGOs have the right to challenge directly to the Court only if this is stipulated specifically by the law. They can challenge the refusal (both total and partial), as well as the delay in answering. Otherwise, subjects may challenge to the Court only after using the administrative recourse. No special criteria is required (the general criteria defined by the Albanian Civil Procedure Code regarding a common suit before the Court). The Court can order disclosure of information. The refusals of requests for information, etc. have to include information on remedies available. There is not any procedure established by the law for reconsideration of refusals by a public authority or by an independent and impartial body other than a court. There are some request format requirements and deadlines defined by the law. The request shall be made in writing and shall include: a) the name of the administrative organ to which it is directed; b) the full name of the applicant, the civil status, the profession and the residence; c) explanations regarding the facts related to which it is made and when it is possible, the legal basis of the request; c) clear explanations regarding the claims; d) the date and the signature of the applicant or another person who is authorized legally by him, if the applicant does not know how to write. The request for appeal shall be submitted within 1 month from the day when: a) the applicant has received notification about the act or the refusal to issue the act; b) the act was published according to provisions of this Code. In case of omission of the administration (refusal to issue the act), the appeal procedure begins three months from the day the initial request regarding the issuance of the administrative act was submitted. There are not any other independent and impartial bodies or administrative authorities that ensure access to environmental information if public authorities refuse a request for environmental information. The Ombudsman in Albania assists the public in exercising the right for access to environmental information, but cannot directly ensure it. The Ombudsman in Albania can only give recommendations to the administrative authorities, so in any case that the competent administrative authority refuses the access to information; the Ombudsman has no obligatory power on it. The time limit for appeal before the court is 30 days. The consideration of the dispute must be concluded within 30 days from the date of registration in the court. The court may officially request from the administrative authorities data in writing on acts and documents which are in that organ and are necessary to be considered in the court process. In practice, the

main challenge is the absence of the reply by the public authorities/organs to the request for access to environmental information.

### **III. CHALLENGING DECISIONS, ACTS AND OMISSIONS BY PUBLIC AUTHORITIES AND PRIVATE PERSONS**

#### **3.1. Standing in environmental cases**

5. There is no fundamental difference between the conditions of legal standing for individuals and for NGOs. The public has the right to challenge the substantive and procedural legality of decisions in an administrative procedure. The right to challenge administrative decisions asking for judicial review at court is guaranteed by Albanian legislation. Everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law according to the Constitution. The public has standing in judicial proceedings against administrative decisions. The public has the right to challenge the substantive and procedural legality (both of them) to the court according to the conditions defined in the Code of Civil Procedure. According to the Code of Civil Procedures, besides of fulfilling the substantive competency (article 324 Code of Civil Procedure) as well as the territorial competency (article 327 Code of Civil Procedure), lawsuit can be brought to the court when the plaintiff argues that administrative act is illegal and has damaged his rights/interests, directly or indirectly, individually or collectively (article 325 Code of Civil Procedure). The public has the right to challenge in the court the acts/omissions which contravene provisions of the environmental law either when such acts/omissions are made by private persons or public authorities, according to the conditions defined in the Code of Civil Procedure. Legal standing has been defined in general rules in the Albanian legislation. There are not any regional/ local or other geographical variations in the regulation of legal standing. The public has the right to challenge the decisions/acts/omissions to the court only after administrative recourse has been used. The pre-trial procedure by a different body is not applicable. There is no *actio popularis* enshrined in national legislation. The Code of Civil Procedures stipulates the cases when a third party may intervene into judicial proceedings. There are two manners of intervention: a) main intervention - in this case, the third party intervenes by bringing the lawsuit against the both parties or against one of them; b) secondary intervention - in this case, a third party joins one or the other party in trial in order to assist it.
6. Albanian Procedural Penal Code (article 283) provides for enforcement to present a criminal report by public citizens; accordingly, any person that has received notice of a criminal offence prosecuted *ex-officio* must lodge a criminal report of it. In cases specified by law, lodging of criminal report is compulsory. The same is provided for public officials who during the course of their work or because of their functions or service receive notice of a criminal offence that is prosecuted *ex-officio*. Contrary to the civil proceedings that are open to the public (open door), in the criminal proceedings only the parties can participate in it (not the public). So, in cases where the public is not a party, the public cannot intervene in the criminal proceedings.

#### **3.2. Procedural and other remedies in environmental matters**

7. The reviewing authorities in the administrative procedure can take the following actions: a) confirming the validity of the act and rejecting the appeal; b) abolishing the act and endorsing

the appeal; c) modifying the administrative act. In principle, the administrative appeal has an automatic suspensive effect on the first instance decision of the administrative authority. The law stipulates the following cases when the execution of the administrative act cannot be suspended: a) the administrative act intends the collection of taxes, fees and other budgetary revenues; b) the administrative act regards police measures; c) the suspension of the execution of the act is forbidden by law; d) the immediate execution is in the interests of the public order, public health and other public interests. The supervisory (oversight, inspection) authority has the capacity to stop an activity temporarily or permanently of an individual or act of a public authority which contravenes the law relating to the environment. There is no mandatory provision establishing an obligation for a public authority to unconditionally suspend the decision that is subject to judicial review. The applicant is entitled to apply for suspension of the administrative decision by a court if the execution of the administrative decision that is being reviewed by the court would cause irreparable damage to the applicant and if the postponement of the execution of the administrative decision is not contrary to the public interest. If the administrative decision given by the Court is not voluntarily executed, then these decisions are enforced by the bailiff office. The suspension of an administrative decision regarding a project automatically leads to the suspension of the project development. The court can also order such suspension. The courts have the capacity (authority, technical capability, etc.) to stop an activity of an individual which contravenes the law relating to the environment both temporarily and permanently. The public is entitled to initiate actions claiming compensation for damage caused to the environment or to their property. Depending on the compensation claim, the individual or the state institution responsible for the administration of property which is damaged can benefit. In addition, the environmental framework law provides the principle "polluter pays", which means that the polluter is obliged to pay charges for environmental pollution if it causes or may cause, by its activities, environmental loading, namely if it produces, utilizes or markets raw material, a semi-finished or a final product containing dangerous materials for the environment.

### **3.3. Timeliness**

8. Albanian environmental legislation does not provide for special timelines for an administrative appeal. Therefore, general timelines are applied as foreseen by Albanian Administrative Procedures Code. This timeline is 30 days from the day when the petitioner has received notification about the act or the refusal to issue the act or from the day when the act was published, according to provisions of this Code. When one party in the administrative proceeding, not due to its own fault, has been obstructed in respecting a time limit determined by this Code or other legal provisions, that party has the right to request that the missed time limit be reinstated, except in cases when the law excludes this right. The request for the reinstatement of the time limit shall be submitted within 15 days from the day when the obstacles have been removed, but no longer than 1 year from the last day of the missed time limit, except in cases of force majeure. The request of the interested party for the reinstatement of the time limit shall be reasoned and must ensure confidence that the time limit has been missed not due to the fault of the party. The request for the reinstatement of the time limit is reviewed by the organ that carries out the administrative proceeding. An appeal against the decision that refuses the request for the reinstatement can be submitted to the Court. Albanian environmental legislation does not provide for special timelines for judicial review/filing a lawsuit at the court. The time period for lodging a lawsuit against an administrative act is 30 days from the day of announcement of the decision of the higher administrative body which have

considered the complaint in an administrative manner, except when the law provides for the direct appeal to the court. In the case of the termination of the time limit without filing the lawsuit by the plaintiff, the reinstatement in time can be asked before the court. In case of refusal by the court of this request, the right/ability to appeal is lost. The timeframes for consideration of the cases regarding decisions/acts/omissions in administrative proceedings is 30 days, but in practice is different (more). In judicial proceedings, this time period is 30 days at the first-level Courts, but more in practice. At the appeal court, it is the same situation as at the first-level court (30 days). There is no legal time period from the decision announcement from the judgment at the first-level to the appeal court. The same situation is for the Supreme Court. There is no legal time period from the decision announcement at the appeal court to the judgment at the Supreme Court. In practice, this period may last up to 2 years. The established time limits for consideration of cases relating to the environment in court and/or other bodies are not reasonable or sufficient.

### **3.4. Assessment of effectiveness**

9. The main practical challenges associated with challenging decisions are related to, but not limited to:
  - Lack of detailed guidelines, indicating all steps to be followed by the public in the case of administrative appeal;
  - Lack of adequate information of the public (individuals and NGOs) regarding the right to appeal the environmental decisions and limited popular knowledge of rights.
  - Lack of free legal aid provided by state (except in penal cases)
  - Lack of public interest lawyers.
  - Lack of environmental law training modules for students/young lawyers
10. From a legal point of view, the remedies in the cases of challenging decisions/acts in court and other bodies are adequate. But practically, the study has not revealed any information regarding any such a case before the court, to estimate how effective they are. Legally established duty to bail, imposing costs on the side that lost, danger to be sued for damages by a defendant, the lack of clear standards and consistent practices in granting injunctions - the discretion of judges, judges lacking the relevant knowledge of environmental law, the lack of judicial independence, inadequate execution of injunctions, are the major obstacles constraining the application of injunctions in matters relating to the environment. There is a lack of state will in application of injunctions, but with the creation of the private bailiff office in Albania, this situation hopes to be changed. The main challenges arising from the execution of court decisions in cases relating to the environment initiated by the public is non-execution. It is worth mentioning that there is a lack of state persistence regarding the court decision's execution.

## **IV. Costs: Information on court costs and other expenses associated with environmental cases**

### **4.1. Financial expenses associated with an administrative appeal (in relation to cases covered by art. 9, paras. 1, 2 and 3)**

11. Albanian legislation does not foresee any costs regarding administrative appeal in environmental matters. Legal representation in the administrative appeal procedure is not mandatory. The typical non-administrative and non-judicial costs (outside any procedure) of environmental cases in preparation for a better administrative appeal procedure are the need to pay for:

- an advocate
- scientific expertise (including laboratory analysis costs, as well as for the preparation of an expert's report)
- expenses for evidences collection (including transport costs/lodging, filming of damages caused to the environment, etc.)

#### **4.2. Court fees and other costs associated with the consideration of a case in a judicial proceeding**

12. Court fees, as determined by the Common Order of the Finance Minister and Justice Minister. These fees are calculated case by case with the aim to guarantee the lawsuit. The amount of expenses does not depend on whether the plaintiff is an individual, a group of individuals, an NGO or other entity; or the type of case (private interest, public interest); or the type of judicial proceedings. It depends on the so-called value of the case/claim. For suits with a value above 100 000 AL (around 700 €), the fee to be paid is 3% of the total value. Under this level a fixed fee of 10 € is applied. Lawsuits exempted from the above payments are: sustenance and return in former workplace, and not based on special personal situation, or NGO status, etc. The lawsuit costs are paid before the start of the case, but other costs (i.e. for expertise) may be paid during the process. All costs are to be paid before decision announcement. In its final decision, the court charges the party whose lawsuit has been dropped to pay court expenses. If the lawsuit has been partially accepted, expenses are paid in proportion to the accepted or refused part of the lawsuit. The defendant has the right to request payment of expenses incurred even when the cessation of the trial has been decided. Fees cannot be attributed to State bodies when they have not been parties in the court case.

#### **4.3. Costs of legal assistance associated with the judicial consideration of cases relating to the environment**

13. Only in the Supreme Court is it obligatory to have services of an attorney. Attorney's fees are determined by the free market rules. Only in criminal cases, and when an attorney is secured by the State to individuals without revenue, fees determined by the state are applied. There are no determined rules regarding when the attorney's fees are paid; it depends on the case. The attorney's fees do not depend on whether the applicant is a citizen or an NGO. Whether the attorney is still able to remunerate the full cost from the client depends on the pre-deal made between the client and the attorney.

#### **4.4. Costs of evidence, involvement of experts or witnesses**

14. The judicial expenses (costs) related to the carrying out of the various evidences or the participation of experts and witnesses during the consideration of the case relating to the environment are prepaid by the party who has requested the evidences, involvement of experts or witnesses. After the final decision has been made by the court, expenses are paid by the party whose lawsuit has been dropped (i.e. the losing party). There are no differences in determination of the amount of the costs referred to in the above paragraph depending on who is an applicant of the case: an individual or an NGO. There are not determined amounts of the costs of evidence or other experts. There are not any exemptions or deferrals (for certain subjects, certain categories of cases, etc.) regarding the costs referred to. Costs do not depend on the subject who initiated the evidence, involvement of experts, specialists or witnesses (the court, a public authority, an individual, an NGO).



#### **4.5. Bond and compensation for damage in the event of suspension of an activity as a security for claims in environmental matters**

15. The court allows the taking of measures to secure the lawsuit, when there are reasons to doubt that the execution of the decision for the rights of the plaintiff shall become impossible or difficult. There are no determined amounts and they are determined case by case. The law establishes a duty of an applicant (individual/NGO) in environmental cases to compensate the defendant for damage due to the application of injunctive relief when the lawsuit has been dropped by the court. Judicial discretion influences the resolution of these issues based on court estimation. There are not data on the legal practice regarding injunctive relief. The amounts of bonds/compensation for damage associated with the application of injunctive relief means a barrier to justice for individuals/NGOs seeking injunctive relief due to the very limited budget of individuals/NGOs.

#### **4.6. Other issues regarding financial expenses**

16. In Albania, the minimum wage is 156.3 Euro; the minimum pension is 85.4 Euro. There are no data on whether the 'loser pays principle' prevails and how it is applied by courts. It does not matter for the distribution of costs between the parties/for exemption from payment of costs that the plaintiff/applicant is an individual or an NGO. The amounts of judicial and other costs constitute a barrier for access to justice in environmental matters for individuals/NGOs due to the very limited budget of individuals/NGOs.

#### **V. Legal aid (Information on legal aid, which can be provided to the public in environmental matters)**

17. There is no legal aid in Albania. Lawyers and organizations operating in the environmental field do exist, but they don't provide any legal aid to the public on environmental matters. There is no such opportunity for individuals/NGOs to get free legal aid on environmental matters from NGOs, lawyers or law firms. Environmental NGOs do not get public funding that they can use for litigation.

#### **VI. Concluding remarks**

18. The main barriers in access to justice in environmental matters in Albania include:

- high court fees
- high fees for plaintiffs
- lack of financial means to cover expenses for lawyers and experts
- lack of free legal aid provided by state (except in penal cases)
- lack of awareness and knowledge of Aarhus rights among the judiciary
- lack of public interest lawyers
  - absence of sanction in legislation in the cases of not providing information
  - absence of clear law procedures (legal steps to be followed, and institutions to be addressed) in the case of administrative lawsuits
  - absence of qualified staff/employees in government institutions in the field of environment
  - absence of time durations for environmental permits (these are granted without time limitations)

- absence of public guidelines showing steps to be followed in case of presenting:
  - a. an administrative complaint;
  - b. a lawsuit.
  
- 19. There is a need to initiate discussion with the involvement of the Ministry of Environment, the Ministry of Justice, Prosecutor's Office, and judges highlighting their role in implementing the access to justice and reducing barriers. Practical solutions should be considered to build awareness on access to justice in accordance with the requirements of the Aarhus Convention, to reduce financial and other barriers (e.g. a requirement on no administrative court fees for environmental NGOs could be included in provisions of the Environmental Protection Law).

**VII. Practical situations**

- 20. The most important types of uses of natural resources in Albania are: oil and natural gas extraction, mining of chromium, iron, and other ores, like limestone, clay etc. used for production of cement and other building materials. The most frequented facility types listed in Annex I of the Aarhus Convention are: steel smelting (secondary), cement production, building material production like bricks etc., oil refining, clay and limestone quarries, etc.

## BOSNIA AND HERZEGOVINA

### I. ENVIRONMENTAL LEGISLATION, ADMINISTRATION AND COURTS

#### 1.1. Environmental legislation and administration

1. Bosnia and Herzegovina as a state has two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. In addition, the Brcko District enjoys considerable autonomy within the country. There are no laws at the state level. On the entity level there are main environmental laws in place.
2. At the State level, environmental matters continue to be the responsibility of the Sector on Natural Resources, Energy and Environment of the Ministry of Foreign Trade and Economic Relations (MoFTER). In terms of the inter-entity bodies, it should be emphasized that the only one that is currently operational is the Inter-Entity Steering Committee for the Environment (IESCE). The IESCE mandate was originally determined by the entities and consists of coordination and harmonization of environmental law and policy between the two entities. Each entity is represented by four members, who are elected for four-year terms. Based on consultations with government officials, it appears that IESCE has functioned reasonably well, and provides a good example of inter-entity cooperation, both in formal meetings and informal knowledge exchange. An important indicator of its success is the degree to which entity environmental laws have been harmonized.
3. Environmental management continues to be the primary responsibility of the two entities, in accordance with article III.3(a) of the constitution, which states that, "All governmental functions and powers not expressly assigned by the Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities".
4. Entity of Federation of Bosnia and Herzegovina (FBiH)  
In 2006, in accordance with the Law on Federal Ministries and other Administrative Bodies (FBiH OG 19/2003), the division of responsibilities was realigned and enhanced competence was allocated to the Ministry of Environment and Tourism (MET). MET performs administrative and expert tasks related to air, water and soil protection; monitoring and environmental standards; drafting environmental strategy and policy; tourism development; and other tasks as set out in the applicable legislation. MET publishes a "state of the environment" report, which provides a detailed assessment of the natural environment in FBiH and the effectiveness of the environmental protection measures that have been adopted. In 2006, the Advisory Board for the Environment was created, with the task of providing scientific and professional support to the Ministry and the FBiH Government. It has a consultative and advisory role, the aim of which is to establish better coordination between the federal and cantonal levels by reviewing and providing opinions on strategy and planning documents. Other FBiH ministries regulating energy, industry, mining, health, transport and culture, as well as public professional institutions working with the Government, address environmental issues as prescribed by law and required in their mandates. However, integration of environmental concerns into these other sectors has been limited. Cantons share the jurisdiction in environmental matters with the FBiH authorities and the cantonal ministries for environment exist in all ten cantons.
5. Entity of Republika Srpska (RS)

In RS, the Ministry of Physical Planning, Civil Engineering and Ecology (MoPPCEE) is responsible for environmental protection. The structure of the Ministry has remained largely unchanged since 2003. Their responsibilities range from dealing with environmental protection issues (land, air and water) to solid and hazardous waste management, legal affairs, and biodiversity issues. The Ministry of Agriculture, Forestry and Water Resources (MoAFWR) is responsible for water strategy and policy. It issues approvals and permits, sets standards and regulations, and oversees compliance with laws and regulations through licensing and inspections. The Law on Environmental Protection requires coordination between MoPPCEE and the 63 municipalities in RS. Other ministries regulating health, economy, energy development and water, as well as the units responsible for construction, water and waste management and environmental inspection at the level of the larger municipalities, address environmental issues indirectly, as required by their mandates.

6. Brcko District

In Brcko District, the authority Department for Urban Planning and Property Affairs is responsible for most issues related to the environment. The Department of Agriculture, Forestry and Water Management is in charge of issuing licenses for water use, water discharge and other water-related issues, and for maintaining flood protection infrastructure such as embankments, channels and pumping stations. Other Government departments are involved in environmental protection through their participation in the adoption of laws and by-laws, issuing environmental permits and resolving various issues related to the environment. These include the Departments of Public Works; Health and other services; Education; Economic Development, Sport and Culture. There is also an inspectorate in Brcko which employs one environmental inspector. The inspector is in charge of implementation of regulations and control in the field of environmental protection.

7. From this point on, findings of the study equally apply to both entities. If that is not the case, then this difference is clearly and explicitly marked and detailed.
8. The Office of the Prosecutor at all levels of government can institute criminal proceedings on the grounds of environmental legislation, as well as criminal codes which criminalize environmental damage as a criminal act. The fact is that the prosecutors in Bosnia and Herzegovina very rarely engage in prosecution of criminal acts in the field of environment and the reason for this is lack of education. The Institution of Ombudsman for Human Rights of Bosnia and Herzegovina (Ombudsman) has the authority to consider issues relating to environment. All citizens have the right to access it and it is, as the name suggests, a state level body. Public authorities and courts theoretically have the authority to apply the Aarhus Convention directly, but the study has not revealed such practical instances. Constitutionally speaking, international treaties are superior to domestic legislation and can be applied directly in Bosnia and Herzegovina.
9. In Bosnia and Herzegovina, the practice of mediation is regulated by the Law on Mediation (there is no entity law). Nevertheless, mediation has so far not been used in environmental matters. It is hard to say, whether or not the public can participate in the mediation procedure. Strictly speaking, the law does not provide for this. However, since the law mentions parties that are involved in a dispute, including environmental disputes where the public can be a party to the proceedings, it can be understood that there is a possibility that a mediator would allow them participation.

## **1.2. Decision-making in environmental matters and administrative review**

10. There is a possibility to challenge environmental administrative decisions to the authority that made the decision (organ of 1<sup>st</sup> instance) and to the superior authority (organ of 2<sup>nd</sup> instance). There is no impartial body specifically created with responsibility to review these decisions in Bosnia and Herzegovina. There are ways to challenge in an administrative review procedure the acts/omissions by private persons and public authorities "which contravene provisions of law relating to the environment" before the competent ministries of entities. All interested parties including the public, the environmental NGOs and individual citizens which have a legal interest can challenge the acts and omissions. The environmental administrative decisions are challenged by filing an appeal ("žalba") which is uniform regardless of the number of applicants. The difference is that the NGOs have a greater burden to prove their legal standing and interest. The non-judicial body entrusted with the review of administrative decisions does not fulfill the criteria of independence and impartiality, because it is a part of the same administrative organ (usually, a Ministry, but in the case of building roads, a public company which oversees this field particularly), which issued the decision of the 1<sup>st</sup> instance. However, there is a possibility of third party intervention into administrative procedures.
11. In practice, the authorities use daily newspapers to publish their decisions and they also post them on the message boards within or in front of their headquarters. However, the pattern concerning publishing the decisions in the newspaper is inconclusive. The law does not create an obligation to publish decisions in the newspaper. The members of the public do not have the right to choose whether to request judicial or administrative review because the public has to exhaust legal remedies in administrative proceedings BEFORE turning to the courts.

## **1.3. Courts**

12. The courts in FBiH are municipal (1st instance) and cantonal (2nd instance) and the Supreme Court of FBiH as final instance. In RS, basic courts (1st instance) and district courts (2nd instance) and the Supreme Court of RS. In Brcko District, the judicial system is comprised of a Basic Court (1st instance) and an Appellate Court (2nd instance). In cases of so-called administrative disputes, when a decision of an administrative body is challenged before the courts, cantonal court and district court acts are courts of first instance. In cases where the administrative organ is on the state level, the decision can be challenged before the Court of Bosnia and Herzegovina and its Appellate Chamber. There is no Supreme Court at the state level, but there are entity supreme courts and the Constitutional Court of Bosnia and Herzegovina where the appellants can claim a violation of their fundamental human rights as guaranteed by the European Convention on Human Rights.
13. The types of judicial proceedings do not vary depending on who initiates the proceedings. Therefore, all types of judicial proceedings can be initiated by these applicants. In the cases related to the environment these types of cases will be civil or administrative. Formally speaking, courts are required to look into the procedural legality of the case and to scrutinize the substantive legality, or even the merits of the case, meaning that the system is reformatory (so, for example courts would be obliged to look for the validity of EIA and its contents), but since the courts in these disputes have no obligation to schedule a public hearing, and to accept such instruments as witnesses in practice, it would be more appropriate to label it as cassatory i.e. quashing decisions without the ability to amend their content. The legislation does not require

the participation of lay persons in judicial benches and there are no lay persons in the court. It is not possible to involve technical experts (expertise) in judicial proceedings as members of the judicial bench concerning cases relating to the environment. On appeal, the courts do not have a responsibility to investigate the particulars of the case (*ex officio* principle), but it is this left for the parties to show. The President, the Government or another public authority of the executive cannot cancel/revoke court decisions or waive enforcement of court decisions in environmental matters.

14. Under the Law on Freedom of Access to Information of the state and both entities, courts are obliged to provide access to decision in all circumstances with only exceptions being interests of defense, security and foreign policy of the country, prevention of criminal activities and commercial interests of third parties. Courts do not publish these decisions on websites and do not do this proactively (that is, not in environmental matters, only in criminal matters), but there is an online system designed for the parties to access the court decisions (in their matters only) via the Internet. At this moment, this is still not active.
15. Judicial training institutions exist on the level of entities. In 2012, REC provided training on Access to Justice under the Aarhus Convention to judges and NGOs in Bosnia and Herzegovina. As of 2013, at the recommendation of the OSCE, training on Aarhus Convention has been integrated into the JPTCs training curriculum as a joint training. Generally, an observation is that neither the judges, nor the prosecutors have an adequate level of education concerning environmental matters.

## **II. CHALLENGING THE REFUSAL OF ACCESS TO ENVIRONMENTAL INFORMATION**

16. Laws on environmental protection of both entities have specific norms which regulate the access to information. This distinction is clear to public authorities applying the law, as they have received training concerning access to information under the general Law on freedom to Access to Information and regarding European best practices in implementation of environmental legislation. The prevailing situation is unclear. The environmental NGOs have reported a few cases in which organs of public authority have denied them access to information. They have initiated a few procedures demanding court or ombudsman intervention in these areas. But, taking into account the state of public administration in Bosnia and Herzegovina due to the fact that all the measures of public administration reform have not yet been implemented, the efficiency in issuing information can still be improved.
17. The individuals, their groups and NGOs have to carry out the pre-trial procedure by appealing to the administrative organ of 2nd instance in case of a refusal of access to environmental information. This is the only criteria which have to be satisfied before they go to the court, as the law does not offer any specific criteria on what the NGOs should be like.
18. A court procedure is the available remedy where disclosure of information can be initiated after the refusal of a freedom of information claim. Protection is also available from the Ombudsman, which has the authority to launch an investigation and to offer recommendations. In case the recommendations are rejected or not implemented by the organ, the Ombudsman has the right to initiate a misdemeanor procedure, in which it can demand that the court fines the organ and/or the person in the organ which has denied the access to information.

19. Refusals of requests for information must contain information on the legal remedy. In cases where the organ refuses to offer access to information, there are two types of protection: protection in a court procedure and protection by the Ombudsman. In cases in which the organ issues no response in 60 days, or issues a decision in which it refuses access to information, the applicant can, after fulfilling the pre-trial procedure described in 2.2., launch an administrative dispute before the Cantonal Court in FBiH, District court in RS or Brcko District or Court of Bosnia and Herzegovina. Which court will have jurisdiction will depend on the jurisdiction on the organ which refused to grant access to information. No mandatory counsel is needed in these disputes. The protection offered by Ombudsman is uniform in all entities of Bosnia and Herzegovina, as there is only one state level Ombudsman institution.
20. A time limit for challenging the refusal of access to environmental information in administrative procedure is 15 days. The day of delivery of the decision is the first day of the time limit within which the appeal can be submitted. If the time limit has exceeded, a request for return in the previous state ("zahtjev za povrat u pređašnje stanje" restitutio in integrum) can be claimed.
21. The court can have access to the requested information, but this will not necessarily be the case. It will depend on whether the court has accepted motion from the applicant to demand access to data before making a decision, and indeed, on the fact whether the applicant has made such a motion. Whether this will influence decision-making, there is very little information to tell.
22. In the cases in which the information is sought in administrative procedure via administrative bodies, the challenges will depend on the willingness of administrative bodies to cooperate. In the cases in which court procedure is needed for protection of right to access to information, the main practical challenge will be, if NGOs are seeking access, to prove that they have the legal standing and legal interest to make such a request. Here, a collision is observed between the laws on access to information and the Aarhus Convention. In every concrete case, this collision should be resolved in a way that gives primacy to the Convention. Also, the agility of the courts and their reaction in these cases will be a challenge, since the court procedure can take quite a while.

### **III. CHALLENGING DECISIONS, ACTS AND OMISSIONS BY PUBLIC AUTHORITIES AND PRIVATE PERSONS**

#### **3.1. Standing in environmental cases**

23. The public (individuals, groups of individuals, NGOs, other entities) have a right to challenge the substantive and/or procedural legality of environmental administrative decisions. The concept of legal standing is pretty much the same as in other countries of the continental legal system. Those who are unsatisfied by the decisions of administrative bodies and who have a legal interests for an overturn of a certain decision, regardless of whether or not they have participated in the administrative procedure, have legal standing and can ask for judicial review. The NGOs and other representatives of the public have a full right to challenge administrative decisions in court procedures. The public (individuals, their groups, NGOs, other entities) also has a right to challenge in court the acts/omissions "which contravene provisions of its national law relating to the environment". The only condition that the law mentions is the situation in which "somebody is acting contravening the law or principles of environmental protection." Different laws do not regulate the standing differently and do not make a difference between individuals

and NGOs. It is not possible to choose between the available remedies. The NGOs have to complete the pre-trial procedure which involves the preliminary review procedure by an administrative authority mentioned.

24. Any member of the public participates in an administrative judicial proceeding in the line with the *actio popularis* principle. There is no possibility for *amicus curiae* to intervene in the proceedings. The public has the right to initiate criminal prosecution and to be present at the hearings, but all other aspects of criminal prosecution are firmly in the hands of the state.

### **3.2. Procedural and other remedies in environmental matters**

25. The decisions that can be taken by the reviewing authorities are to allow the construction of the facility in question, not to allow the construction or suspend the construction until adequate documentation concerning EIA and other necessary documents is prepared and then reach a final decision. In either case, the decision will take the form of "Rjesenje". After the appeals made by the interested parties the decisions can be overturned. The appeal does not have an automatic suspensive effect on first instance decision. But, in the lawsuit filed to the court one can request an injunction which would suspend the decision until the court procedure is finished.

26. The inspections of both entities have the authority to stop an activity on a temporary or permanent basis. There is no mandatory provision establishing an obligation for a public authority to unconditionally suspend the decision that is subject to judicial review. The appellant is entitled to apply for a suspension of the decision by the court. The court enjoys a wide discretion in making a decision, as the criteria for their nullification is rather wide and is not defined in the laws on environmental protection of both entities, but in the Law on Administrative Disputes of Bosnia and Herzegovina and of both entities. These criteria are:

The decision lacks elements which allow the control of its legality;

The law, or bylaws based on the law were inadequately applied in the judgment;

The decision was made by an organ which had no authority to make such a decision;

The law on administrative procedure was breached in the administrative procedure preceding the decision which was made;

If the organ making a decision under rules of discretion has breached the authority entrusted to it or acted contravening the reason for which the discretion was given to it.

27. The court can order the suspension of the project development, since the suspension of an administrative decision does not automatically lead to suspension of project development. No such situations are known to be happening in practice, because of the very small number of environmental cases before the courts in Bosnia and Herzegovina. The courts have the capacity (authority, technical capability, etc.) to stop an activity of an individual which contravenes the law relating to the environment on both permanent and temporary basis. The public is not entitled to initiate actions claiming compensation for environmental damage.

### **3.3. Timeliness**

28. The procedural time limit for an administrative appeal is 15 days. The day of delivery of the decision is the first day of the time limit within which the appeal can be submitted. If the time limit has exceeded, a request for return in the previous state ("zahtjev za povrat u pređašnje



stanje" restitutio in integrum) must be filed. A time limit for challenging the decisions, acts and omissions is 30 days from the day of the delivery of the administrative act that is being challenged in court. The right begins with the delivery of the act that is being challenged in court. The legal consequences of the termination of the time limit is that the judicial review cannot be requested, unless a party can prove that the delay happened without its fault in which case the party submits a request for return in the earlier state (restitutio in integrum "zahtjev za povrat u pređašnje stanje").

29. In administrative proceedings in both entities, the general time limit for reaching a decision is 30 days, with the special time frame limit of 60 days in cases where the administrative body needs to take special investigative measures by which it would establish facts relevant for the decision to be reached.
30. Generally, when the court decides in administrative disputes, it does not have a fixed time limit by which it needs to reach a decision. In cases where requests for temporary injunction have been filed, the court will reach the decision on injunction in one to three days (the law does not provide a fixed time limit). However, in practice, decisions on injunctions are reached within one to five days, with the obligation of the court to deliver the decision on injunction to the opposing side which will submit an answer in the following three days and the court will schedule a hearing on preliminary injunction in the three days after the answer has been submitted. In all other cases it may take the court up to one year to take the case into consideration, depending on the efficiency of the court in question. Delays longer than one year are considered to be ordinary, whereas in cases of longer delays, the party has the right to appeal to the Constitutional Court of Bosnia and Herzegovina and claim that its right to a fair trial under the European Convention on Human Rights has been breached. In cases where the judicial procedures in the first instance (before the cantonal courts in FBiH and District Courts in RS) end in one year, the parties have a right to demand protection from the Supreme Court of the entities and the Constitutional Court. These two procedures can last up to two years, making the average total time of duration of a court procedure three years.
31. The established limits are not reasonable and sufficient, especially with regards to court procedures, and as such they are not observed.
32. The main practical challenge for the NGOs and other representatives of the public is to prove their legal standing, then, also the fact that the authority of second instance will rarely decide against the organ of first instance and if it does so, this will be for procedural, rather than substantive reasons. The remedies in the cases of challenging decisions/acts/omissions are adequate, but they should be more effective. The major obstacles concerning the application of injunctions are that judges lack the relevant knowledge of environmental law and lack consistent practices in granting injunctions. The greatest challenges in the execution of court decisions are unwillingness of the court to insist on the execution and to report those who are preventing the execution to the Office of the Prosecutor (OTP) for the criminal act of "non-execution of court judgment" ("neizvršenje odluke suda"). The second challenge is the unwillingness of the OTP to prosecute for this criminal act.

#### **IV. Costs: Information on court costs and other expenses associated with environmental cases**

33. Main financial expenses associated with an administrative appeal are determined by the Law on Court Fees of each Canton in FBiH and by the Law on Court Fees of RS. In RS, where the subject of the dispute is definable, the costs cannot be more than 500 KM or less than 100 KM, while in FBiH the fees cannot be less than 100 KM or higher than 250 KM. Legal representation in the administrative appeal procedure is not mandatory. It is hard to give a precise answer to the question of what are the typical non-administrative and non-judicial costs (outside any procedure) of environmental cases such as pre-trial copying, fact-finding, consultations, etc. It will depend on a case to case basis.

#### **4.2. Court fees and other costs associated with the consideration of a case in a judicial proceeding**

34. The amount of expenses depends on whether it is a civil or an administrative case and on the so-called value of the case/claim. In the administrative dispute, the value of the case/claim is not established, but a general fee for all administrative disputes is paid. The fee for the administrative dispute in FBiH is between 100 and 250 KM, in RS it is between 100 and 500 KM. In civil cases, the value of the case/claim is determined by the value of the damage in question or by value of the disputed object, or it is set by the plaintiff, and if no objection is raised by either the court or the defendant, it is defined as the value of the case/claim. The fee will depend on the value of the case/claim and is calculated in proportion to this value. In the RS, for the value of the case up to 1.500 KM it will be 50 KM, for the value up to 3.000 KM it will be 100 KM, for the value up to 10.000 KM it will be 200 KM, for the value up to 50.000 KM it will be 500 KM, for the value up to 100.000 KM it will be 1.000 KM and for the values over 100.000 KM it will be 1% of the value, but not higher than 10.000 KM. In FBiH, the court fees vary from one canton to the other, although the level of fees is similar. For example, in Canton Sarajevo, for the value of the case up to 500 KM, it will be 20 KM, for the value up to 1.000 KM, the fee is 30 KM,, for the value up to 1.500 KM, the fee is 50 KM, for the value of 3.000 KM, the fee is 100 KM, for the value up to 10.000 KM it will be 200 KM, for the value up to 50.000 KM it will be 500 KM, for the value up to 100.000 KM it will be 1.000 KM and for the values over 100.000 KM it will be 1% of the value, but not higher than 10.000 KM. The taxes in administrative disputes are described in section 4.1.1. above, whereas the fees in civil disputes can be as high as 10,000 KM depending on the value of the dispute.
35. Low-income citizens, students, and the disabled can be exempt from paying court fees, while NGOs cannot be exempt from these costs, as the law provides an exemption only for low-income citizens. A recent decision of the Constitutional Court of Bosnia and Herzegovina has determined that it is unconstitutional to demand that the court fees are paid before the decision is reached. In practice, this decision will be implemented soon. The court does not have the right to waive court fees, to distribute it between the parties or to attribute it to the State. Exceptionally, it can, at the request of both parties, determine that each party bears only the costs of the fees that it has incurred.

#### **4.3. Costs of legal assistance associated with the judicial consideration of cases relating to the environment**

36. When applying to court, it is not mandatory to use the services of an attorney or other legal expert. But it is, at this time, the most preferable option, due to the fact that there is a lack of legal training in environmental NGOs. Attorney's fees are determined by the Tariff of the Bar Associations of both entities. Attorney's fees can be paid before the case is considered as

advance costs, or upon results of consideration of the case. There are known cases in which there are attorneys willing to represent *pro bono* in environmental matters. The attorney's fee does not depend on whether the applicant is a citizen or an NGO. If the fees are calculated according to a scheme or decided by the court, the attorney is still able to remunerate the full cost from the client.

#### **4.4. Costs of evidence, involvement of experts or witnesses**

37. The general rule of sharing the costs is that the party that loses the case pays the costs. However, the costs are paid in advance to the experts and witnesses participating in the procedure by the party which proposes that they take part in the proceedings. There are no differences in determination of the amount of the costs depending on who is an applicant of the case: an individual or an NGO. The costs are determined at the hearing at which it is decided that the expert witnesses will participate in the trial. There are not any exemptions or deferrals (for certain subjects, certain categories of cases, etc.) regarding the costs referred to. The costs do not depend on the subject who initiated the evidence, involvement of experts, specialists or witnesses (the court, a public authority, an individual, an NGO).

#### **4.5. Bond and compensation for damage in the event of suspension of an activity as a security for claims in environmental matters**

38. In cases where an injunctive relief as a security for the claim has been initiated, the court may decide this duty for the applicant, but not necessarily, so it will depend on the decision of the court in each instance. The law is unclear, so it seems that the court enjoys a large discretion concerning the amount of the bond. The duty of an applicant (individual/NGO) in environmental cases to compensate for damage to the defendant due to the application of injunctive relief can only be established by a court decision if the NGO is sued by those claiming to have suffered damage as a result of their actions. Generally, bonds are rarely used as an instrument in court proceedings in all cases, therefore one cannot claim that the courts are biased in the sense as regards this question. There is no sufficient practice concerning injunctive relief in these cases, so it is not known how interested the defendants are in cases relating to the environment in claiming compensation for damage from the applicant due to the application of injunctive relief. However, taking into account the interests in other cases, one must observe that such an interest was rarely seen. The amounts of bonds/compensation for damage associated with the application of injunctive relief are not barriers to justice for individuals/NGOs seeking injunctive relief.

#### **4.6. Other issues regarding financial expenses**

39. The minimum wage is 350 KM (approximately 178 €) and the minimum pension is 160 KM (80 €) in the entity of Republika Srpska. In the entity of the Federation of Bosnia and Herzegovina, the minimum pension is 326 KM (approximately 170 €) and the minimum wage is 350 KM (178 €). The loser pays principle prevails and it is applied by the courts consistently. Parties can forfeit the court fees, except for the part which they owe to the state. For the distribution of costs between the parties/for exemption from payment of costs it doesn't matter whether or not the applicant is an NGO and it does not matter that the case is a public interest environmental dispute. The amounts of judicial and other costs do not constitute a barrier for access to justice in environmental matters for individuals/NGOs.

**V. Legal aid (Information on legal aid, which can be provided to the public in environmental matters)**

40. A system of legal aid to the public in environmental matters doesn't exist, but organizations willing to represent the individuals/groups or hire attorneys can be found (however, they are scarce). There are public interest lawyers/organizations operating in the environmental field and/or providing legal aid to the public on environmental matters operating in the country. Examples of such organizations include: Association Aarhus Center Sarajevo and Banja Luka, Center for Ecology and Energy Tuzla, Vaša Prava BiH, MDP Initiatives Doboje and EKOTIM Sarajevo. Individuals/NGOs can get free legal aid on environmental matters from NGOs, lawyers or law firms. The NGOs can apply for grants to all levels of government (municipal, cantonal, entity, or state) So far, there is no information on funds being specifically allocated for this purpose, yet there is nothing that precludes the NGOs for applying for such funds.

**VI. Concluding remarks**

41. One of the barriers is that the NGOs need to prove their legal standing in court cases and in administrative procedures as well. Also, a problem is that the authority of second instance will rarely decide against the organ of first instance and if it does so, this will be for procedural, rather than substantive reasons. The courts are also somewhat reluctant to review substantive rather than procedural aspects of the case. Bureaucratic mentality of civil servants views any improvements in its practice as 50% more work for the same pay.

**VII. Practical situations**

42. The most important types of natural resources are water, forests, coal and soil. Most frequently operated facility types as per Annex I of the Convention are: oil refineries, power plants, installations for the manufacture of iron and steel, installations for the manufacture of iron metals, installations for the burning of municipal waste, installations for the production of wood pulp and similar fiber materials, dams and other similar installations for keeping water.

43. A decision for the environmental and construction permitting of an industrial facility (listed under the AC)

In this case, the government body is to provide the public with access to information in 15 days. This deadline can be prolonged to 30 days in cases of immense complexities. The public then has 30 days from the date of acquiring access to information to present its commentaries, opinions and findings to the relevant organ. This deadline can be extended to 60 days in the case of immense complexities. When the organ reaches a decision, the representatives of the public have 15 days to file a complaint to the organ of second instance. If this complaint is rejected, the public has the right to file a lawsuit against the organ. The Law on protection of environment in its Article 35 obliges the Ministry to create a tariff for costs of information presented to the public. These costs cannot exceed the costs needed for duplication of files for which the access is required. To the best of our knowledge, ministries in both entities have so far failed to create such a tariff. If access to information is denied, representatives of the public can start a court procedure that has an urgent character, which effectively means that the court procedure will be ended in one year. The costs of filing a lawsuit vary from one entity to the other. In FBiH, the court fee is 100 KM and the request for extraordinary review of the court's decision is 200 KM. In

RS, the court fee is 200 KM and the additional fee is 1% of the value of the subject matter of the dispute which cannot exceed 500 KM.

44. A decision to undertake the construction of a highway (listed under the AC)

The investor has an obligation to create a Study on Environmental Impact and the public has the rights it has to any other Study on Environmental Impact. The Law on Environmental Protection gives the public the right to file its complaints and commentaries in the deadline of 30 days from the day of receiving the information. If the decision to undertake a construction of a highway is granted the public has the same legal remedies mentioned under 2.1. and will be faced with the same costs and procedures.

45. On-going polluting operation of an industrial facility with a permit

Except for the possibility to initiate proceedings by filing a complaint to the supervisory organs of the entity ministries, the public has no standing in these cases.

46. On-going polluting operation of an industrial facility without a permit

Except for the possibility to initiate proceedings by filing a complaint to the supervisory organs of the entity ministries, the public has no standing in these cases.

47. A clear cutting of a forest threatening a nature reserve/biodiversity area

In FBiH, the Law on Forests from 2002 has been suspended by the Constitutional Court and at this point there are no legal norms to govern this situation. In RS, the Law on Forests does not envisage for a public participation in these cases. In FBiH, the Law on the protection of nature mentions public participation in a few instances, most notably in Article 39, in which it obliges the relevant authorities to enable public participation in preservation of nature reserves. But, since the law stops there, we are of the opinion that the public cannot do much more except, as in 2.3 and 2.4, point the relevant authorities towards supervisory activities. In RS, the situation is the same.

48. A decision to undertake an infrastructure construction project within a nature reserve

Specific laws on the protection of nature reserves in FBiH are silent on the matter of public participation in infrastructure construction project. Therefore, in the expert's opinion, the relevant provisions of the general Law on Protection of the Environment should apply and the procedures should apply. In RS, the situation is the same.

# CROATIA

## Introduction

1. Croatia is a party to the Aarhus Convention. The Constitution of the Republic of Croatia (2010) contains several provisions that mention the protection of the environment. There exist a number of laws and by-laws that regulate issues related to the environment. The Aarhus Convention was introduced into the domestic legal system indirectly, by transposing the relevant EU legislation. The principal Act regulating the protection of the environment is the Environment Protection Act.
2. The Aarhus Convention first pillar right - right to information about the environment, together with the relevant right of access to courts is regulated by the Environment Protection Act and the Act on the Right to Access to Information.
3. First instance environmental administrative decisions are enacted by central or regional/government authorities or other public bodies, depending on the issue. Competent authorities are designated by specific Laws. The first instance procedure ends with a decision in the form of an Order.
4. Generally, there is possibility of appeal to higher instance administrative body, unless the appeal is excluded by law, or there is no higher body (the decision, for instance, was enacted by a Ministry). The administrative appeal procedure is at the general level governed by the General Administrative Procedure Act. However, the competent bodies as well as the appellate bodies in each specific situation are designated by the specific law that regulates the issue, as are the details of different procedures.
5. There is a right to judicial review of second instance administrative decisions, or first instance administrative decisions if the appeal was excluded. Such right is guaranteed by the Constitution.
6. There is an Ombudsman, who can consider complaints of the citizens relating to maladministration by public institutions leading to the violations of human rights and freedoms.
7. State Attorneys have the role to prosecute environmental crimes, as envisaged by the Criminal Act.
8. The administrative control over the implementation of environmental legislation and individual administrative decisions in the field of environmental law is carried out by the environmental inspectors.
9. Croatian judiciary system consists of the Constitutional Court, Regular Courts and Specialized Courts. On the top of judicial hierarchy of ordinary courts is the Supreme Court (Vrhovni sud). Its most important role is to provide for the uniform application of law. For this reason, this court is the highest Court for all other types of court, regular or specialised. The Regular courts consist of the Municipal Courts (Općinski sudovi) and County Courts (Županijski sudovi). They are the courts of general jurisdiction, and they will hear all the cases that are not expressly transferred to the jurisdiction of specialized courts.
10. Specialised courts are:
  - 7 Commerical Courts (Trgovački sudovi), with the High Commerical Court (Visoki trgovački sud), as the second instance
  - 4 Administrative Courts (Upravni sudovi), with the High Administrative Court (Visoki upravni sud), as the second instance;
  - 61 Misdemeanour Courts (Prekršajni sudovi), with the High Misdemeanour Court (Visoki prekršajni sud), as the second instance.
11. The administrative courts hear cases against public bodies, and have jurisdiction to perform judicial review of administrative acts, which makes them important courts for the field of

environmental protection. The right of judicial review against individual administrative decisions is guaranteed by the Croatian Constitution (Article 19/2).

## I. CHALLENGING THE REFUSAL OF ACCESS TO ENVIRONMENTAL INFORMATION

12. The right to access the information held by public authorities is guaranteed by the Croatian Constitution. The access to environmental information is regulated by a number of laws, e.g. the Environmental Protection Act, the Act on the Right of Access to Information and the General Administrative Procedure Act. The order of applying the law is clear. Environmental Protection Act, as *lex specialis*, has the precedence in application. The Act on the Right of Access to Information applies to questions of the right of access to environmental information which are not regulated by the Environmental Protection Act. The General Administrative Procedure Act applies to all procedural questions that are not governed by the above mentioned special acts. If a request for information has been ignored or wrongfully refused, the applicant may submit an appeal (žalba) to the Information Commissioner (as the competent second instance public authority). The Information Commissioner (Povjerenik za informiranje) was introduced in 2013 as an independent public authority for protection of the right of access to information. The applicant may file a lawsuit (tužba) against the second instance decision (rješenje) and thereby institute an administrative dispute (upravni spor) before the High Administrative Court of the Republic of Croatia (Visoki upravni sud Republike Hrvatske). The lawsuit can also be filed if the second instance body fails to render the decision within prescribed time limits. The Court has the authority to order information to be disclosed. All decisions of public authorities must be rendered in writing and include explanation and instruction about the legal remedy. The beneficiary of the right to information is any domestic or foreign physical or legal person. The applicant is not obliged to give the reasons for requesting access to the information. According to the Act on the Right to Access Information, public authority is obliged to enable the applicant to gain access to the information within no more than 15 days from the day the request is submitted. The time limits may be extended by up to 30 days insofar as: 1) the information must be sought outside the seat of the body of public authority; 2) a large number of different pieces of information are requested in one application; 3) it is necessary to ensure the completeness and accuracy of the information requested; 4) the public authority is obliged to apply “the proportionality and public interest test”, i.e., assess if the interest against disclosure outweighs the public interest in favor of disclosure.
13. Insofar as the beneficiary considers the information obtained to be inaccurate or incomplete, he/she may request that it be corrected or completed. If request for information has been ignored or wrongfully refused, the applicant may submit an appeal to the Information Commissioner. The appellant has to indicate in its appeal:
- the contested decision or the fact that the decision has not been rendered within the prescribed time limits,
  - the name of the administrative body which has rendered or should have rendered the decision, and
  - the reasons why the party is dissatisfied.
14. The beneficiaries of the right to information are exempted from the payment of administrative fees in proceedings before public authorities, which also applies to the appeal procedure. There is no mandatory counsel. The second instance decision on the appeal must be rendered and served without delay, and no more than 30 days from the day the appeal was submitted.

Exceptionally, when the Information Commissioner has to apply the “proportionality and public interest test”, i.e., assess if the interest against disclosure outweighs the public interest in favor of disclosure, the decision on the appeal must be rendered and served no more than 60 days from the day the appeal was submitted. Where confidentiality of information is provided for under the data protection law, the Information Commissioner shall require the opinion of the Office of the National Security Council. In such cases that involve classified information, the second instance decision must be rendered and served at the latest within 90 days after the appeal has been submitted.

15. The appeal has to be lodged within 15 days from the day on which the decision was served. In case of failure to provide information or render and deliver a decision refusing the request for information within the set period, there are no time limits for instituting the appeal proceedings. An appeal can only be premature if an applicant did not wait for a prescribed time limit, in which a public authority had to provide or refuse to provide information, to expire. The lawsuit must be submitted to the High Administrative Court within 30 days after the delivery of the decision of the Information Commissioner on the appeal. Where an administrative dispute is initiated by reason of a failure to take a decision within the fixed time limit, the lawsuit may be submitted to the court eight days after the expiration of the prescribed time limit (for rendering the decision on the appeal) at the earliest. A lawsuit can only be premature if an applicant did not wait for a prescribed time limit to expire.
16. The High Administrative Court must bring a judgment within 90 days. Public authority that issued the first instance decision also has the right to initiate administrative dispute against the decision of the Information Commissioner. The lawsuit has a suspensive effect if the second instance decision granted the access to information. The parties are exempted from the payment of court fees.
17. In the process of the administrative dispute, the public authorities are obliged to provide to the court the access to restricted information that is the subject of the proceedings. In the vast majority of cases, main reason for initiating an appeal is the absence of a timely response to the request for environmental information. However, during the appeal proceedings, the public authority usually provides the requested information. In such cases, the second instance authority terminates the proceedings.

## **II. CHALLENGING DECISIONS, ACTS AND OMISSIONS BY PUBLIC AUTHORITIES AND PRIVATE PERSONS**

### **3.1. Standing in environmental cases**

18. The right to a legal remedy is generally provided as follows. Against the decision which is issued by the Environmental Protection Ministry, an appeal shall not be permitted, but an administrative dispute may be initiated before the Administrative Court. Against the decision which is issued by the competent administrative body in the county (županija) or City of Zagreb (Grad Zagreb), an appeal can be lodged to the Environmental Protection Ministry.
19. An NGO has a sufficient legal interest in the procedures regulated by the Environmental Protection Act, which provide for the participation of the public concerned, if it fulfills the following requirements: 1. if it is registered in accordance with special regulations governing



associations and if environmental protection, including the protection of human health and protection or the rational use of natural resources, is set out as a goal in its statute; 2. if it has been registered for at least two years prior to the initiation of the public authority's procedure (in relation to which it is expressing its legal interest), and if it can prove that in that period it actively participated in activities related to environmental protection on the territory of the city or municipality where it has a registered seat in accordance with its Statute. Such an NGO shall have the right to file an appeal with the Ministry or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions if it participated in the procedure as the public concerned.

20. Individuals have the right to file an appeal if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as public concerned.
21. The access to judicial review of administrative decisions or failure to render a decision within the set period (so called "silence of administration") is regulated by the Administrative Disputes Act. The administrative courts are responsible for the adjudication of administrative disputes. They assess the legality of administrative decisions by which public authorities decide on rights, obligations and legal interests of the party in administrative matters and the legality of other acts by which a right, obligation or legal interest of the party was breached. The administrative courts are also responsible for the assessment of the legality of the conclusion, termination and enforcement of administrative contracts. Any individual or legal entity who deems that his or her rights or legal interest have been violated by (1) a decision, (2) an act of the public authority, (3) the failure to adopt a decision or to act within the time limit prescribed by law, or (4) the conclusion, termination or enforcement of an administrative contract shall have the right to institute an administrative dispute. Organizations, business units of commercial organizations, settlements etc. or groups of persons, although they do not have the character of a legal entity, may institute an administrative dispute if they have the capacity to be the holders of the rights and responsibilities which were the subject of the administrative proceedings.
22. According to the well-established case law of the Administrative Court of the Republic of Croatia, citizens who live or work in an area where adverse environmental effects are possible or likely to occur and whose interest in the preservation of environmental quality can be affected by the project, have the right to participate in the environmental impact assessment procedure, either individually or organized as registered associations, groups of persons or settlements (Cases: Us-1149/97, Us-89/01). They also have the right to initiate administrative dispute before the administrative court against the decision rendered in the environmental impact assessment procedure in order to protect their rights or direct personal interests based on law. Their *locus standi* stems from Article 3 of the Constitution which, inter alia, states that the conservation of nature and human environment are the highest values of the constitutional order of the Republic of Croatia and the basis for the interpretation of the Constitution, as well as from Article 69, which provides that everyone shall have the right to a healthy life and shall be bound, within their powers and activities, to pay special attention to the protection of human health, nature and the human environment (Case: Us-7555/2004-5).
23. Anyone who deems that his or her rights or legal interest have been violated has the right to challenge administrative decision, on the basis of the Administrative Disputes Act. Legal interest can be: appropriate distance of the planned construction from his/her building, noise protection,

possible negative impact to the stability of his/her building, fire safety, hygiene and health protection, environmental protection etc. However, the 2007 Environmental Protection Act restricted the right to challenge administrative decision only to those individuals who participated in the procedure as public concerned and who can prove impairment of their right due to the location and/or nature and impact of the project (both conditions have to be fulfilled). Therefore, the general rules of the Administrative Disputes Act are more favorable than the rules of the Environmental Protection Act. The criteria for NGOs are the same as described for administrative review.

24. If a party had the possibility to lodge an appeal before the second instance public authority, the lawsuit before the administrative court will not be admissible in case the party did not use the appeal before commencing the administrative dispute. Only interested parties may become involved in the dispute at any time. The court shall ask the interested party to participate in the dispute in the line of duty or upon the proposal of one of the parties. An interested party in a dispute is any person to whom the nullification, change or taking of a decision would mean a violation of his right or legal interest. An interested party is also a public authority that holds that a court decision may have an impact on the rights and legal interests that it protects under law.

### **3.2. Procedural and other remedies in environmental matters**

25. The administrative court can:
- dismiss the lawsuit,
  - reject the claim, or
  - accept the claim.
26. The court shall establish that there are no conditions for conducting a dispute and dismiss the lawsuit if it establishes the following:
- the lawsuit was submitted in an untimely manner;
  - a decision does not affect the right or legal interest of the complainant;
  - an appeal (žalba) was not filed against a decision (in cases where there was a possibility to file it);
  - court protection is ensured outside the administrative dispute;
  - a legally effective decision issued in an administrative dispute in the same matter already exists;
- or
- the lawsuit was filed against a procedural decision (zaključak), unless provided otherwise by law.
27. The court shall reject a claim if it establishes that it is unfounded. The court shall also reject the claim as unfounded if it establishes that there were shortcomings in the procedure which preceded the issuing of the decision, but which did not affect the resolution of the subject-matter, and if it establishes that the decision was based on law, but for reasons other than those stated in the decision. If the court establishes that an administrative decision is unlawful, the court shall accept the claim, nullify the decision and resolve the matter itself, except where it may not do that in view of the nature of the issue or where the public authority acted according to its discretion (slobodna ocjena (pouvoir discrétionnaire, freies Ermessen)). If the complainant submits a claim for compensation of damages, the court shall also make a decision concerning damages. The court shall reject the claim with respect to the compensation of damages if it establishes that the complainant caused or contributed to the appearance of such damages by his or her actions.

28. An administrative appeal postpones the legal effects of the decision until the party is served the decision on the appeal, unless provided otherwise by law. An administrative body may exceptionally decide, for the purpose of protecting public interest or if urgent measures are required or in order to avoid irreparable damage, that an appeal does not postpone the enforcement of the decision. A detailed explanation must be given in the decision on why the appeal does not postpone the enforcement. A supervisory (oversight, inspection) authority has the capacity (authority, technical capability, etc.) to stop an activity of an individual or act of a public authority which contravenes the law relating to the environment temporarily or permanently.
29. A lawsuit does not have a suspensive effect, unless stated otherwise by law. The court may decide that a lawsuit should have suspensive effect if the enforcement of a decision would result in damages on the part of the complainant which would be difficult to remedy and that such a delay is not contrary to public interest. If the law already prescribed that an administrative appeal in such cases does not delay the enforcement of a decision, the court cannot suspend the decision. In disputes concerning environmental impact assessments the courts have never allowed a suspensive effect (to my knowledge). It seems from the case law that it is difficult to prove that the enforcement of a decision would result in damages on the part of the complainant in such procedures. The courts have the capacity (authority, technical capability, etc.) to stop an activity of an individual which contravenes the law relating to the environment both temporarily and permanently.
30. Only an injured party has the right to initiate actions for damages under the general rules that apply to civil obligations (Civil Obligations Act).

### **3.3. Timeliness**

31. An administrative appeal has to be lodged within 15 days from the day on which the decision was served. In environmental impact assessment procedures, the decisions are published on the website of the public authority. The time limit for filing an appeal begins on the eighth day from the date of publication of the decision on the website of the public authority. If the appeal was submitted in an untimely manner, it shall be dismissed.
32. A lawsuit must be submitted to the court within 30 days after the delivery of the disputed individual decision. Where a decision was not delivered to the party in accordance to the prescribed service rules, a lawsuit may be submitted within 90 days after the moment the party learned or could have learned about the decision. If a decision includes instructions on the legal remedy which states erroneously that a lawsuit is not permissible, a complaint may be submitted within 90 days of the moment the party learned or could have learned about the possibility of submitting a lawsuit. In case of environmental permits which are published on the website of the Ministry, the time limit for filing a lawsuit begins on the eighth day from the date of publication of the permit on the website of the public authority.
33. If the lawsuit was submitted in an untimely manner, it shall be dismissed.
34. A decision on the administrative appeal has to be adopted by the second instance body and served to the party through the first instance body as soon as possible, and at the latest within two months from the date of submission of the appeal.

35. Court proceedings in cases relating to environmental protection are urgent. However, it is prescribed that urgency applies only to the proceedings initiated pursuant to the Environmental Protection Act. If a lawsuit is, for instance, filed pursuant to the Nature Protection Act, the urgency does not apply, even when the lawsuit was filed with the aim of environmental protection.
36. Since the law does not prescribe time limits within which the court should decide the case, the interpretation of the term “urgent” in proceedings initiated pursuant to the Environmental Protection Act is mostly left to the discretion of the court. Courts should have clear instructions regarding the meaning of the urgency. These would include setting deadlines for: issuing a preliminary injunction, scheduling hearings, as well for bringing the judgment.

#### **3.4. Assessment of effectiveness**

37. Recently there have been major reforms in Croatia in the field of environmental protection and judicial review, mostly due to the process of harmonization with the EU *acquis*, as a condition for membership in the EU. It is too early to give any impressions on the effectiveness of the new system, since there have not yet been any reported final judgments.

## KOSOVO

### (United Nations administered region, Security Council resolution 1244 (1999))

#### I. ENVIRONMENTAL LEGISLATION, ADMINISTRATION AND COURTS

##### 1.1. Environmental legislation and administration

1. The environmental law in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) arises from three principles sources: a) the Constitution (Kushtetuta), b) the laws enacted by the Assembly and c) the secondary legislation (usually adopted by Minister for environmental matters in the form of Administrative Instructions (“Udhëzim Administrativ”) or the Government in the form of Regulations (“Rregullore”). The Constitution was adopted in 2008. It defines the protection of environment as one of the basic constitutional values. The Constitution has failed to recognize the constitutional right on healthy environment but has provided in Article 52 [Responsibility for the Environment] that the protection of nature and biodiversity, environment and national inheritance are everyone’s responsibility. In addition, Article 52 of the Constitution gives everyone the right “to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live”, which utilizes the public participation principle of the Aarhus Constitution at the constitutional level. Public participation is further guaranteed where Article 45 para. 3 of the Constitution obliges state institutions to enable “every person to participate in public activities” by enabling everyone to democratically influence the decisions of public bodies.
2. The Constitution also gives rise to direct application of some key international human rights treaties, which by virtue of Article 22 of the Constitution, take prevalence over the domestic laws. There are a number of major environmental laws in force. Secondary legislation in the area of environmental law is typically issued upon explicit authorization by a statutory provision for the implementation of law provisions.
3. There are two types of authorities applying environmental legislation in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)). At the central level is the Ministry of Environment and Spatial Planning (“Ministria e Mjedisit dhe Planifikimit Hapësinor”). MESP is responsible to coordinate activities in the field of environmental protection in order to promote the coherent development of environmental protection policies. MESP is also competent to develop norms and standards and issue guidelines in the field of environmental protection with due regard to relevant international standards. The MESP is composed of 7 departments, two institutes and the Kosovar Agency for Environmental Protection (“Agjencia Kosovare për Mbrojtjen e Mjedisit”). The Ministry through the Environmental Protection Inspectorate (“Inspektorati Mjedisor”) is competent to oversee adherence to environmental standards. Inspective supervision ensures that provisions of environmental legislation are implemented and that activities of supervised entities are consistent with the applicable environmental legislation. At the municipal level, there are Municipal Assembly Committees for Urban Planning, Cadaster and Environmental Protection and the Directorate for Urban Planning, Constitution and Environmental Protection acting under the supervision of the Municipality Mayor. Inspection for environmental compliance is also conducted at the municipal level. Inspective supervision for Municipality Environmental License is made by the municipality environmental inspector.

4. The Prosecutor (“Prokurori”) is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts specified by law. It should be noted that the Criminal Code (“Kodi Penal”) (Law No. 04/L-082) contains a chapter on criminal offences against the environment, animals, plants and cultural objects.
5. The Ombudsperson (“Avokati i Popullit”) monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities. On a number of cases, the Ombudsperson was involved in the protection of the claims, rights and interests of citizens with regard to environment, in particular with regard to the protection of the right to access information or on matters involving participation in the decision-making procedures.
6. The application of the Aarhus Convention by the public authorities is still in an early stage of development. Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) has not yet ratified the Aarhus Convention, and this could be a reason why the Convention is not applied directly. Ordinary courts are not applying the Aarhus Convention in the course of judicial proceedings. Only the Constitutional Court has made one reference to the Aarhus Convention in a case, *Hoxha et.al v. Municipal Assembly of Prizren*, a case that dealt with the denial of the Municipality to consult the citizens in the revision of the Municipal Urban Plan.
7. Law on Mediation aims to resolve the disputes in an effective way through mediation. The mediation law is applicable in contested relationships, in legal-assets matters, of natural and legal persons, commercial, family, labor, other civil, administrative and criminal relationships, on which the parties can freely act with their good will, if otherwise not foreseen, the exclusive responsibility of a court or other competent body with a separate law. Environmental disputes could be administrative or civil law disputes, falling thus under the authority of this Law and being subject to mediation.

### **1.2. Decision-making in environmental matters and administrative review**

8. The environmental sectoral laws do not specifically provide the right of the public (individuals, groups of individuals, NGOs, other entities) to challenge the substantive and/or procedural legality of environmental administrative decisions. The Law on Environmental Protection contains only the right to file a claim to the competent court or public authority requiring the appropriate enforcement of a law or a subsidiary normative act. Conditions for this are that any physical and legal entity as well as the public have to suffer material damage or must be under a serious threat of suffering material damage attributable to a particular activity or source of pollutions that is in violation of the law or a subsidiary normative act issued pursuant to the present law. However, the Law fails to provide an article for the purpose of protecting the right to a healthy life and healthy environment. Therefore a person (citizen or other natural or legal person, their groups, associations and organizations) who proves the legitimacy of his legal interest and a person who, due to the location of the project and/or due to the nature and/or impact of the project, can prove in accordance with the law that his rights have been permanently violated, shall have the right to contest the procedural and substantive legality of decisions, acts or oversights of public authorities before the competent body and/or competent court.

9. The Law on Administrative Procedure provides that “any interested party is entitled to complain against administrative acts or against refusals to issue administrative acts”. In practice, the parties are not advised to challenge decisions in the administrative review procedure regarding the lawfulness or correctness of the contested act. They are advised to challenge the decision before the competent courts in the administrative dispute proceedings, which is contrary to what the Law on Environmental Impact Assessment provides. The Law on Environmental Impact Assessment provides in its article 22 that only the applicant is entitled to file an appeal within thirty (30) days of the date of acceptance of the Decision for Environmental Consent but not the public concerned. The appeal is filed at the Ministry. The Law is not clear whether the appeal is an administrative appeal. Moreover, the Law does not clearly provide whether the administrative appeal can be submitted against all decisions taken on the EIA procedure at the Ministry of Environmental and Spatial Planning. The current practice is that the parties are advised to file a lawsuit before the competent court within thirty (30) days of the date of acceptance of the Decision for Environmental Consent but not the public concerned.
10. The public (individuals, groups of individuals, NGOs, other entities) has a right to challenge in an administrative procedure the acts/omissions by private persons and public authorities "which contravene provisions of law relating to the environment" (art. 9 para. 3 of the Aarhus Convention). Citizens are permitted to fulfill this role in the manner that they can file an administrative complaint with the administrative body/agency e.g. environmental inspectorate requesting the competent administrative authority to perform their specific statutory assignments in order to address the acts/omissions by private persons that contravene provisions of the environmental law.
11. On the question before regarding in which non-judicial authority the administrative complaint is filed, it should be noted that this depends on the nature of the administrative authority. Unless differently provided by law, this non-judicial authority is called a Committee for Appeals, which acts within the administrative authority that has issued the administrative decision, e.g., Independent Commission for Mines and Minerals.
12. Pursuant to the Law on Administrative Procedure, “any interested party is entitled to complain against administrative acts or against refusals to issue administrative acts”. The Law provides that the administrative organ to which the complaint is directed is entitled to review the lawfulness and correctness of the contested act. In addition, the individual or NGOs can require from the administrative authority in the administrative procedure to stop, for example, the polluting activities prior to using the avenues for judicial relief. The Law on Administrative Procedure does not provide the form of injunction to stop the environmental harm and negative side effects. In general, the individual needs to prove in the administrative complaint that certain statutory or regulatory controls or limitations are in force and that the state authority or private operator under the supervision of the administrative authority has failed to adhere to them. In actions brought to enforce statutes that require regulated entities to report regularly to the MESP on their regulated activities, water or air quality controls, proof might consist simply of the operators’ own reports. These reports may reveal violations of applicable emission limits or permit conditions.
13. The Law on Administrative Procedure (“Ligji për Procedurën Administrative”) provides two situations under which an administrative decision can be challenged. When the administrative complaint is referred in the form of a request for reconsideration, the administrative complaint

is submitted to the administrative body that has issued the contested administrative act or has failed to issue the administrative act. When the administrative complaint has been made in the form of an appeal, the administrative complaint is submitted and reviewed by a higher administrative body. This procedure allows the authority to review the decision and offers a good opportunity to look at the main procedural requirements. The independence and impartiality of the administrative procedure could be questioned if the authority that reviews the challenged administrative act/decision is not independent from the administrative authority that has rendered the decision. There is a possibility for third party intervention into administrative procedures, as elaborated above.

14. The public is mainly informed through electronic and print media for the decisions and the decision of a non-judicial body as a result of the appeal. However, these decisions of the administrative bodies are rarely made available online, which makes it difficult for the public to know what decision has been taken. The Ministry for Environment and Spatial Planning has recently established the practice of publishing the environmental consents and environmental permits online, which enables access of the public on the decision-making procedure.
15. The members of the public are not entitled to choose whether to request judicial or administrative review of the environmental administrative decisions.

### **1.3. Courts**

16. The judicial power in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) is exercised by the following courts: the Basic Courts (“Gjykata Themelore”), the Court of Appeals (“Gjykata e Apelit”), and the Supreme Court (“Gjykata Supreme”). The Basic Court is the court of first instance comprised of seven geographic areas as established by the Law on Courts. The Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by a Law. Environmental contests are therefore under the jurisdiction of the Basic Courts depending on the type of the environmental disputes, which could be of administrative or civil nature. Environmental disputes are complex and can involve private individuals, the general public, multiple regulatory jurisdictions and special interests. In case of a judicial review of an environmentally-related administrative act, the competency belongs to the Administrative Department of the Prishtina Basic Court. The Administrative Matters Department of the Basic Court adjudicates and decides on administrative conflicts according to complaints against final administrative acts and other issues defined by law. The Court of Appeals is competent to review all appeals from decisions of the Basic Courts, and for the conflict of jurisdiction between basic courts. The Supreme Court is competent to adjudicate on extraordinary legal measures, such as the request for extraordinary legal measure against final decisions of the courts, or revision against second instance decisions of the courts on contested issues. The Supreme Court is also competent to issue principled attitudes for issues that have importance for unique application of Laws by the courts. The Supreme Court is also competent to decide the cases related to the Kosovo Property Agency as defined by Law.
17. The Constitutional Court (“Gjykata Kushtetuese”) is not considered to be part of the ordinary judicial system. The Constitutional Court is not entitled to initiate proceedings on its own initiative (*ex officio* proceedings). Constitutional litigation can thus be initiated only by the subjects that have standing before the Constitutional Court. The Court is competent to adjudicate on the questions of the compatibility with the Constitution of laws, of Presidential



decrees, regulations of the Government and the municipal statutes. These are typically proceedings for an abstract norm control, which is the prerogative of the President, the Assembly, the Government or the Peoples' of Advocates. The Court is also competent to decide on the compatibility of a proposed constitutional amendment with binding international agreements ratified under the Constitution and the review of the constitutionality of the procedure followed. One of the Courts' main responsibilities is the authority to hear petitions submitted in the form of individual constitutional complains for violations of the constitutional rights and freedoms.

18. There may be three types of judicial proceedings that can be initiated when an appeal/case relating to the environment is filed, including:

The administrative judicial proceedings before the Prishtina Basic Court;

The civil judicial proceedings before the Basic Court (Environmental Tort Proceedings);

The Constitutional Court proceedings on the basis of the individual constitutional complaint for rights on access to environmental information or alleged infringement of the right to public participation.

19. The courts can look into the procedural legality of the case but can also scrutinize the substantive legality or merits of the case. The Constitution refers to the lay judges when it refers to the immunity of judges ("gjyqtarë"). However, in the actual practice, lay judges are not part of the judicial proceedings of any kind, including those related to environment. All judicial cases are decided by professional judges. It is not possible to involve technical experts (expertise) in judicial proceedings as members of the judicial bench concerning cases relating to the environment. The courts do not have a responsibility to investigate the particulars of the case (*ex officio* principle); this is left for the parties to show.

20. The President, the Government or another public authority of the executive cannot cancel/revoke court decisions or waive enforcement of court decisions in environmental matters. Decisions of the courts are final, subject to appeal as guaranteed by the Constitution. Court decisions are binding upon all natural and legal persons.

21. The public is entitled to access court decisions, according to the law. In practice, the public has limited access to court decisions, since they are not made available online. Interested individuals should specifically ask the respective court to obtain a copy of the court judgment. The Law on Access to Official Documents guarantees the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions, including courts. Access to court decisions can be made only under the condition that the access does not influence: national security, defense and international relations; public security; prevention, detection and investigation of criminal activities; disciplinary investigations; inspection, control and supervision by public institutions; privacy and other private legitimate interests; commercial and other economic interests; state Economic, monetary and exchange policies; equality of parties in court procedure and efficient administration of justice; environment; and the deliberations within or between the public institutions concerning the examination of a matter.

22. Judges are not sufficiently familiar and experienced with legislation relating to the environment. There are no advisory opinions of the Supreme Court on environmental matters. At the bachelor level, environmental law studies has not been and is still not part of the university curriculum.

The master level studies (department for international law) at the University of Prishtina provide for an elective course on environmental law. The Kosovo Judicial Institute (“Instituti Gjyqësor i Kosovës”) has offered training sessions for the judges on the application of the Aarhus Convention in the judicial process, raising thus the awareness of the judges and prosecutors on the importance of applying this Convention on concerned judicial cases.

## **II. CHALLENGING THE REFUSAL OF ACCESS TO ENVIRONMENTAL INFORMATION**

23. The legislative framework on access to information is complex and spread to a number of laws. The basic Law No 03/L –215 on access to official documents guarantees the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions. The Law applies to all central and local level institutions, including courts. Access to information is also provided by the Law on Environmental Protection (“Ligji për Mbrojtjen e Mjedisit”). According to the Law, environmental information is any information in written, visual, oral, electronic or any other material on the state of the elements of environment, measures, reports, cost-benefit analyses and the state of human health. The Law further provides (principles of the Law) that all natural and legal persons have rights to be informed on the environmental state and participation in the decision making process. Article 54 of the Law on Environmental Protection provides that “Ministry, Central Institutions, municipalities, authorized organizations and others shall be obliged to regularly, timely and objectively inform the public on the environmental status, namely phenomena monitored in keeping with the monitoring of environmental quality and emission and warning measures or development of the pollution which may pose threat to human life and health, in compliance with law. The public is entitled to access of statutory registers or records containing the information and data in compliance with law”.
24. The individuals, their groups and NGOs do not have the right to challenge the refusal of access to environmental information directly to the court. The individuals, their groups and NGOs are entitled to initially challenge the refusal of access to environmental information through administrative appeal. Only after the administrative complaint procedure are the individuals, their groups and NGOs entitled to go to the court and seek the review of the administrative act, pursuant to the Law on Administrative Disputes. The plaintiff is required to prove that the refusal of access to environmental information has violated his/her rights or legal interests contemplated by the relevant legislation.
25. The Law on Access to Information (“Ligji për Qasje në Informata”) fails to provide rules regarding the remedies available in case a request for environmental information is refused. The Law only provides that the public authority refusing total or partial access to a document shall state the reasons for refusal. The applicant shall be entitled, following the submission of an application, to receive a justified decision in writing for this refusal by the public institution concerned. However, the Law provides that in the procedure of the realization of the rights for access to information, respectively to public documents, appropriately, the provisions of the Law on Administrative Procedure are applied. Therefore, if the request for environmental information is refused or wrongfully/inadequately answered, the Party has the right to file an administrative appeal. According to the Law on Administrative Procedure, “any interested party has a right to appeal against an administrative act or against unlawful refusal to issue an administrative act”. The administrative appeal is lodged in the course of 30 days since the day the complainant has

received the notice on the act or refusal to issue an act. In case of failure to undertake any action by the administration (non-issue of act or complete silence), the administrative appeal is filed in the course of 60 days since the day of submission of request for commencement of administrative proceeding. Only after the exhaustion of the administrative complaint procedures can the Party seek judicial review of the administrative act before the Prishtina Basic Court.

26. According to the Law on Administrative Procedure, the public administration body, when it refuses the access on information, takes the decision in writing containing the reasons of issuing and instructions for appeal. The Law on Access to Documents provides that when the public institution fails to reply, in other words, in the case of refusal of the application of the applicant as well as the failure by the public authority to reply within the prescribed period of time, the applicant is entitled to initiate the procedure before the Ombudsperson Institution. Under the Law on Access to Official Documents, the Ombudsperson is competent to assist citizens to have access to the necessary documents being refused them. The Ombudsperson's duty is to ensure unobstructed exercise of the right of access to public documents, notably to take the necessary measures to promote and support the fundamental rights of access to documents, and to submit regular reports to the Assembly on the implementation of the right of access to official documents by public institutions.
27. The Law on Administrative Procedure provided the 30 day time-period for submitting an administrative appeal. In the case of administrative silence, the administrative appeal can be made within 60 days. The time limit for the right of appeal begins at the date the administrative act is served to the party. The complaint can be submitted at the court within 30 days from the announcement of the administrative act. The procedure is not expeditious. Judges can have access to the information which is disputed.
28. One of the challenges regarding the refusal of access to environmental information is attributable to the lack of legal awareness to seek administrative or judicial review of the denial of access to environmental information. Other challenges include the lack of legal skills to formulate administrative complaints, including lack of financial possibilities to engage a private advocate to formulate the appeal on their behalf and inadequate and insufficient free legal aid centers to help those willing to challenge decisions of the administrative bodies denying access to environmental information.

### **III. CHALLENGING DECISIONS, ACTS AND OMISSIONS BY PUBLIC AUTHORITIES AND PRIVATE PERSONS**

#### **3.1. Standing in environmental cases**

29. The environmental sectoral laws do not specifically provide the right of the public (individuals, groups of individuals, NGOs, other entities) to challenge the substantive and/or procedural legality of the environmental administrative decisions. However, the Law on Administrative Procedure provides that "any interested party is entitled to complain against administrative acts or against refusals to issue administrative acts". In this respect, the Law provides that the administrative organ to which the complaint is directed is entitled to review the lawfulness and correctness of the contested act. Pursuant to the Law on Administrative Procedure, any natural or legal person who has been adversely affected by an individual or collective administrative decision may file a request for the administrative review of the decision before the body that

issued it or an administrative appeal before the higher administrative body. The administrative body reviewing the request for review or the administrative appeal may either confirm, abolish or modify the administrative act ("akt administrativ"), or instruct the administrative body to issue an act (if the administrative appeal was submitted on the grounds that the administrative authority refused to issue the act). The administrative appeal is made within 30 days from the day when the complainant has received notification for the act or refusal to issue the act. The administrative appeal can also be made in cases when the administrative body has not responded within 60 days following the submission of a request for initiation of administrative procedure, e.g., request for access to environmental information (administrative silence).

30. If the aggrieved party is dissatisfied with the final decision of the administrative authority, a judicial appeal may be filed with the Prishtina Basic Court under the Law on Administrative Disputes and the Law on Courts. The procedure may be initiated within 30 days from the day when the administrative decision was served to the party. The public (individuals, their groups, NGOs, other entities) have standing in judicial proceedings against administrative decisions. The public (individuals, their groups, NGOs, other entities) can challenge the substantive and/or procedural legality of the administrative decisions. The administrative decision may be challenged before the Basic Court in Prishtina on the following grounds:
  - a. violation of the law;
  - b. lack of jurisdiction of the administrative authority who issued it; or
  - c. the factual situation was wrongfully established or when the administrative authority has issued the act that was previously annulled by final court judgment.
31. The Law on Environmental Protection contemplates the principle of protection of rights under which every individual citizen or public may file a suit with the court demanding the termination of an activity if that activity poses or will pose an immediate threat to the environment, a critical environmental strain or damage, a direct danger to the life and health of people, or that the commencement of such an activity be prohibited if the likelihood of the above-mentioned effects can be demonstrated with great certainty. The public (individuals, their groups, NGOs, other entities) is therefore entitled to challenge in court the acts/omissions by private persons or public authorities which contravene provisions of national law relating to the environment. There are no regional or local or any other type of geographical variations in the regulation and practice of legal standing. It should be noted that there are no specific or sectorial laws that define standing differently from the general rules.
32. The public (individuals, their groups, NGOs, other entities) have the right to challenge decisions, acts, and omissions directly to the court after the administrative complaint procedures have been exhausted. No preliminary review of the lawsuit ("padi") is necessary prior to its submission to the competent court. Based on the Law on Administrative Procedure, any natural or legal person has the right to start an administrative conflict before the competent court if he/she considers that by the final administrative act in administrative procedure his/her rights or legal interests have been violated. However, our system does not provide for *actio popularis*, i.e., the possibility for other parties to participate in the judicial procedure. There is no possibility for third party intervention into judicial proceedings (e.g., *amicus curiae*) according to Law on Administrative Conflicts ("Ligji për Konfliktet Administrative").
33. According the Criminal Procedure Code, if the police or another government agency reports to the state prosecutor a reasonable suspicion of a criminal offence, the state prosecutor may

initiate the investigatory stage of a criminal proceeding. If the police or any other person reports to the state prosecutor a reasonable suspicion of a criminal offence or criminal offences, none of which are punishable by fine and/or imprisonment of more than three years, and the state prosecutor determines that a well-grounded suspicion exists to support an indictment, the state prosecutor may file an indictment.

### **3.2. Procedural and other remedies in environmental matters**

34. The reviewing authorities acting upon the submitted administrative complaint can take the following actions: a) to confirm the validity of the act and reject the appeal; b) to abolish/revoke the act and endorse the appeal; c) to modify the administrative act by partially endorsing the appeal; d) to instruct the competent body to issue an administrative act when its issuance has been unlawfully rejected. There are conditions in which administrative decisions (“Vendime Administrative”) can be immediately executed, irrespective of an appeal or a court action. In the cases of eliminating the direct threat for environment, life and health of individuals, the administrative appeal lodged against the decision of the inspection authorities will not postpone the execution of the administrative decision. However, in principle the administrative appeal has an automatic suspensive effect on the first instance decision of the administrative authority unless the issue is about tax collection, police measures or if the administrative act is on the interest of the public health, public order or other public interests. The supervisory (oversight, inspection) authority has the capacity (authority, technical capability, etc.) to temporarily stop an activity of an individual or act of a public authority which contravenes the law relating to the environment, but it has no authority to stop an activity permanently.
35. There is no mandatory provision establishing an obligation for a public authority to unconditionally suspend the decision that is subject to judicial review. However, the applicant is entitled to apply for suspension of the administrative decision by a court if the execution of the administrative decision that is being reviewed by the court would cause irreparable damage to the applicant and if the postponement of the execution of the administrative decision is not contrary to the public interest. The suspension of the administrative decision is enforced by the court on the basis of the execution procedure. The court is competent to decide on the suspension of an administrative act within 3 days from the receipt of the request for such suspension, according to the Law on Administrative Conflicts. In principle, the decisions of the court ordering the suspension of the administrative decision go into effect immediately.
36. The Law on Environmental Protection gives the inspectorate (Article 85) the authority to stop or temporarily halt the activities and operations that are contrary to the provisions of the Law on Environment. The competent court can either uphold the measure or can decide differently in the course of its proceedings. The Law on Obligations in its sections related to the compensation of damage provides that the Court can order measures against someone causing damage, upon the request of the party involved in the judicial procedure. The Law on Administrative Dispute does not provide for the capacity of the courts to stop an activity of an individual which contravenes the law relating to the environment.
37. Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) has no Law on compensation for environmental damage. The Law on Environmental Protection provides two important principles on the basis of which claims for compensation of environmental harm can be made. The “polluter pays” principle means that the polluter is

obliged to pay the charges for environmental pollution if it causes or may cause, by its activities, environmental loading. Namely if it produces, utilizes or markets raw material, semi-finished or final products containing dangerous materials for the environment. The second principle is that of the protection of rights at court. Under this principle, any physical and legal entity, as well as the public, shall have the right to file a claim or request the competent court or public authority requiring the appropriate enforcement of the law or a subsidiary normative act. Its conditions are that the applicants are suffering material damage or are under a serious threat of suffering material damage attributable to a particular activity or source of pollutions that is in violation of the law or a subsidiary normative act issued pursuant to the present law.

38. The individuals, their groups or NGOs can initiate the tort proceedings i.e. judicial procedure on the basis of Law on Obligations and claim for environmental damage. Law on Obligations (“Ligji për Detyrimet”) provides that “any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former. Persons shall be liable for material damage and activities that result in major risk of damage to the environment, irrespective of culpability.” The parties initiating this procedure must, of course, show a probable causal link between the activities and the loss referred as a result of the environmental damage, caused by activities carried out in a certain area and resulting from pollution of the water, air or soil; noise, vibration, radiation, light, heat or smell; or other similar nuisance. In this type of environmental judicial claim, the provisions of the Law on Obligations and the Law on Contested Civil Procedure will apply, unless provided differently with the special law.

### **3.3. Timeliness**

39. The administrative appeal (“ankesa administrative”) is made within 30 days from the day when the complainant has received notification for the act or refusal to issue the act. The administrative appeal can also be made in cases when the administrative body (“organi administrativ”) has not responded within 60 days following the submission of a request for imitation of administrative procedure, e.g., requests for access to environmental information (administrative silence), the administrative appeal. The time limit for the right to appeal begins when the complainant has received notification about the act or refusal to issue the act, or if the act has been issued and made public in compliance with provisions of the law. In the case of administrative procedure for contesting the acts/omissions by private persons and public authorities “which contravene provisions of law relating to the environment”, the deadline runs or starts to run on the day the individual or NGOs learns of the violation of environmental laws (the principle of continued violation). The “continuing violation” doctrine overrides the statute of limitations. This is an exception to the statute of limitations, which sets the maximum period of time during which one can wait before filing a lawsuit.
40. The time limit for challenging the decisions, acts, omissions in court is within 30 days from the day when the administrative decision at the second instance administrative authority was served to the party. The right to ask for judicial review or file a lawsuit at the court begins from the day when the administrative decision at the second instance administrative authority was served to the party. The legal consequences of the termination of the time limit is that the complainant is entitled to file a lawsuit at the court only when the competent administrative authority has decided/ruled on the appeal.

41. The Law on Administrative Procedure provides the timeframe for the consideration of administrative cases, i.e., the timeframe for completion of administrative procedures. In this regard, the Law provides that the administrative procedure is completed within 3 months following the submission of the administrative request or application, with the exception of those cases when the special Law provides differently or when the postponement of the administrative procedure is a result of extraordinary circumstances. However, in the case of extraordinary circumstances, the administrative procedure is concluded within 3 months after the end/termination of the extraordinary circumstances. In the case of administrative appeals, the Law on Administrative Conflicts provides that the administrative organ review the administrative appeal and takes a decision on that matter within 30 days from the date of the submission of appeal. If the competent organ has not issued a decision on the appeal within the given timeframe, the parties that have standing will have the right to seek a judicial review of the administrative decision.
42. It should be noted that there are no timeframes provided for the resolution/consideration of administrative appeal at the judicial proceedings. The special laws in the area of environment do not provide any deadline within which the competent court decides on the procedure for judicial review of administrative acts. The courts are bound by the constitutional requirement of the fair trial, i.e., the conducting of the judicial proceedings without delay. The established time limits for consideration of cases relating to the environment in administrative proceedings are reasonable and sufficient.

#### **3.4. Assessment of effectiveness**

43. The main practical challenges associated with challenging decisions, acts/omissions relating to the environment are:
- lack of legal awareness among individuals and NGOs to appeal administrative decisions
  - lack of free legal aid mechanisms to support the interested individuals or NGOs to refer administrative appeals in conformity with applicable law
  - lack of competent lawyers/legal specialists to deal with administrative environmental complaints
  - lack of specialized courses in the area of environmental law at the higher education level to develop student's legal skills in referring environmental law matters at the administrative or judicial organs. For example, at the Faculty of Law of the University of Prishtina, the course on environmental law is optional and offered at the Masters Programme
44. The remedies in the cases of challenging decisions/acts/omissions which contravene the law relating to the environment in court and/or other bodies are adequate. But in absence of the cases raised at the courts, it is difficult to estimate their effectiveness. Unfortunately, the Law on Administrative Conflicts contains no provision allowing for the issuing of an interim measure while an administrative case is pending before the Court. This gap is particularly troubling because the law expressly states that an administrative lawsuit shall not suspend the execution of the administrative act against which it has been lodged. Despite the legal requirements for a reasoned administrative decision that contains a summary of factual findings based on evidence submitted during the administrative proceeding, many administrative decisions fail to comply with these requirements. Of note are the cases in which the court, in assessing the legality of administrative acts, annulled the act based on lack of reasoning and referred the case back to the administrative authorities. Despite the clear legal requirements set forth in both the international human rights standards and the legal framework, courts frequently fail to consider

applications for interim measures promptly or with due diligence, and in many cases fail to deal with these applications at all.

45. It should be noted that there is a small number of cases when an NGO acting as a plaintiff has filed a case before the court in the name of the public interest. Some of the challenges would include: the risk for repetition of the environmental damage/harm; when a judgment of the court cannot be executed (e.g., in the environmental tort procedures, etc.).

#### **IV. Costs: Information on court costs and other expenses associated with environmental cases**

##### **4.1. Financial expenses associated with an administrative appeal (in relation to cases covered by art. 9, paras. 1, 2 and 3)**

46. There are no financial implications/expenses associated with an administrative appeal in environmental matters. The party can represent himself/herself in the administrative proceedings or can, of course, engage a private defense attorney to prepare the administrative complaint. Tariffs for legal counseling are subject to negotiations and are determined by the Kosovo Chamber of Advocates (“Oda e Avokatëve të Kosovës”). Legal representation in the administrative appeal procedure is not mandatory. The typical non-administrative and non-judicial costs (outside any procedure) of environmental cases include fact-finding, consultations, legal analysis, preparation of the appeal, etc.

##### **4.2. Court fees and other costs associated with the consideration of a case in a judicial proceeding**

47. In Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) the primary cost of litigating comes from the expense of obtaining legal advice and representation and, where necessary, expert evidence and other disbursements, including the fees for filing a lawsuit. Together, legal fees and disbursements comprise the “costs” of litigating in the legal system. The courthouses, the court staff and the adjudicators are publicly funded, and the court fees have been introduced so that courts can conduct their activities. In principle, the costs of litigation are borne in the first instance by the parties, but they are subject to redistribution by the court at the end of the litigation through costs awards. The expense of litigating disputes is such that the economic framework for the costs system has a significant impact on the decisions of potential litigants about whether to sue and how to frame the litigation.
48. The amount of expense does not depend on whether the plaintiff is an individual or other entity. The Administrative Instruction of the Kosovo Judicial Council does not make any difference between private interests and public interests in the collection of judicial tariffs. The determination of the court fees is made based upon the value of the judicial dispute stipulated in the lawsuit. The Administrative Instruction of the Kosovo Judicial Council provides a template which sets the amounts in Euro depending on the nature of the judicial proceedings and the value of the judicial dispute.
49. The Administrative Instruction on Court Fees adopted by the Kosovo Judicial Council in 2008 exempts the following categories from paying the costs: claims in the area of labor law, except those related to requests for compensation; low-income citizens, those under social care service provided by the Ministry for Social Welfare, and if the individual proves he/she is receiving free legal aid.



50. Each party carries its own costs caused by its own procedural deeds. In principle, the court fees are payable upon submission of the referral to the competent court. So witness, expert and evidence collection expenses are prepaid by the party that requested them. When the evidence collection is proposed by both parties, the court decides that both parties should pay the sum in the equal shares. The judge, however, may grant some additional time to the referring party to pay the court fee. The date of payment in this case is specified by the decision of the judge. The party that loses the court process has to entirely cover all costs of the winning party, as well as intermediaries' costs if he/she joined the process. If the plaintiff succeeds only partially in the process, then the court can decide that each party should carry its own expenses, or that the expenses should be carried out by the other party, including the proportional intermediary costs, depending on the achieved result. Depending on the results, the court will decide if the costs will be carried out by one party or by both parties, or if these expenses will be carried out by the court. Court fees are not distributed to the parties. They are distributed to the State budget.

#### **4.3. Costs of legal assistance associated with the judicial consideration of cases relating to the environment**

51. According to the Law on Contested Procedure, any person who has full capacity to act is entitled to undertake the actions in the procedure before the Court (procedural capacity). The individual, a group of individuals and NGOs can also engage a legal representative to conduct the procedural activities on their behalf. Although the use of attorneys is not mandatory, in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) it is still considered the most preferable option. The attorney fees are determined by agreement but within the tariff provided by the Kosovo Chamber of Advocates. When the attorney's fees are paid depends on the agreement made between the individual and the attorney. Some fee is usually paid in advance. The attorney's fee does not depend whether the applicant is a citizen or an NGO, everything is subject to agreement with the client. If the fees are calculated according to a scheme or decided by the court, the attorney is still able to remunerate the cost from the client.

#### **4.4. Costs of evidence, involvement of experts or witnesses**

52. The judicial expenses (costs) related to the carrying out of the various evidences, the participation of experts and witnesses during the consideration of the case relating to the environment are initially borne by the referring party, e.g., the plaintiff. In this respect, the law on Contested Procedure provides that each party shall initially cover the expenses of their procedural actions that have been undertaken. When the taking of evidence is proposed by the parties together, the court decides the required amount necessary for the payment to be divided by the parties on equal parts. The Law on Contested Procedure further provides that the party that loses the entire case is obliged to compensate the judicial expenditures of the winning party. If the judicial procedure ends with an agreement between the parties and if the parties have not determined the manner in which the judicial procedure expenditures have to be divided, the general rule is that each party will cover its own expenses. There are no differences in determination of the amount of the costs referred to in the above paragraph depending on who is an applicant of the case: an individual or an NGO.

53. The costs related to witnesses, experts etc. are initially borne by the requesting party according to the decision of the competent court. The party is obliged to contemplate in the request the expenses for which compensation is required, if such evidence is not contained in the court files. According to the Law on Contested Procedure, the court exempts a party from paying expenses if it is determined that it is beyond the parties' financial capability, and when such a thing will harm him/her or their family. Exemption includes court taxes, depositing for witnesses, depositing for experts, as well from court acts. The court can only exempt a party from court taxes if the payment would drastically affect feeding the person's close family. The order on exemptions of court expenses is given by the first degree court with the request of the party. The party has to present, together with the request, the certificate on its real estate property and on the income certified by the adequate body. When it is necessary, the court can also, by its official duty, inquire regarding the party that requests the exemption, and regarding this the opponent can be questioned. If the party is exempt from all expenses, then the court will pay for all costs incurred, including witnesses, experts, direct examinations, publications of the court acts, as well as for the assigned representative expenses. These costs do not depend on the subject who initiated the evidence, involvement of experts, specialists or witnesses (the court, a public authority, an individual, an NGO).

#### **4.5. Bond and compensation for damage in the event of suspension of an activity as a security for claims in environmental matters**

54. The Law on Contested Procedure only provides for the security of a lawsuit, i.e., if a plaintiff has credible evidence that a defendant may transfer or hide the private property which makes it hard or impossible to execute a court judgment. In this regard, the Law on Contested Procedure provides that "if it's not determined differently by law, the court will determine the measures of insurance within the set deadline by the court as it is determined by the Law for the final procedure, it will issue guaranties on the measure and the type specified by the court for the damage that can be caused to the opposing party by determining and executing the insurance measures. If the proposing party does not give guarantees within the set deadline, the court will reject the proposal for determining the insurance measures. With request of the party that proposed it, the court can dismiss him from the issuing of the guaranties if it ascertains that the proposing party has no financial possibilities to provide such guarantees. Legislation does not establish a duty of an applicant (individual/NGO) in environmental matters to pay a bond (other financial guarantees) due to the request for an injunctive relief as a security for a claim. The law does not establish a duty of an applicant (individual/NGO) in environmental cases to compensate for damage to the defendant due to the application of injunctive relief. There is yet no established legal practice regarding injunctive relief to assess how interested are the defendants in cases relating to the environment in claiming compensation for damage from the applicant due to the application of injunctive relief.

#### **4.6. Other issues regarding financial expenses**

55. The amount of the minimum wage, pension (minimum income) in Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) is 110 Euro.

56. The 'loser pays principle' prevails and is determined by the Law on Environmental Protection although with the exception of administrative fines that environmental inspectorates have pronounced, there have not been cases at the courts where organizations or individuals were

declared liable for the environmental damage that has been made. Court fees are not distributed to the parties. They are distributed to the State budget. The Law on Contested Procedure provides that judicial fees and other court expenditures will be borne by the losing party [the party that has lost the case]. It is the Court that decides the amount to be paid to the party that has won the case based on the judgment. It does not matter for the distribution of costs between the parties/for exemption from payment of costs that the plaintiff/applicant is an individual or an NGO.

57. The costs of administrative or contested procedures as they currently exist constitute a barrier for access to justice. For example, engaging a defense attorney to provide certain legal services (administrative lawsuit for example) or payment of the judicial fees in the judicial proceedings has often been claimed to be a barrier for the individuals and NGOs willing to refer cases at the court for environmental damage.

**V. Legal aid (Information on legal aid, which can be provided to the public in environmental matters)**

58. A system of legal aid to the public in environmental matters does not exist. Between July 2001 and August 2005, a legal aid system provided low income residents with free legal assistance in civil and administrative cases. An agreement between the European Agency for Reconstruction (EAR) and the Kosovo Chamber of Advocates (KCA) in 2001 created the Legal Aid Project, which the EAR extended on a yearly basis until August 2005. Due to the completion of this project, the legal aid system for civil and administrative cases has ceased to function. Some nongovernmental organizations (NGOs) still provide free legal assistance to low income residents in limited categories of civil cases, or for members of vulnerable groups. However, despite the availability of legal assistance for some civil cases, legal aid does not cover all residents, in all regions, for all types of civil cases.

59. There are no public interest lawyers/organizations operating in the environmental field and/or providing legal aid to the public on environmental matters. In some cases, the Ombudsperson makes efforts to advise citizens and NGOs in pursuing their legal claims on environmental matters.

**VI. Concluding remarks**

60. There are several barriers affecting the access to justice in environmental matters. First, the lack of proper understanding/awareness among citizens and NGOs to address environmental problems in the administrative or judicial proceedings. Second, a lack of institutional readiness to protect environmental problems and degradation through inspection units at the local or central level, which de-motivates individuals and NGOs to address these environmental problems, either at the administrative level or through the courts. Third, environmental protection is a completely new chapter or sector for courts, which makes the need for judicial trainings on the environmental cases indispensable.

61. Seeking environmental justice is a difficult task for NGOs and individuals, due to the stringent rules on environmental matters. These rules pose a great challenge to the victims of environmental degradation. These rules are the problem of *locus standi*, institution of class action, limitation of time, the issue of cost and burden of proof. All these rules to a great extent

present a difficult task to those affected by the environmental abuse in seeking environmental justice and serve as a barrier that prevents aggrieved persons from having access to courts for environmental redress. NGOs and civil society should strengthen efforts to further advance legal awareness about environmental rights as a precondition for the realization of environmental rights. NGOs through donations / support from foreign institutions must be more demanding in terms of media, publications, seminars and trainings to send the message of the importance of environmental protection.

## **VII. Practical situations**

62. Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) is especially rich in coal, being aligned among European countries as that with the third largest coal reserves aluminum, gold, lead, zinc, copper, bauxite, magnesium. Kosovo (United Nations administered region, Security Council resolution 1244 (1999)) possesses relatively low reserves of water, as compared to its needs, but is rich in agricultural land, as 53 percent of the total area is arable land. The most frequently operated facility types listed in Annex I of the Aarhus Convention include but are not limited to: producer and supplier of cement; Installations using a chemical or biological process for the production of basic pharmaceutical products; Installations for the incineration, recovery, chemical treatment or landfill of hazardous waste; Landfills; Production of paper and board; Construction of motorways and express roads; Installations for the storage of petroleum, petrochemical, or chemical products; Installations for melting mineral substances; Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain Simple hydrocarbons.
63. A decision for the environmental and construction permitting of an industrial facility (listed under the Aarhus Convention)

### ***Administrative Complaint Procedure***

Environmental and construction permitting of an industrial facility is regulated by the Law on Environmental Protection and the Law on Environmental Impact Assessment. The public concerned is entitled to challenge the administrative decision issued by the first instance administrative authority by way of administrative complaint, but based on the Law on Administrative Procedure not the Law on Environmental Protection. The Law on Environmental Protection provides for the principle of the subsidiarity under which provisions of the Law on Administrative Procedure will apply only if a special Law does not provide differently in terms of challenging the decisions. This challenged decision is typically the decision on the environmental consent issued by the Ministry for Environment and Spatial Planning within 30 days from the date on which the administrative decision was issued. Grounds for contesting the administrative decision may be: a) refusal for access to information, b) denial or inadequate participation of the public in the decision-making procedure or c) or if the industrial facility is not in compliance with environmental law. There are no fees provided for the filing of administrative complaints. The appeal is reviewed by a Committee established within the Ministry of Environment and Spatial Planning.

### ***Judicial Complaint Procedure***

The public concerned, if not satisfied with a decision on the review of the administrative decision, is entitled to file a lawsuit with the competent Court by seeking judicial review of the

administrative decision with 30 days from the date on which the administrative decision is issued. This lawsuit is reviewed by the Prishtina Basic Court – which is competent to adjudicate and decide on administrative disputes according to complaints filed against final administrative acts. The referring party should be pay judicial fees when submitting the lawsuit at the competent court as provided by the KJC Administrative Instruction on the Court Tariffs.

64. On-going polluting operation of an industrial facility with a permit

According to the Law on Environmental Protection, any operator causing pollution (including an industrial facility) is responsible for environmental damage and is therefore legally obliged to compensate in the amount of the damaged values, including expenditures of urgent intervention, expenditures of rehabilitation, the creation of new state or retrieval on previous state of environment and compensation any legal or natural entity that has been directly affected by the environmental damage. The public/individual can file an administrative lawsuit to: a) stop the pollution activity according to the Law on Environment and the Law on Administrative Procedure. There are no administrative fees provided for the filing of the administrative complaint with the competent administrative authority. The administrative complaint can be made within the local administrative authorities where the on-going polluting operation occurs. Under the Law on self-government, the municipalities are, among other things, responsible for environmental protection. The public concerned is entitled to challenge the administrative decision issued by the first instance administrative authority by way of administrative complaint within 30 days from the date on which the administrative decision was issued. The public is also entitled to seek compensation for environmental damage if it can demonstrate that there is a probable causal link between the activities and the environmental damage. In the latter case, provisions of the Law on Obligations with respect to the damage caused will apply. In assessing the probability of causality, consideration shall be given, among other things, to the type of activity and loss and to the other possible causes of the loss.

65. On-going polluting operation of an industrial facility without a permit

The filing of the administrative appeal by the public with regard to the on-going polluting operation of an industrial facility without the permit depends on whether the respective activity requires EIA, the location of the project and/or the nature and impact of the project. The individual can therefore submit an administrative complaint with the Municipality in which on-going polluting operation occurs or at the Ministry of Environment and Spatial Planning. The applicant is entitled on the basis of the Law on Environmental Protection and the Law on Administrative Procedures to request the halting of the on-going pollution operation of an industrial facility which runs its activity in absence of an environmental permit. If the administrative authority denies the administrative complaint or if it fails to take into account the individual/public concerns, the individual/public is entitled to file a lawsuit with the Prishtina Basic Court, which is competent for administrative matters seeking from the Court to stop the on-going polluting activity that runs without environmental permit. The lawsuit can be filed after 30 days from the date of the receipt of the decision from the second instance administrative authority. The applicant is, pursuant to the Law on Administrative Disputes, entitled to seek compensation for the environmental damage that has occurred by the defendant whose act is contested. The Law on Administrative Disputes further provides that any natural or legal person, including the Ombudsperson and other NGOs are entitled to submit a lawsuit by which they seek to protect the public interest or when they consider that the administrative act infringes rights and legal interests provided by law.

66. A clear cutting of a forest threatening a nature reserve/biodiversity area

The individual can submit an administrative complaint with the Municipality seeking to halt the clear cutting of a forest that threatens a nature reserve/biodiversity area. If the respective administrative authorities deny the administrative complaint or fail to take into account the individual/public concerns as stipulated in the administrative appeal, the individual/public is entitled to file a lawsuit with the Prishtina Basic Court competent for administrative matters seeking from the Court to cease the cutting of a forest. The lawsuit can be filed after 30 days from the date of the receipt of the decision from the second instance administrative authority. If the individuals have suffered direct damage from the cutting of a forest, they have standing to file a lawsuit under the provisions of the Law on Environmental Protection and the Law on Administrative Disputes and seek compensation for the environmental damage that has occurred by the defendant whose act is contested.

67. A decision to undertake an infrastructure construction project on a nature reserve

Decisions to undertake an infrastructure construction on a nature reserve are regulated by the Law on Nature Protection and the Law on Environmental Impact Assessment to determine the nature, extent and the impact of the intervention in the protected zone. The permit for intervention and activities in the strict nature reserve, special zones, national parks, natural parks and nature monuments is issued by the Ministry of Environment and Spatial Planning. The Law on Nature Protection (“Ligji për Mbrojtjen e Natyrës”) provides that no appeals can be filed against the decisions issues by the Ministry. The parties that have standing may initiate an administrative dispute before the Prishtina Administrative Court for the judicial review of the Ministry decision within 30 days from date of the Ministry decision. The public has standing to challenge the decision to undertake an infrastructure construction project on a nature reserve since the Law on Nature Protection contains the principle of public participation under which each individual enjoys appropriate access to information concerning nature and the nature damages, and the opportunity to participate in decision-making processes regarding the nature.

## MONTENEGRO

### I. ENVIRONMENTAL LEGISLATION, ADMINISTRATION AND COURTS

#### 1.1. Environmental legislation and administration

1. The 2007 Constitution of Montenegro addresses environmental issues in its several provisions, building on Montenegrin legal tradition in this field. The Constitution of Montenegro, in wording similar to that of its 1992 predecessor, defines the state as an “ecological one”, treating the right to a healthy environment as a human right; it addresses the protection of natural heritage and provides for the restriction of entrepreneurship by the protection of the environment and nature. There are two provisions of the Constitution dealing with access to information.
2. Environmental legislation includes a large number of general and sectoral environmental pieces of legislation.
3. The Ministry of environmental protection (MEP, presently: Ministry of Sustainable Development and Tourism) is in charge of the performance of the majority of the activities in the area of the Environment; the Ministry of Agriculture and Rural Development, the Ministry of Health and the Ministry of Transport and Maritime Affairs are in charge of specific areas and issues pertaining to the environment. The Environmental Protection Agency (EPA), established in 2009, is the executive body of the MEP and its activities include monitoring and reporting, communication, issuing of permits and the supervision of the application of environmental regulations (propisi). In Montenegro there are two Aarhus centers (in Podgorica and Nikšić), the one in Podgorica being attached to the EPA and the other to the NGO “OZON”.
4. Criminal proceedings are conducted before the competent court in accordance with the provisions of the Criminal Procedure Code. Criminal proceedings are instituted on the request of the state prosecutor (državni tužilac), and can be initiated by any citizen by filing criminal charges. The law provides that everyone needs to report a crime which is prosecuted *ex officio*, and only exceptionally, when it is prescribed by law for private lawsuits.
5. In proceedings related to the environment before the ordinary courts, whether in the civil, administrative or criminal proceedings, the Protector of Human Rights and Freedoms (zaštitnik ljudskih prava i sloboda) - the Ombudsman, can only intervene in the case of delays in judicial proceedings, the obvious abuse of procedural powers and the failure to enforce court decisions, but is not entitled either to overrule, reverse or annul the decisions. The Ombudsman, by rule, acts on the basis of individual citizens’ complaints, but may initiate the procedure on his own. The deadline for filing complaints to a defender is one year from the date of the violation or the date of being informed of the violation. The person who complains does not have to exhaust all remedies in order to address to the Ombudsman, however, if he considers it more efficient, the Ombudsman may request that the person complaining exhausts all other legal remedies for the elimination of violations before filing a complaint. If the Ombudsman finds that a violation of law occurred, the Ombudsman gives his final opinion and issues recommendations to the authority on what they should do to eliminate the violation and also sets a deadline for the elimination of violations. If the authority fails to comply with the recommendation, the Ombudsman may inform the next higher body, the Parliament of Montenegro and the public.

6. In Montenegro, public authorities and courts do not apply the Convention directly and they are more likely to apply the relevant provisions of domestic legislation.
7. According to the Law on Mediation, there are no obstacles for using this procedure in environmental matters in civil law issues in general, provided that parties may dispose freely of their rights and that parties consent to that (Article 1). As to other ADR methods, the same stands for arbitration.

### **1.2. Decision-making in environmental matters and administrative review**

8. The Law on Environmental Impact Assessment stipulates that the Environmental Protection Agency is responsible for conducting the assessment of the projects for which consents, approvals and licenses are issued by another organ of the state government, and that the local organ of self-government in charge of environmental affairs is competent for other projects for which consents, approvals and other permits are issued by the relevant local authority. Against the decision of the EPA, administrative appeal may be filed with the Ministry of Environmental Protection, and against the decisions of the local authority, administrative appeal may be filed with the Chief Administrator.
9. The Law on Integrated Prevention and Control of Environmental Pollution divided the responsibility for issuing integrated permits to the State (Environmental Protection Agency) and local level (local self-government). The decision of the EPA may be appealed with the Ministry of Environmental Protection, and the decisions of the local self-government may be appealed with the Chief Administrator.
10. In Montenegro, there is no independent and impartial body specifically created with the responsibility to review environmental administrative decisions.
11. The Law on Environmental Impact Assessment introduces a right to file a complaint against the decision of the competent authority on the application for a decision on the need for an impact assessment to the chief administrator (Art. 14). The same stands for the scope and content of the EIA study (elaborat) and decision on giving consent or rejecting request for consent on the study (Art. 25), but it doesn't go into details regarding representation and time limits. Thus, the Law on General Administrative Procedure applies to the question of whether public concerned may file a complaint.
12. The Law on Environmental Impact Assessment also stipulates that in case environmental inspection determines that all the measures envisaged by the study were not realized, a permit cannot be issued. In addition to administrative measures and actions foreseen by the Law on Inspection Control, the environmental inspector shall, when it determines violation of law, order the implementation of the project measures. If the developer fails to comply with the decision, the environmental inspector is authorized to initiate misdemeanor proceedings (prekršajni postupak) before the misdemeanor authorities.
13. The Law on Integrated Pollution Prevention and Control provides that the competent authority may revoke a license if the operator fails to meet any of the conditions which the permit envisages. The operator shall be notified within five days on procedure for termination of the license. The competent authority shall issue a decision within 30 days of the initiation of



proceedings. Against the decision taken by the competent authority may be appealed to the Ministry of Environmental Protection or to the Chief Administrator if the license is issued by the local authority.

14. In the administrative procedure for challenging decisions, acts/omissions, the party has the right to appeal against the first instance decision. Also, the person has the right of appeal who was not given the opportunity to participate in the trial, if the decision affects their rights and legal interests (interested party), thus the public concerned has the right of appeal. The appeal shall be filed within 15 days of receipt of the decision, unless otherwise is stipulated. The decision on the appeal must be made and delivered to the party, as soon as possible, and no later than 30 days after the appeal is filed, unless a special law allows a shorter period. There is no difference according to the person who wants to be party.
15. The competent authority conducts the review proceedings and makes a decision independently. Any person who has a legal interest has the right to participate in the proceedings. It is believed that the legal interest has been expressed if a person claims to be included in proceedings to protect their rights or legal interest (interested party). The institution is not independent of the executive branch.
16. For all the foregoing cases, the competent authority (Environment Protection Agency-EPA) shall notify the public about its decision within eight days from the date of issuance of the license. The EPA informs the public about its decisions by publishing it in at least one local paper in each of the official languages in use in the territory that will be affected by the planned project or activity, as well as via electronic media. The Law on General Administrative Procedure stipulates that a decision on the appeal must be made and delivered to the party as soon as possible and not later than 30 days after the appeal is filed, unless a special law allows a shorter period. There is no difference in informing the public between the law and the practice.
17. Members of the public cannot choose whether to request judicial or administrative review.

### **1.3. Courts**

18. Courts in Montenegro are: 1) basic courts, 2) higher courts, 3) commercial courts, 4) the Court of Appeal of Montenegro, 5) The Administrative Court of Montenegro and 6) The Supreme Court of Montenegro. Civil and criminal legal protection that applies to the environment is provided before the ordinary courts. Basic courts in the first instance are responsible for the civil legal protection (građanskopravna zaštita), as well as the criminal legal protection (krivičnopravna zaštita), relating to the environment (for criminal offenses for which the prescribed prison sentence is up to 10 years (and this applies to the highest number of crimes in this area). High Court in the second instance decides on appeals against decisions of the first instance courts. The Administrative Court of Montenegro is responsible for the administrative dispute resolution (about legality of administrative acts, as well as the legality of other individual acts when it is determined by law, as well as for extraordinary legal remedies against of final decision in misdemeanor proceedings). The Supreme Court, as the highest court in Montenegro, decides on extraordinary legal remedies against the decisions of the courts in Montenegro (except for the request for the retrial where the court which decided in the first degree is competent). Before the Constitutional Court of Montenegro, there is the possibility of initiating a constitutional complaint for violation of human rights and freedoms after exhausting regular legal remedies.

19. Members of the public may initiate the appropriate motion - an administrative dispute before the Administrative Court and the litigation before the Court of First Instance with territorial jurisdiction (civil procedure, criminal procedure). In addition, they may lodge a constitutional appeal with the Constitutional Court. A decision in the administrative judicial dispute may be appealed only by extraordinary legal remedies: a request for extraordinary review of a court decision (before the Supreme Court) and request for retrial.
20. Any natural or legal person who believes that his right or legally based interest, based on an administrative or any other act, was violated has the right to initiate administrative action if all the requirements set by the Law on Administrative Disputes are met. An administrative dispute may be initiated against an administrative or other act that was passed in the second degree, and can be run against first-instance administrative or other acts against which filing appeal in an administrative or other proceeding may not be allowed. Also, administrative action may be initiated in the case of the "silence of administration" (when the competent authority on request or on the party's appeal did not render an appropriate administrative or other act).
21. EIA, SEA and IPPC laws do not mention administrative dispute procedure, but as a general rule, it may be initiated in accordance with the Law on Administrative Disputes, meaning that the public concerned has a legal standing.
22. The Law on Environment stipulates that any legal entity or individual who believes that, due to the nature, location and impact of the project or activity done by other legal entities and entrepreneurs, her/his right to a healthy environment is violated, has a right to judicial protection, in accordance with the law. The law states that in the process of judicial protection, the court may: order the polluter to take all necessary measures, including stopping certain activities; bind polluters to pay appropriate compensation for the damage; determine the necessary temporary measures and order the polluter to implement them; make other appropriate decisions in accordance with the law. A person who suffers damage due to environmental pollution has a right to compensation, in accordance with the general rules on damages, in the urgent procedure. This so-called environmental action has now found its place in the Law on Environment, while previously it was in the Law on Obligation Relations (this law is dealing with contracts and torts).
23. The Law on Environment also provides for the definition of the procedure for compensation for environmental pollution which is now emerging. Pursuant to the Law on Ownership Relations, one of the means of protection for the owner of real estate from various harmful impacts (emissions), which can significantly affect the use of real estate, is *actio negatoria*, calling for the interruption of interference, i.e., removal of disturbance. Owners of real estate which are exposed to excessive emissions are entitled to demand the owner of the property from which they originate to remove the causes of these emissions and compensate for the damage they caused, as well as banning the future pursuit of the activities which cause the exceeded emissions from his property, until the owner has taken all the measures to disable them. As an exception, when excessive emissions are caused by the activities for which there is permission from the competent authorities, owners of real estate who are exposed are not entitled to require a ban on such activity while the permit lasts, but may seek damages, as well as undertake appropriate measures to prevent or reduce excessive emission in future, i.e., damages.

24. An individual, a group of individuals, an NGO or other entity may initiate the criminal proceedings. Normally, criminal proceedings will be initiated by the competent public prosecutor.
25. In terms of possibilities for protecting environmental rights in accordance with the Constitution of Montenegro, it is possible to initiate proceedings before the Constitutional Court, with constitutional complaint for violations of human rights and freedoms guaranteed by the Constitution, after exhaustion of all effective legal remedies. A constitutional complaint may be filed against individual acts of state organs, organs of state administration, local government bodies or a legal entity exercising public authority, because of the violation of human rights and freedoms guaranteed by the Constitution, after exhaustion of all effective remedies.
26. Administrative Court in administrative proceedings avoids entering into the merits and usually examines the procedural legality of a decision contested by an administrative action. If the court finds that the contested decision was not based on the law, the Court in its decision obliges the defendant to, at some time, make a new decision based on the law, and in accordance with the guidelines and the legal interpretation of the Administrative Court. The merit decisions are rarely made.
27. Montenegrin laws regulating criminal, civil and administrative proceedings do not provide for lay participation (that is laymen people involved in making judicial decisions). The Civil Procedure Law stipulates only that the court may decide to hear experts, when professional knowledge, which the court does not have, is necessary for the establishment or clarification of certain facts.
28. In civil proceedings, the court decides within the limits of the claims which have been filed during the procedure. If the parties fail to propose the taking of evidence, the court will not take evidence *ex officio*. In civil proceedings, the second instance court examines the judgment in the part that has been contested by the appeal, within the limits of the reasons stated in the appeal, having due regard *ex officio* to the misapplication of substantive law and violations of the procedure.
29. In an administrative dispute, the provisions of the Civil Procedure Law apply regarding all the issues of procedure not envisaged by the Law on Administrative Disputes. In administrative disputes, the Administrative Court shall examine the legality of a disputed administrative or other act in the scope of the claim in a complaint, yet it shall not be bound by reasoning stated in a complaint. It will pay notice to the nullity of an administrative or other act *ex officio*.
30. The bodies of the executive power cannot reverse the decision of the court or prevent the enforcement of judicial decisions.
31. The Constitutional Court of Montenegro, acting on a party's constitutional appeal regarding the violation of human rights and freedoms, after the exhaustion of all legal remedies, may annul the decision of the court. The Constitutional Court is not an ordinary court or judicial body, but a special body that protects the constitutionality and legality of the legal system as such (of what?).
32. The public has limited access to judicial decisions. The courts publish some decisions at its sole discretion on their website ([www.sudovi.me](http://www.sudovi.me)) after removing the references to the parties of the case. A good example of transparency and positive exception is the Administrative Court of

Montenegro, which, on its website, regularly publishes all of its decisions from several years previous. In recent years, individuals and NGOs had been addressing courts referring to the Law on Free Access to Information, and in fact, some courts have allowed access to judicial decisions, while a majority of courts have not. Finally, the Supreme Court of Montenegro adopted, on 6 July 2011, the Legal position which states the following: "Access to judicial records cannot be made on the basis of the Law on Free Access to Information, but only on the basis of procedural law and the Law on Courts. When, according to the Law on Free Access to Information, is sought access to information on delivered court decisions, which are not published on the website of the court under the program "Jurisprudence", competent court shall allow access to information by providing required decisions after making the anonymization of data in accordance with the Rules on anonymization of data in judicial decisions".

33. Generally, judges are not well acquainted with the legislation relating to environmental protection. Of the total number of cases, very few cases are related directly to the area of the environment. For this reason, it can be said that generally, judges do not have a lot of practice in this field, and the situation is similar with lawyers and prosecutors. The Center for Judicial Training program in its initial education training (for future judges and prosecutors) does not have the education in the field of environmental protection. In its program of continuing education (for judges and prosecutors), the Topics in Annual Training Centre features environmental legislation.

## **II. CHALLENGING THE REFUSAL OF ACCESS TO ENVIRONMENTAL INFORMATION**

34. The legal framework for access to information consists of numerous legislation, some of which being of a general character, with others related only to environmental field. The Law on Free Access to Information treats the right of access to information as a general right, and it guarantees the level of principles and standards contained in international documents on human rights and freedoms. The law establishes an obligation for authorities to draw up and publish a guide for access to information, which should include an overview of the types of information that authority has, including public records, information on the procedure for access to information, the names of persons responsible for compliance with the request for access to information, etc. The law specified the basis for restricting access to information.
35. The Law on State Administration proclaims in its basic provisions that the work of the state administration is public and that the citizens shall have access to data, documents, reports and information from their competence, except in cases provided by law, and that the organs of state administration are obliged to make lawful and timely decisions on matters within their jurisdiction. Any denial or refusal of a citizens' demand must be explained to a citizen in written form, enabling the right to petition to a higher authority of state administration. For requests that are addressed to public utilities and that are refused, apply the procedure provided for by the Law on Access to Information (they do not have special higher administrative bodies).
36. The Law on Environment provides that everyone has the right to be informed about the state of the environment and to participate in the decision-making process when the implementation of a decision could affect the environment, and that the data on the state of the environment are public.

37. Individuals, their groups and NGOs have the right to contest the decision denying/restricting the right of access to information. Before they file a complaint with the Administrative Court, it is necessary to appeal to an independent supervisory authority responsible for the protection of personal data and access to information - the Agency for the protection of personal data and access to information, through authority which decides on the request for information in the first instance. Exceptionally, if the required information/documents are marked as confidential, or the request was rejected by the authorities, the party has the right to directly take action before the Administrative Court. Mentioned persons shall have the legal capacity so they could be able to institute proceedings as a party in court proceedings. A party to the proceedings may be any natural or legal person, and the special regulations determine who, apart from natural and legal persons, may be a party to the proceedings. The trial court may, exceptionally, with the legal effect to the certain litigation, recognize the status of the party even to those forms which do not have the legal capacity, if it determines that, given the subject matter, they basically meet the essential requirements for the acquisition of legal capacity, especially if they have property which may be object of the execution procedure.
38. If the party is not satisfied with the decision of the authorities, rendered on his/her request for information, the party can appeal to the independent supervisory authority responsible for the protection of personal data and access to information - the Agency for the protection of personal data and information access. The Council of this Agency is entitled to ask from a public authority the information for which the access is sought as well as other information relevant for decision-making. If a party is not satisfied with the decision of this appellate authority s/he may file a complaint against that decision with the Administrative Court of Montenegro. If a party is not satisfied with the decision of the court, a party may file an extraordinary remedy - a request for a special review of the decision to be decided by the Supreme Court of Montenegro. If a party is not satisfied with the decision of the Supreme Court, it may file a complaint to the Constitutional Court of Montenegro for violations of human rights and freedoms.
39. A decision (rešenje) on refusing the request for information shall include instruction on available legal remedy. The Law on General Administrative Procedure provides that administrative appeal must be filed within 15 days of receipt of the decision (rešenje), unless otherwise specified. Thus, the filing period begins to run from the date of delivery of the decision to the party. Despite the fact that the Article 44 of the Law on Free Access to Information provides that the administrative dispute proceedings initiated by filing the complaint regarding access to the information are urgent, in the practice of the Administrative Court those proceedings are treated like all other administrative proceedings. The reason could be the fact that some NGOs overcrowded the Administrative Court with claims for access to information. An average 6-7 months passes from submitting the complaint until the receipt of the written decision of the court.
40. The previous practice of the Administrative Court was not to ask for information/documents from the public authorities in order to decide on the complaint. The new Law on Free Access to Information began to be implemented this year, so it will take some time before recognizing its weaknesses and shortcomings. So far, the limiting factors were confined to judicial decisions in accordance with the restrictive legal position of the Supreme Court. Administrative Courts very rarely engaged in deciding on the merits of a case, avoiding ordering the public authority to disclose the requested information in addition to annulling the decision of the public authorities.

### **III. CHALLENGING DECISIONS, ACTS AND OMISSIONS BY PUBLIC AUTHORITIES AND PRIVATE PERSONS**

### **3.1. Standing in environmental cases**

41. According to the Law on General Administrative Procedure, a decision (rešenje) may be disputed by an appeal in case of: violation of the rules of procedure, incomplete or inaccurate establishment of facts, and incorrect application of the material law. An individual or legal entity who believes that his right or interest, based on an administrative or any other act, was violated has the right to file a complaint if all the requirements set by the Law on Administrative Disputes are met. An administrative dispute may be initiated against an administrative or other act that was passed in the second instance, and can be run against first instance administrative or other act against which the filing of an appeal may not be allowed in an administrative or other proceeding. Also, administrative complaints may be initiated in the case of the “silence of administration” (when the competent authority on request or on the party’s appeal did not render an appropriate administrative or other act). Administrative disputes are settled by the Administrative Court of Montenegro, and it may adopt the complaint or reject it as unfounded. If the complaint is adopted, the challenged act is going to be annulled.
42. In certain cases, by the annulment of the disputed act, the Administrative Court may decide on the matter based on the merits. Such judgments completely replace the annulled act. Extraordinary legal remedies may be filed against the final decision of the Administrative Court: a request for an extraordinary review of court decisions and the request for a retrial. The decisions of the Administrative Court are executed in accordance with the Law on Enforcement and Security.
43. According to the Law on Administrative Dispute, any natural person who believes that some of his rights or legally based interests have been violated by an administrative or other act shall have the right to institute an administrative dispute. In addition, any group of persons may institute an administrative dispute if they are entitled to be holders of rights and obligations decided on in an administrative or other procedure. This means that in this procedure, as the parties may appear as persons whose right to a healthy environment was impaired.
44. There are no regional or local variations in the regulation and practice of legal standing. Basis for filing a complaint are governed by the Law on Administrative Dispute and procedural laws as explained previously. Regarding administrative procedures before the judicial phase, where the Law on General Administrative Procedure applies, the law stipulates that an appeal may be filed against a first instance decision issued by a ministry only when determined by the law and in matters in which administrative dispute is excluded. In addition, appeal against a decision issued by the Government is not permitted.
45. The Law on Environment provides that every individual or legal person who believes that, because of the nature, location and impact of the intervention or activities of other legal entities and entrepreneurs, his/her right to a healthy environment is being violated has the right to judicial protection. The law also states that the court may: order the polluter to take all necessary measures, including the termination of certain activities; bind polluters to pay appropriate compensation for damage; determine the necessary interim measures and order the polluter to implement them, as well as make other appropriate decision in accordance with law.

46. According to the Law on Administrative dispute, a person for whom the nullification of a disputed administrative or other act might directly disadvantageous will have the status of a party to the dispute. The state prosecutor or other competent authority may intervene into the administrative dispute for the sake of protection of the public interest. The Ombudsman may assist NGOs, but can intervene or initiate a court procedure only in cases of discrimination.
47. The public has the right to initiate criminal proceedings, whether criminal proceedings will be initiated by the state prosecutor or a private prosecutor. In criminal proceedings, public participation is not allowed. The Law on Misdemeanor lists parties and participants in misdemeanor proceedings. Participant in misdemeanor proceedings may be an injured party whose personal or property right has been violated.

### **3.2. Procedural and other remedies in environmental matters**

48. The impact of an administrative appeal on the enforceability of the first instance decision is that the decision shall not be executed during the term for filing an appeal. When the appeal is properly filed, the decision cannot be executed until the decision passed upon the appeal has been delivered to the party. Exceptionally, the decision may be executed during the appeal period, as well as when an appeal is filed, if it is provided by law, in cases of need for emergency measures or in cases where delay of execution might cause irremediable damage to the party.
49. Principles of inspection, methods and procedures for inspection and obligations and powers of inspectors are regulated by the Law on Inspection Control. One of the principles of inspection is the principle of transparency, which means that the inspector shall, when it comes to protecting the lives and health of persons or serious disruption of public interest, inform the public of the facts and irregularities identified in the inspection procedure. The inspector shall be obliged to consider the initiative to start the inspection procedure and inform the initiator. During the inspection, the inspector is authorized and obliged, in order to eliminate the irregularities, to indicate to the subject of supervision: detail the irregularities and to set a deadline for their removal; order appropriate measures and actions; temporarily prohibit the performance of activities and other actions; seize objects or means which have been used for some criminal act; impose fines; submit request for the criminal proceedings; initiatives; initiate criminal or other appropriate procedure. If, during an inspection, inspector finds violation of law or regulations, or that prescribed standards or norms are not followed, the inspector is required to take administrative measures and actions, including: to order the suspension of construction; to order the withdrawal from the market of goods and trade in goods; to order the seizure or destruction of items, goods and other products, as well as animals; to ban the use of space, tools, equipment, plant, machinery, and other commercial facilities transportation and other assets; to ban the manufacture, use, or distribution of goods or provision of services; to prohibit the performance of any action that threatens the environment, property, or endangers the life or health of people. These measures and actions are valid until the defects or circumstances no longer exist.
50. As a rule, a complaint against an administrative decision to the court shall not prevent the execution of an administrative or other act, against which it was filed. The Administrative Court, upon the request of an appellant, may postpone the execution of an administrative act if the appellant would incur damage that would be hard to repair, the exclusion is not opposed to

public interest and the opposite party or third interested person would not incur worst or non-reparable damage due to postponement.

51. Courts have the capacity (authority, technical capability, etc.) to stop an activity of an individual which contravenes the law relating to the environment temporarily and permanently, through a temporary measure or by a final court decision (judgment or settlement).
52. The Law on Environment stipulates the right of everyone to demand the elimination of a danger of injury or loss. According to this Law, everyone may demand from another to eliminate a source of danger threatening considerable damage to him/her or to an unspecified number of persons, as well as to refrain from an activity causing disturbance or danger of loss, should the ensuing disturbance or loss be impossible to prevent by adequate measures. On the demand of an interested person, the court is able to order the taking of adequate measures to prevent the emergence of damage or disturbance, or to eliminate the source of danger, at the expense of the holder of the source of danger, should he himself fail to act accordingly. When loss occurs in the course of an activity undertaken in the interest of the general public, and otherwise permitted by a competent agency, the only recovery to be demanded shall concern loss exceeding normal limits. However, in such a case, it shall also be possible to demand taking socially justified measures in order to prevent the emergence of damage or to reduce it.

### **3.3. Timeliness**

53. The administrative appeal shall be filed within 15 days of receipt of the decision, unless otherwise specified. In case an appeal is filed in an untimely manner, the first instance public authority shall reject it by its decision (rešenjem). The complaint to the court shall be filed within 30 days of the submission of the administrative act to the party. This deadline shall also apply to an authority or person authorized for submission of a complaint if the administrative act has been delivered to them, and if not, they may submit the complaint within 60 days after the delivery of the administrative act to the party, in whose favor the act was passed. If this time limit is missed, the potential applicant will be precluded from filing the lawsuit. The decision becomes final.
54. The general rules pertinent to administrative proceedings or specific judicial proceedings apply to the timeframes for the consideration of environmental administrative or environmental judicial cases, the only exception being made by the Law on Environment, which stipulates that the procedure for compensation for environmental pollution is urgent. The Law on Administrative Dispute provides timeframes for initiating procedure. In addition, extraordinary legal remedies (the request for extraordinary reconsideration and the request for the retrial of the procedure) have to be filed within 30 days of the day of delivery of the Administrative Court decision. In practice, Montenegrin judiciary is not famous for its timely action, so the same stands for cases related to environment. There is no official data on the average duration of judicial cases relating to the environment.

### **3.4. Assessment of effectiveness**

55. The main problem is lack of specialized NGOs or lawyers who would assist citizens free of charge in challenging those decisions. To a lesser or greater extent, all the listed obstacles (for example: legally established duty to bail, imposing costs on the side that lost, danger to be sued for



damages by a defendant, the lack of clear standards and consistent practices in granting injunctions - the discretion of judges, judges lack the relevant knowledge of environmental law, the lack of judicial independence, inadequate execution of injunctions, other) affect the situation, that injunctions (privremene mjere) are determined relatively rare. In each case, some of these obstacles are prevalent, some less and some more pronounced. Due to a fear of the high costs to which the parties could be exposed, parties are more cautious when seeking injunctive relief from the court. The degree of effective enforcement of court decisions is not satisfactory. Presently, the judiciary is in charge of enforcement of the court decisions. But soon it is expected that public doers - people who perform activity as an independent, professional and exclusive occupation - will begin to perform enforcement procedures.

#### **IV. Costs: Information on court costs and other expenses associated with environmental cases**

##### **4.1. Financial expenses associated with an administrative appeal (in relation to cases covered by art. 9, paras. 1, 2 and 3)**

56. When filing an appeal in the course of the administrative procedure, the appellant has to pay a fee (taksa) in the amount of 5.00 Euros, according to the Law on Administrative Fees and Fee Tariff which forms part of this law. A party is entitled to a fee refund, upon its request, in the case where her appeal is granted either wholly or partly. In the administrative appeal proceedings, the party's representation by an attorney or lawyer is not mandatory. Costs associated with the copying procedure for access to information held by public bodies are specified in Articles 1 and 2 of the Regulation on compensation of the costs of access to information. The consultation with employees in any organ of public administration or local self-government is free of charge. Article 20 of the Law on Free Access to Information provides that the authority shall, in accordance with its responsibilities, assist the applicant to gain access to the requested information. Fact-finding may or may not be related to the cost. If the party requires the inspection of the public registers and records, it is free of charge because there is no real cost. The authority may require the payment of copying.

##### **4.2. Court fees and other costs associated with the consideration of a case in a judicial proceeding**

57. According to the Law on Court Fees and Fee Tariff which forms part of this law, in an administrative dispute before the Administrative Court, the party pays a fee for a claim (complaint) in the amount of 20.00 Euros, and a fee for a court decision in the amount of 10.00 Euros. In practice, the court takes the case even if the fee is not paid. If a party fails to pay the fee even after the warning, the court will certainly continue to work on the case and end the case, and the cost of unpaid taxes may be forcibly collected by the party who has not paid.

58. When filing a claim for damages, the fee for a claim and the fee for court decision depend on the value of the dispute specified in a claim. For disputes worth up to EUR 500.00, the claim fee is 20.00 Euros and the fee for a court decision is 10.00 Euros. For values of a dispute over EUR 500.00 to 5,000.00 Euros, the fee is 20.00 Euros + 2% of the difference above 500.00 Euros (for example, for the value of the dispute of 2,500.00 Euros, the fee for a claim is 60.00 Euros and the fee for a court decision is 30.00 Euros).

59. To the value of a dispute over 5,000.00 EUR, the claim fee is 110.00 Euros +1% of the difference above 5,000.00 Euros, but not more than 750.00 Euros before a court of general jurisdiction

(competent for claims for damages) (e.g., for a value of a dispute of 30,000.00, the claim fee is 360.00 EUR and the court decision fee is 180.00 EUR). If the value of a dispute cannot be determined, the value of a dispute is considered to be 1,500.00 Euros for assigning fees so that the claim fee in this case is 30.00 Euros while the fee for the court decision is 15.00 Euros.

60. In the enforcement proceedings (izvršni postupak), the amount of court fees is generally at the level of fees paid in civil proceedings. In civil proceedings (litigation), the court takes the case in work even if the court fee is not paid, however, upon the final completion of the trial, the court will not officially put a validity and enforceability clause on the court's decision if the party has not paid the court fee. The Enforcement Officer of the court usually will not send a judicial decision on enforcement if the party has not settled the court fee that was charged.
61. The amount of costs relating to court fees generally don't depend on whether the plaintiff is an individual or legal person, that is, individual, group of individuals or organization. However, according to the Law on Court Fees, humanitarian organizations are exempt from paying the tax. Due to this, some non-governmental organizations which are not normally engaged in humanitarian work list humanitarian work as one of their activities in their statutes, in order to be freed from paying the tax.
62. Law on Court Fees stipulates the categories of prosecutors and types of disputes that are exempt from fees. Also, the court may relieve a person from the payment of fees regardless of the type of dispute, if paying fees would significantly impair assets from which he supports himself and his family by applying the provisions of the Civil Procedure Law on exemption from paying the costs of the proceedings. The law does not provide for the possibility to delay the payment of court fees, but it provides for the exemption from court fees under certain conditions. The court has no discretion to "give up" the tax, but the judge of the case, or the court official who is responsible for determining whether the court fee is paid in a given case, can simply ignore that the court fee is paid or not. Theoretically, the parties could share the costs related to court fees if among them there is a court settlement and the parties expressly agree in writing and the court endorses the settlement to the court record.

#### **4.3. Costs of legal assistance associated with the judicial consideration of cases relating to the environment**

63. Only in criminal proceedings, the accused in certain circumstances must have a competent defense, i.e., lawyers. If the defendant has no money to pay for his services, the court will assign an attorney to the defendant *ex officio*. In civil proceedings as well as in administrative disputes, professional legal representation is not required. However, hiring a lawyer, particularly in complex cases, is the most common option. The attorney fees are prescribed by the Lawyers' Tariff. According to this rate, the cheapest procedural action (e.g., drafting unreasoned submission) including a flat rate for secondary operations, is 37.50 Euros, and the most expensive procedural action is 500.00 Euros. In addition to the remuneration set forth in this Tariff, the lawyer and client may negotiate payment in a lump sum or as a percentage. The attorney is entitled to the reimbursement of expenses (travel, hotel, postage, cost of photocopying documents, taxes, etc.). The said attorney Tariff provides that a lawyer can negotiate with a party the prize for his work in a lower amount than that specified, but not less than 50%. The amount of processing operations depends on the procedural steps of the dispute and the value of the dispute. In any case, there is a flexible model for negotiating between the

contracting parties and lawyers on the amount, time and manner of payment of an attorney for his services. In practice, the parties usually agree with the counsel on compensation for his services, but when the court rules on the costs of the trial, it admits only the costs in accordance with the prescribed Lawyers' Tariff.

64. The current Lawyers' Tariff provides that the award is typically charged after the service, but a lawyer may communicate with a party to pre-pay all or part of rewards and costs. Thus, the lawyer and the client may agree on the time of payment of lawyers' fees. Often, lawyers accept to be paid by the end of the procedure if they consider that there is a good chance that their party will be successful in the dispute.
65. The attorney's fee does not depend on whether the applicant is a citizen or an NGO. The law does not prescribe the tariff difference between individuals and NGOs, in terms of the amount of remuneration and compensation to a lawyer. Of course, the lawyer may take that fact into account, and therefore require a higher or lower fee.
66. Whatever the agreement between a lawyer and a client is on the price of legal assistance, the court applies the Lawyers' Tariff when deciding on costs in judicial procedures. Therefore, a lawyer will often not be able to charge the customer the full cost of all process activities. The judges, in practice, always tend to underestimate the costs of the proceedings, especially if the respondent is a state agency or a local authority, a public company, etc. Often, the court allocates costs only to those procedural steps that in court opinion were necessary. Thus, the court often has the view that an appeal was not necessary in a given case, because the party appeal is based on the reasons already stated in the complaint in the first instance, or do not recognize to a party the costs of a motion drafted by an attorney because he found that it was not necessary.

#### **4.4. Costs of evidence, involvement of experts or witnesses**

67. For civil proceedings, the issues of costs are regulated by the Civil Procedure Law. The basic rule is that each party shall bear the costs previously caused by its own actions, and that the party making the presentation of evidence shall, by order of the court, deposit the amount required to cover the costs to be incurred on the occasion of the presentation of evidence. The party that loses the case is obliged to reimburse the costs to the opposing party and its intervener. If a party fails partially in the litigation, the court may, in view of the success achieved, order that each party bear its own costs or reimburse the other party. In principle, co-litigants bear the costs in equal parts. For these issues in administrative dispute proceedings, as well as other matters of procedure not covered by the Law on Administrative Dispute, the provisions of the Civil Procedure Law apply.
68. There are no differences in the determination of the amount of the costs referred to in the above paragraph depending on who is an applicant of the case: an individual or an NGO. However, an individual may be exempted from the payment of court costs, while NGOs cannot be (the only exceptions are humanitarian organizations, which may be released from paying court fees).
69. The judge orders the parties proposing or carrying out other expert evidence that is associated with certain costs to advance some sum to the bank account of the court, at the discretion of the

judge. When the expert presents his findings and opinion to the court, he delivers the calculation of its services, in accordance with the Law on Expert Witnesses. On that basis, the judge shall determine the cost of expertise. Thus, costs are determined in the course of judicial proceedings, upon the completion and submission of the court expert of an accounting of their services by experts.

70. Civil Procedure Law provides that a witness is entitled to reimbursement of travel expenses and the cost of meals and lodging, as well as the compensation for loss of earnings. The witness should claim compensation immediately after the hearing, or he will lose the right to it. The court is obliged to caution the witness in this regard. In the decision (rešenje) on the costs of witnesses, the court shall order that a certain amount has to be paid in advance, and if payment is not passed, it shall order the party to pay a certain amount to the witness within eight days. These costs don't depend on the nature of the subject who initiated the evidence.

#### **4.5. Bond and compensation for damage in the event of suspension of an activity as a security for claims in environmental matters**

71. Provisional measures are prescribed by the Law on Enforcement and Security. The law does provide the possibility and not the obligation to the person proposing the introduction of interim measures to commit to court the obligation of the bond (bail) if the court determines that as a provisional measure. The court is authorized to determine the amount of free evaluation. In this regard, the court may request the opinion of the professional person / expert appraiser or institution. The Law on Enforcement and Security provides for such a situation (in case the court has upon the request of the applicant or individual or NGOs, ordered provisional measures against a person, and that subsequently turns out that a temporary measure was unjustified, causing the party damage). The amounts of bonds/compensation for damage associated with the application of injunctive relief mean that there are barriers to justice for individuals/NGOs seeking injunctive relief. However, provisional measures, as their names imply, only temporarily govern a relationship until a judgment is made by the court.

#### **4.6. Other issues regarding financial expenses**

72. The minimum wage in Montenegro is 193 Euros (for the period 1.4.2013-1.10.2013), and the average salary is 480 Euros. The minimum pension depends on the type of pension; the minimum amount is 92 Euros. Otherwise, the average pension in Montenegro is 279 Euros, and one in seven people is retired. 64.000 people receive a smaller pension than the average, 29.700 persons receive less than 180 Euros and 4.500 persons receive less than 100 Euros.
73. In most cases, the losing party pays the costs of the proceedings. The court decision pronounces also on the costs of the proceedings. The exception is when the court released the party to pay all or some of the costs of the proceedings. There are not any specific cases relating to the environment. The conditions for exempting a party from paying court costs are provided by the Civil Procedure Law.
74. Fees and expenses paid out by the court from its funds are reimbursed, *ex officio*, by the party who is obligated to pay them. If the opposing party, who is exempt from paying the costs of the proceedings, is being obligated to reimburse litigation costs, and it is determined that it is not able to pay these costs, the court may later decide that a party that is exempt from costs of the

procedure shall pay those costs in whole or in part from the part awarded. This does not affect the right of the parties to seek compensation from the other party.

75. An individual may be exempted from the payment of court costs, while NGOs cannot. (The exceptions are humanitarian organizations, which may be released from paying court fees.) It does not matter whether the case is a public interest environmental dispute. Court costs to some extent constitute a barrier to access to justice in cases relating to the environment. In these cases, expensive assessment of an expert and professional institutions. is often required. Despite the fact that there is a Law on legal aid and the possibility of exempting a party (natural person) from paying the cost of the procedure prescribed by the Law on Civil Procedure, administration, procedures, documentation the an individual must submit to the court may constitute a barrier for individuals. Similarly, NGOs have the opportunity to be exempt from the payment of court costs (excluding court fees under certain conditions); therefore, the conclusion is that the legal fees are a barrier to access to justice in these cases.

#### **V. Legal aid (Information on legal aid, which can be provided to the public in environmental matters)**

76. There is the Law on Free Legal Aid pursuant to which an individual who meets the requirements may be entitled to free legal help from a lawyer, from the list of the Bar Association of Montenegro assigned by the president of the competent court. To provide free legal aid, lawyers are entitled to 50% remuneration determined by Lawyer Tariff and fees for necessary expenses. Free legal assistance includes providing the necessary resources to fully or partially cover the costs of legal advice, the drafting of documents, representation in proceedings before the court, the State Prosecutor's Office and the Constitutional Court of Montenegro and the procedure for the amicable settlement of disputes and payment of the expenses of the proceedings. Funding for legal aid shall be provided in the budget of Montenegro. Conditions for the exercise of legal aid are described in the Law on Free Legal Aid and a provision dealing with a party of low income that meets the requirements could be applied to the cases pertaining to the environment. Exercising the right to free legal assistance, in accordance with this Law, does not limit the providing of legal assistance by NGOs and other organizations which are established in accordance with the law.

77. There are no public interest lawyers/organizations operating in the environmental field and/or providing legal aid to the public on environmental matters operating in the country. Free legal assistance pursuant to the Law on Free Legal Aid is only available to individuals; NGOs can provide legal assistance to individuals, provided that the funds for the legal assistance have been obtained from donors and from the budget when applying for the specific projects. NGOs can use these funds not only to pay their lawyers, but also lawyers who were engaged in these court cases. Environmental non-governmental organizations may apply for a variety of projects financed from the Budget. A project can also foresee court costs arising from suing polluters and similar cases. If these projects are approved by the relevant state commission, the environmental organizations may ensure the funding for these purposes.

#### **VI. Concluding remarks**

78. Two general remarks, including the improving on timeframes for delivery and for acting in the course of the procedure should be strictly respected in all the procedures. Additionally, greater

attention should be paid to the education and specialization of judicial and administrative bodies regarding environmental issues, education and specialization of NGOs and lawyers etc.

### **Practical situations**

79. The most important types of uses of natural resources in Montenegro include minerals, water and forests. The most frequently operated facility types listed in Annex I of the Aarhus Convention include: installations for the disposal of non-hazardous waste with a capacity exceeding 50 tons per day; quarries and opencast mining where the area exceeds 25 acres; construction of transmission lines with a voltage of 220 kV or more and a length of more than 15 km.
80. A decision for the environmental and construction permitting of an industrial facility (listed under the AC)  
In EIA, the public concerned is entitled to file an appeal against the decision of the competent authority on the application for a decision on the need for an impact assessment, for a decision on the scope and content of the EIA Study and against the decision for approval of the EIA study or refusal of the application. The public concerned may also initiate administrative judicial (dispute) procedures. Those questions have already been addressed in details in previous answers dealing with general administrative procedure and administrative judicial procedure.
81. A decision to undertake the construction of a highway (listed under the AC)  
The Law on Strategic Environmental Impact Assessment addresses public participation in decision-making regarding plans and programs, but no legal remedies are provided for the public concerned (neither on appeal in administrative proceedings nor in administrative judicial proceedings). According to the Regulation on EIA (20/07), an EIA is compulsory for the construction of a highway.
82. On-going polluting operation of an industrial facility with a permit  
According to the Law on Integrated Prevention and Control of Environmental Pollution (IPPC law), an appeal can be filed against the decision of the competent authority regarding permit granting, or the refusal to grant a permit. The law does not stipulate who has active legitimation to start the procedure, but since the public concerned is informed on all steps of the procedure, it is reasonable to believe it may have a right to legal standing. Accordingly, the public concerned may also initiate administrative judicial (dispute) procedures.
83. On-going polluting operation of an industrial facility without a permit  
Everyone can demand from everyone else to remove the source of danger that may cause considerable damage to them or to an unspecified number of individuals and to refrain from an activity that causes harassment or potential damage, if the cause of harassment or damage cannot be prevented by applying appropriate measures. On demand by an interested person to eliminate a danger of injury or loss, the Court may order the taking of adequate measures to prevent the emergence of damage or to eliminate the source of danger. Also, the environmental inspector is obliged to order the acquiring of the permit in accordance with the IPPC law. However, neither this law nor the Law on Inspection Control stipulate who may address inspection, but it seems reasonable that the general public can.
84. A clear cutting of a forest threatening a nature reserve/biodiversity area

According to the Law on Inspection Control, an appeal against the decision of the inspector can be submitted to the relevant Minister within 8 days from the date of receipt of the decision. The public may initiate a criminal procedure for crimes: Devastation of Forests, Forest Theft, Damaging the Environment and Destroying, Damaging and taking abroad a Protected Natural Asset. The public may initiate a Demand to Eliminate a Danger of Injury or Loss in accordance with the Law on Environment.

85. A decision to undertake an infrastructure construction project on a nature reserve

The Nature Protection Act does not stipulate the possibility of protecting rights in administrative proceedings, on appeal, not even in administrative judicial (dispute) proceedings for the public or public concerned (though it has a provision on informing the public). However, the Regulation on EIA in its List II stipulates that all projects enumerated in the List II in a nature reserve may be eligible for EIA. In case the project is not eligible for EIA, the Law on Spatial Arrangement and Construction stipulates the right to appeal the decision (rešenje) on granting a construction permit, but it does not stipulate who has the legal standing.

## SERBIA

### I. ENVIRONMENTAL LEGISLATION, ADMINISTRATION AND COURTS

#### 1.1. Environmental legislation and administration

1. Environmental law in Serbia is characterized by a number of laws and general acts<sup>28</sup>. Since there is no specific law on access to environmental information in Serbia, the right to access environmental information is recognized as a right to access public information and is governed by the Law on Free Access to Information of Public Importance and the Law on Environmental Protection.
2. The basis of administrative authority's work in environmental protection is found in standards of the Constitution of the Republic of Serbia. Matters of provincial interest in the field of environmental protection are governed by the autonomous provinces in accordance with the law. Art. 74 of the Constitution stipulates the right of everyone to a healthy environment and to timely and complete information about its condition. The same article states the norm that everyone is to preserve and improve the environment, as well as that Serbia and autonomous provinces bear the responsibility for environmental protection.
3. Administrative authorities in Serbia are formed as ministries, administrative bodies within ministries and special organizations of Ministry, formed to carry out state administration in one or more related areas. Tasks of state administration concerning the system of protection and sustainable development of natural goods and resources (water, air, land, mineral resources, forests, fish, wild plants and animals), and the system of protection and improvement of environment are entrusted to the Ministry of Environment.
4. An Agency for Environmental Protection is formed within the Ministry for Environmental Protection as an administrative body. The Agency for Environmental Protection is responsible for managing the system of national information systems for environmental protection, the collection and processing of environmental data and reporting about the state of the environment and the implementation of environmental policy.
5. The institution of the Commissioner for Information of Public Importance is established for the purpose of exercising the rights of access to information of public importance held by public authorities. The Commissioner is an autonomous government body, independent in the exercise of its powers. In the exercise of his/her powers, the Commissioner shall neither seek nor accept instructions or orders from government bodies or other persons. Among other things, the Commissioner has a power to monitor the compliance of public authorities with the duties provided for in the Law on Free Access to Information of Public Importance and report to the public and the National Assembly thereof, deliberate complaints against the decisions of public authorities that violate the rights provided for in the Law on Free Access to Information of Public Importance and disseminate to the public the content and the rights regulated by this Law.
6. Criminal Procedure Code defines that a public prosecutor is the Republic Public Prosecutor, an appellate public prosecutor, a higher public prosecutor, a basic public prosecutor, a public

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<sup>28</sup> <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>



prosecutor of special jurisdiction, deputy public prosecutors and persons authorized by law to deputies for the same. The authorized prosecutor for criminal offences prosecuted *ex officio* is the public prosecutor.

7. The Serbian Ombudsman (Protector of Citizens) is established by the Constitution and the Law on the Protector of Citizens. The Protector of Citizens is established as an independent body that protects the rights of citizens and controls the work of government agencies, and as the body authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organizations, enterprises and institutions which have been delegated public authority. The Protector of Citizens has the power to control the legality and regularity of the work of administrative bodies, to establish violations resulting from acts, actions or failure to act by administrative authorities, if they are violations of the law, regulations and other general acts of the republic. In accordance with the Constitution and the Law on the Protector of Citizens, the Protector of Citizens has no power to control the work of the National Assembly, President of the Republic, Government of Serbia, Constitutional Court, courts and public prosecutor's office.
8. The Aarhus Convention has become a part of the Serbian legal system by adopting the Law on Ratification of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters in May, 2009. In accordance with the Serbian Constitution, ratified international treaties and generally accepted norms of international law represent an integral part of the legal order of the Republic of Serbia, and as such are directly applicable. Ratified international treaties must be in accordance with the Constitution.
9. The rules of mediation procedures in disputes and in particular property-legal relations between physical persons and legal entities, commercial and family, labor and other civil relations, administrative and criminal procedures in which the parties are able to act freely are stipulated by the Law on Mediation. There is no information on cases in which the mediation was practiced in environmental matters.

## **1.2. Decision-making in environmental matters and administrative review**

10. Supervision over the implementation of the Law on Environmental Protection provisions and regulations made on its basis shall be carried out by the Ministry via inspectors for environmental protection.
11. The Law on Environmental Protection stipulates that a citizen or groups of citizens, their associations, professional and other organizations are entitled to exercise their right to a healthy environment before the competent authority or the court, in accordance with the law. The public concerned are entitled to exercise their right to a healthy environment by initiating the decision review procedure before the competent authority or the court, in accordance with the law. Every person affected by damage has a right to reimbursement. The request for reimbursement may be submitted directly to the polluter. Court procedure for reimbursement is urgent.
12. The Law on EIA stipulates that the project developer and the public concerned shall be entitled to file a complaint against the decision of the competent authority on the application for a decision on the need for an impact assessment. The appeal should be submitted to the competent authority of the second instance in accordance with the law regulating

environmental protection. The competent authority of the second instance shall decide on the complaint within 20 days from the date of receipt of the complaint. Law on EIA stipulates that the project developer and public concerned shall be entitled to file a complaint against the decision of the competent authority on the application for a decision on the scope and content of the EIA Study. The appeal should be submitted to the competent authority of the second instance in accordance with the law regulating environmental protection. The competent authority of the second instance shall decide on the complaint within 20 days from the date of receipt of the complaint.

13. The principle of two instances as a right to appeal is stipulated by the General Administrative Procedure Act (hereinafter: GAPA). The parties have the right to file an appeal against a decision adopted in the first instance. Only exceptionally the law may prohibit the filing of an appeal in specific administrative matters. GAPA also stipulates a principle of independent decision-making. According to this principle, the authority has an obligation to conduct the procedure and decide independently within the powers defined by law or other regulation. The authorized officer establishes the facts and circumstances independently and uses them as a base for applying regulations to a specific case.
14. A party in an administrative procedure is a person at whose request a procedure has been instituted or against whom a procedure is conducted. A party may also be a person who is entitled to participate in the procedure for the purpose of protection of his/her rights or legal interests. When legally empowered to protect the legality or represent the public interest, the public prosecutor or the public attorney shall, within the scope of such powers, have the rights and obligations of a party to the procedure. Those authorities may have broader powers than the parties, only when such powers have been granted to them under the law.
15. The authority that made the decision to grant the approval for the EIA Study or to refuse the application for approval of the EIA Study has the obligation to inform the authorities, organizations and the public concerned about its decision. The notice contains the content of the decision, the main reasons for it and the most important measures that the project developer have to undertake in order to prevent, reduce or eliminate adverse effects. The authority provides the complete documentation relating to the impact assessment procedure to the authorities, organizations, and the public concerned for review within 15 days from the date of receipt of their written request. The public authority informs the public about its decisions by publishing it in at least one local paper in each of the official languages in use in the territory that will be affected by the planned project or activity. In practice, written explanations of how public comments are taken into account are rarely applied, and feedback is not provided. The public authority who is in charge of making a decision on integrated permission is obligated to inform the public concerned on the submission of the application for permission within five days from date of receipt of a complete integrated permit granting application. On the request of the public concerned, the competent authority shall deliver the copy of the permit granting application.
16. An appeal procedure against the second instance administrative authority is a precondition for access to Administrative Court, unless the right to appeal is excluded by the law.

### **1.3. Courts**

17. The basic elements of the judicial system in Serbia are established by the Constitution and the Organization of Courts Act. The Organization of Courts Act established the following courts of general jurisdiction: basic, high and appellate courts and the Supreme Court of Cassation, and the following courts of specialized jurisdiction: the Administrative Court, misdemeanor courts, the High misdemeanor Court, commercial courts and the Commercial Appellate Court. Cases in administrative matters are heard before the Administrative Court in a public hearing. Appeal cannot be made to the Court decision made in administrative disputes. Only extraordinary legal remedies are allowed, which are heard before the Supreme Court of Cassation.
18. The Constitutional Court is established by the Serbian Constitution to protect constitutionality, legality, and human and minority rights and freedoms as an independent body. Any legal or natural person has the right to institute proceedings for a review of constitutionality or assessment of legality. In addition, any person who believes that his or her human or minority rights and freedoms, as stipulated by the Constitution, have been violated or denied as a result of an action or act of the state authorities or an organization with public authority may lodge a Constitutional appeal with this court.
19. When an appeal/case relating to the environment is filed by an individual, a group of individuals, an NGO or other entity, they are able to initiate an administrative court procedure, civil procedure, and criminal procedure or to lodge a constitutional appeal. The Law on Environmental Protection stipulates that the public concerned are entitled to exercise their right to a healthy environment by initiating the decision review procedure before the competent authority or the court, in accordance with the law. Every person affected by damage has a right to reimbursement. The request for reimbursement may be submitted directly to the polluter. Court procedure for reimbursement is urgent. The Law on EIA stipulates that the applicant and the public concerned are entitled to initiate the administrative court procedure against the decision related to the application for approval of the EIA study or refusal of the application. The Law on Integrated Environmental Pollution Prevention and Control stipulates that an appeal cannot be filed, while administrative court procedure can be instigated against the decision of the competent authority on permit granting, or refusing of the permit granting application.
20. Civil action is initiated by filing a lawsuit. Any natural person or legal entity may be a party to the civil proceedings. The Law on Contracts and Torts stipulates that everyone can demand from everyone else to remove the source of danger that may cause considerable damage to them or to an unspecified number of individuals and to refrain from an activity that causes harassment or potential damage, if the cause of harassment or damage cannot be prevented by applying appropriate measures.
21. The Constitution states that a constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organizations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.
22. The Administrative Court in environmental matters examines the procedural and substantive legality of the challenged act within the limits of the request contained in the lawsuit, but is not bound by the legal reasons set down in the lawsuit. In a decision of full jurisdiction, the Administrative Court may have reformatory function. The Administrative Court rarely decides in

full jurisdiction. In the past 20 years, there were only 4 cases where the Administrative Court decided in full jurisdiction. None of them was an environmental matter.

23. In Civil procedure, the second instance court may, at the session of the panel or based on held hearing, alter the first instance judgment and decide on the requests of the parties as well as adopt an appeal, revoke the judgment and decide on the requests of the parties.
24. Expert inquiry/evaluation may be ordered when, for establishing or assessment of an important fact, it is necessary to obtain the finding and the opinion from a person who has expert knowledge. Expert inquiry/evaluation may be ordered by a written order of the court or of the administrative authority that conducts the misdemeanor proceedings. It is stated in the order with respect to what facts expert inquiry/evaluation is conducted and to whom it is entrusted.
25. In administrative disputes, a Court decides on the ground of facts established at the public hearing. That is stipulated by the Law on Administrative Disputes as one of the basic principles. In civil procedure, the parties are required to present all facts on which they base their claims and propose evidence supporting such facts. The court considers and determines only facts presented by the parties and exhibits only evidence proposed by the parties, if the law does not stipulate otherwise.
26. The President, the Government or another public authority of the executive cannot cancel/revoke court decisions or waive enforcement of court decisions in environmental matters.
27. The most important decisions of the Supreme Court of Cassation and general legal opinions deemed by that Court as capable of influencing the case law of lower courts are publicly available on the Supreme Court of Cassation website. The decisions and opinions are available in Serbian. A bulletin with general legal opinions of the General Session, conclusions of the court divisions, sentences of the decisions of courts passed at the sessions of divisions, as well as expert opinions and opinions of judges are published by the Supreme Court of Cassation. As part of additional education for judges, the Supreme Court of Cassation publishes certain decisions of the European Court of Human Rights and other international institutions of importance for the protection of human rights and fundamental freedoms. The Constitutional Court of Serbia has established a database of case law. It can be searched by the file number of the case, the type of procedure or by key words. This database is publicly available on the website of the court in Serbian. A bulletin on the most important issues tackled by the Constitutional Court and the most interesting opinions of this Court is also publicly available on the same website. The relevant case law on access to information and data protection in Serbia can be found on the website of the Commissioner for Information of Public Importance and Personal Data Protection. The cases include the basis for some of the Commissioner's decisions and opinions, the most important decisions of domestic courts, and decisions of international and foreign courts and other bodies. Some cases are available only in Serbian, while others are available in English as well. As part of the National Judicial Reform Strategy, the Ministry of Justice began implementing the project of introducing new business software, i.e., an automated case management programme for courts in Serbia. The project has been carried out in commercial courts and it will soon be completed in all courts throughout Serbia. After the introduction of the system, citizens will have free access to case data, while preserving litigant privacy. Thus, open access will result in an objective perspective of courts, judges and court proceedings.

28. A court with a higher number of judges has a Case Law Department, in accordance with the Court Rules of Procedure. The Case Law Department follows and studies the case law of courts and international court authorities, and informs judges, judge's assistants and judge's trainees on the interpretation of law by courts. The Case Law Department is managed by a judge designated by the court president. The process of the initial and ongoing training of judges is regulated by the Judicial Academy Act. During their internship, trainees are trained by experienced judges, *inter alia*, in the fields of European law, human rights law and international law. This training should also provide interns with advanced knowledge of the judicial practice of the ECHR, and basic principles and standards of European law and the case law of the EU Court of Justice. As a matter of principle, the continuous training of judges is voluntary.

## **II. CHALLENGING THE REFUSAL OF ACCESS TO ENVIRONMENTAL INFORMATION**

29. The Law on Free Access to Information of Public Importance provides a realization of the constitutionally guaranteed right to information. In this sense, the scope of information of public importance is determined, as well as the right to access information of public importance and a specific legal regime of the right to access environmental information was established. A special Law on environmental information is not established. By means of analyzing existing legal norms, everyone has the right to access the information. That means that everyone will have the right to be informed whether a public authority holds specific information of public importance and/or whether such is otherwise accessible to him/her. The right to access information can be realized by examining the document containing the information, and taking copies of documents containing the requested information, or by sending copies of this document via (e-) mail or fax.

30. Access to environmental information is regulated differently than access to information of public importance. One of the differences concerns the question of the existence of legitimate interest to be informed. In terms of access to public information, the rights provided for in the Law on Free Access to Information of Public Importance, in exceptional circumstances, may be subject to limitations set out in this Law, to the extent necessary in a democratic society to prevent a serious violation of an overriding interest based on the Constitution or law. Nothing in the Law on Free Access to Information of Public Importance shall be construed as justifying the revocation of a right conferred by that Law or its excessive limitations. However, when it comes to information related to the threat and/or protection of public health and the environment, it is considered that there is always a justified public interest to know. Environmental information has a special position, and the competent authority cannot deny the interest of the applicant to approach them.

31. The right of the competent authority to restrict access to environmental information is regulated differently in the Law on Environmental Protection. In this sense, the Law on Environmental Protection (Article 80) states the possibility of rejecting the requests for information relating to the environment in certain cases. In order to establish a uniform regime of rights of access to environmental information, it is necessary to remove the perceived inconsistencies.

32. Another curiosity of regulating access to information on environmental protection is the deadline for the competent authority to notify the applicant as to whether the requested information exists, to provide access to the document containing the information, and to issue or provide a copy of the document. When the request is related to access to information on the

protection of life and liberty of individuals, threats of protection of public health and risks or environmental protection, the authority is obliged to fulfill the request within 48 hours of receipt. In other cases, the authority is obliged to act without delay, within 15 days of receipt of the request. An applicant may lodge a complaint with the Commissioner if a public authority failed to reply to a submitted request within time limits set for the access to environmental information.

33. If a public authority does not respond to a request within the specified deadline, an applicant may lodge a complaint with the Commissioner. The particularity of access to information relating to the protection of the environment is reflected in the exemption from payment of fees for access to documents that contain this information. In that sense, non-governmental organizations focusing on human rights that request a copy of a document for the purpose of carrying out their registered activities, as well as all persons who request information regarding a threat to, or protection of, public health and environment, shall be exempted from the duty to reimburse costs.
34. An applicant may lodge an appeal with the Commissioner if: 1) A public authority rejects or denies an applicant's request within 15 days of service of the relevant decision or other document; 2) A public authority failed to reply within 48 hours of receipt of the requests which can reasonably be assumed to bear on the protection of a person's life or freedom and/or the protection of public health and the environment; 3) A public authority made the issuance of a copy of a document containing the requested information conditional on the payment of a fee exceeding the necessary reproduction costs; 4) A public authority does not grant access to a document containing the requested information; 5) A public authority does not grant access to a document containing the requested information and/or does not issue a copy of the document; or 6) A public authority otherwise obstructs or prevents an applicant from exercising his/her freedom of access to information of public importance. Appeal cannot be filed against decisions of the National Assembly, the President of the Republic, the Government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court and the Republic Public Prosecutor, but an administrative dispute procedure may be initiated. If it is the case, that fact should be notified to the Commissioner by the relevant court *ex officio*. Proceedings before the Commissioner shall be governed by the provisions of the General administrative Procedure Act pertaining to the appellate decisions of second-instance bodies, unless provided otherwise by the Law on free access to information of public importance.
35. An administrative dispute may be instituted against a decision of the Commissioner. Administrative disputes regarding the exercise of the right to free access to information of public importance should be resolved in expedited proceedings. The Court examines the legality of the challenged act within the limits of the request contained in the lawsuit, but is not bound by the legal reasons set down in the lawsuit. In decisions of full jurisdiction, the Court could order information to be disclosed.
36. An administrative dispute may be instituted against a decision of the Commissioner. The exception exists in cases of 'silence of the administration' (*ćutanje uprave*). If a second-instance competent authority does not decide on an appeal against a first instance authority's decision within 60 days, or less if it was provided by special environmental law, and if the second instance authority fails to respond within seven days following an appellate request, the appellant may initiate court proceedings on the grounds of failure to take a decision ('silence of the

administration'). If a first instance authority fails, within a time frame determined by law, to issue a decision on a refusal to grant an appeal; if the authority fails to respond within seven days to a request from a party in the dispute, the party is thereby allowed to initiate court proceedings on the grounds of failure to take a decision ('silence of the administration'). The Administrative Court is able to order the competent authority to take action, or to take its own decision based on the nature of the request and the evidence provided. Administrative disputes regarding the exercise of the right to free access to information of public importance shall be resolved in expedited proceedings.

37. If a public authority refuses to inform an applicant, either entirely or partially, whether it holds the requested information, to grant an applicant access to a document containing the requested information or to issue or send to an applicant a copy of the document, it shall have the duty to pass, without delay, and within 15 days of receipt of the request at the latest, a decision rejecting the request and provide the rationale for such decision in writing, and shall furthermore be required to notify the applicant in the decision of the available remedies against such decision.
38. The Commissioner and the Court take steps to find facts necessary for reaching a decision. In order to find the facts they are allowed to access to any information. At the request of the Administrative Court, public authorities and other bodies with public responsibilities have to submit documents in their possession at the request of the Administrative Court. In its request, the Administrative Court determines a time limit for submission. Public authorities and other bodies with public responsibilities have to ensure the confidentiality of the requested documents. If the authorities fail to respond to such a request, the Administrative Court is able to demand an explanation from the authority in question.
39. A special Law on Access to Environmental Information should provide a definition of the environmental information, reasons for refusal of access to environmental information and time limits for access to environmental information. Time limits for access to environmental information are different in environmental laws, which creates confusion. In order to establish a uniform regime of rights of access to environmental information, it is necessary to remove the perceived inconsistencies between the Law on Free Access to Information of Public Importance and the Law on Environmental Protection.

### **III. CHALLENGING DECISIONS, ACTS AND OMISSIONS BY PUBLIC AUTHORITIES AND PRIVATE PERSONS**

#### **3.1. Standing in environmental cases**

40. The Constitution ensures legal remedies and judicial reviews of administrative acts by stating that everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations, or lawful interests. The legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessment before the court in an administrative dispute, if another form of court protection has not been stipulated by the Law. An administrative act may be challenged by regular administrative legal remedy - an administrative appeal, by extraordinary legal remedies in administrative procedure and before the Administrative Court. An Administrative Court proceeding is initiated by the lawsuit to the Administrative Court that can be submitted against the administrative act which is final in administrative proceeding. This means that administrative appeal has to be exhausted before

the initiation of Administrative Court procedure. The Law on Administrative Disputes stipulates that a party to an administrative dispute may be any natural or legal person maintaining that an administrative document infringes on their rights or legal interests, as defined by law. A government authority, an authority of the autonomous province and local self-government authority, an organization, a local community, a group of people, etc., who do not have the status of a legal person, may be parties to an administrative dispute, if they are holders of rights and obligations or legal interests which are to be decided in the administrative dispute.

41. Individuals, their groups, NGOs and other entities have standing in judicial proceedings against administrative decisions if they are holders of rights and obligations or legal interests which are to be decided in the administrative dispute. The Law on EIA stipulates that the applicant and the public concerned are entitled to initiate the administrative court procedure against the decision related to the application for approval of the EIA study or refusal of the application. The Law on Integrated Environmental Pollution Prevention and Control states that appealing is not an option against the decision on issuing an integrated permit or against the decision to refuse the application for this permit, but an administrative dispute is.
42. Citizen or groups of citizens, their associations, professional and other organizations are entitled to exercise their right to a healthy environment before the competent authority or the court in accordance with the law. Art. 81a of the Law on Environmental Protection stipulates that the public concerned are entitled to exercise their right to a healthy environment by initiating the decision review procedure before the competent authority or the court in accordance with the law. Every person affected by damage has the right to reimbursement. The request for reimbursement may be submitted directly to the polluter. Court procedures for reimbursement are urgent.
43. There are no regional or local variations in the regulation and practice of legal standing. An appeal procedure against the second instance administrative authority is a precondition for access to the Administrative Court, unless the right to appeal is excluded by the law.
44. A party to an administrative dispute may be any natural or legal person maintaining that an administrative document infringes on their rights or legal interests, as defined by law. An organization, a local community, a group of people, etc., who do not have the status of a legal person, may be parties to an administrative dispute, if they are holders of rights and obligations or legal interests which are to be decided in the administrative dispute. The public prosecutor may file a lawsuit against a decision violating the law to the detriment of the public interest.
45. The Ombudsman and the Commissioner for information of public importance may assist NGOs when bringing cases to courts.
46. The Law on Environmental Protection stipulates that Civil societies, founded for the protection of the environment, should prepare, promote and realize their protection program, protect their rights and interest in the environmental protection, propose activities and measures conducive to protection, participate in the decision making process in compliance with the law and help or directly disseminate information about the environment.

### **3.2. Procedural and other remedies in environmental matters**



47. The reviewing authority in an administrative procedure is able to:
- reject the appeal (odbiti žalbu);
  - annul the decision in full or in part (poništiti rešenje);
  - amend the first instance decision (izmeniti rešenje);
  - declare the decision null and void (oglasiti rešenje ništavim).
48. In Serbian law, an administrative act in administrative procedure becomes final (konačan) when an administrative appeal cannot be filed against it. In the situation where a second administrative authority renders its own administrative act, he/she is able to dismiss or reject the appeal or to change the first instance administrative act with the possibility to exercise discretionary power. When an administrative act is enforceable, it means that its content can be enforced. Where an appeal cannot stay the enforcement of a decision, this fact shall be stated in the wording. GAPA stipulates that an administrative act becomes enforceable (izvršan) when it becomes final, but if an administrative appeal submitted against it does not delay its execution, it can become enforceable before that.
49. The inspectors are authorized, among other things, to prohibit the use or utilization of natural resources and goods without permit or against the provisions of a permit. They can also instruct rehabilitation, namely, undertaking other appropriate protective measures, as well as to prohibit the construction and use of an installation and performance of activities. This is conditional upon if prescribed standards and norms regarding emissions and immissions have not been fulfilled, if they do not possess adequate equipment and devices whose functions mitigate or prevent the emission of pollutants or energy or if other measures and conditions of environmental protection have not been undertaken.
50. The Administrative Court, upon the request of an appellant, may postpone the execution of an administrative act if the appellant would incur damage that would be hard to repair, the exclusion is not opposed to public interest and the opposite party or third interested person would not incur worst or non-reparable damage due to postponement.
51. The Law on Administrative Disputes stipulates that the provisions of the law governing the litigation procedure shall be applied accordingly to the matters relating to administrative disputes. During the proceedings, the court may *ex officio* order temporary measures, even without interrogation of the opposing party, in accordance with the law that regulates enforcement and securing in order to eliminate an urgent risk of unlawful damage or to prevent violent actions or to eliminate unrecoverable damage. The court will decide on the temporary measure at the request of a party made within eight days following the submission of proposal. No special appeal is allowed against decisions about temporary measure of the court.
52. The Law on Contract and Torts stipulates the right of everyone to demand the elimination of a danger of injury or loss. According to this Law, everyone may demand from another to eliminate a source of danger threatening considerable damage to him/her or to an unspecified number of persons, as well as to refrain from an activity causing disturbance or danger of loss, should the ensuing disturbance or loss be impossible to prevent by adequate measures. On the demand of an interested person, the court is able to order the taking of adequate measures to prevent the emergence of damage or disturbance, or to eliminate the source of danger, at the expense of the holder of the source of danger, should he himself fail to act accordingly. When loss occurs in the course of an activity undertaken in the interest of the general public, and otherwise

permitted by a competent agency, the only recovery to be demanded shall concern loss exceeding normal limits. However, in such a case, it shall also be possible to demand taking socially justified measures in order to prevent the emergence of damage or to reduce it.

### **3.3. Timeliness**

53. In decision-making on the application for a decision on the need for an impact assessment, the competent authority should inform the authorities, organizations and public concerned about the submitted application for a decision on the need for an impact assessment within 10 days from the date of receipt of the complete application. The project developer, the authorities and organizations and the public concerned may submit their opinions within ten days from the date of receipt of the notice. The competent authority decides on the application within 15 days from the expiry of the period. The developer and the public concerned are entitled to file an appeal against the decision of the competent authority on the application for a decision on the need for an impact assessment. Time limits for it are not defined by the Law on EIA. GAPA defines that a general time limit for an administrative appeal is 15 days from the date of delivery. If this time limit is missed, the potential appellant will be precluded from filing the appeal. The decision becomes final in administrative procedure. By the GAPA, a potential appellant is able to request the return of the proceeding in a previous state (*restitutio in integrum*). This opportunity is possible if the potential applicant provides a justification for the failure to file appeal in the prescribed period of time. The project developer and public concerned have the right to appeal against the decision made on the application for a decision on the scope and content of the EIA Study. Time limits for it are not defined by the Law on EIA. The time limits stipulated by GAPA may be applied here as well.
54. A lawsuit should be filed within 30 days from the delivery of the final decision in an administrative procedure (the decision that cannot be appealed). If this time limit is missed, the potential applicant will be precluded from filing the lawsuit. The decision becomes final.
55. Administrative procedure must be conducted without delay and with the lowest possible costs for the party and other participants of the procedure, but in a manner allowing the obtainment of all evidences necessary for a correct and thorough determination of the facts and for the issuing of legal and appropriate decision. GAPA stipulates that if the time limits are not specified by law or other regulation, they should be set by the officer conducting the procedure in view of the circumstances of the case. The time limit set by the officer conducting the procedure, as well as the time limit specified by regulations, for which the possibility of extension is provided, may be extended upon a petition by the interested party, submitted prior to the expiry of the time limit, provided, however, that there are valid reasons for the extension.
56. The Administrative Court has the obligation to make a decision in reasonable time. There is no official data on the average duration of judicial cases relating to the environment.

### **3.4. Assessment of effectiveness**

57. A special Law on Access to Environmental Information should provide a definition of the environmental information, reasons for refusal of access to environmental information and time limits for access to environmental information. The status on environmental associations should be clearly regulated. An appeal procedure is not allowed in cases of final decisions on EIA and

integrated permits. Environmental laws concerning protection against radiation and nuclear safety, non-ionizing radiation, air protection, nature protection, protection against noise in the environment, sustainable use of fish reserves, waste management, packaging and packaging waste, water protection and planning and management do not establish provisions for access to justice. In those cases, other laws should be applied. The terms 'public' and 'public concerned' should be defined in the Law on Environmental Protection and implemented consistently throughout entire legal system. Quality standards for public participation do not exist. Consequently, public participation in environmental decision-making may result in *pro forma* public participation. It is not clear which subjects have standing for an administrative dispute about the decision on issuing an integrated permit.

58. There is a lack of clear standards. Practice in granting injunctions in environmental matters is not established. Citizens are not educated about the role of courts in environmental protection. The access to courts in environmental matters is very rare. Usually, citizens are not informed about the effects of the execution of court decisions in environmental matters. The court decisions should be adjudicated in short time limits.

#### **IV. Costs: Information on court costs and other expenses associated with environmental cases**

##### **4.1. Financial expenses associated with an administrative appeal (in relation to cases covered by art. 9, paras. 1, 2 and 3)**

59. GAPA stipulates that special out-of-pocket expenses of the authority conducting the procedure, such as travel expenses of officers, expenditures for witnesses, expert witnesses, interpreters or translators, costs of on-site investigation, advertisements, etc., incurred in the course of an administrative procedure, should be, as a rule, borne by the party who has instituted the entire procedure. Where a party participating in the procedure incurs costs for certain actions in the procedure due to his/her fault or wantonness, he/she shall be obliged to pay such costs. Where the procedure that has been instituted *ex officio* is concluded by a ruling in favor of the party, the costs of the procedure shall be borne by the authority that has instituted the procedure. Each party to the administrative procedure shall, as a rule, bear their own costs of the procedure, such as travel expenses, costs of time spent in court, costs of fees, legal representation and expert assistance. Witnesses, expert witnesses, interpreters and officers should be entitled to a prescribed compensation for travel expenses. If they are entitled to earnings in that period of time, they shall also be entitled to a prescribed compensation for the loss of earnings. In addition to the prescribed compensation, expert witnesses and interpreters shall be entitled to a special remuneration for the provided expert opinion or interpretation.
60. The authority conducting the procedure may exempt a party from the payment of costs, either in full or in part, if it finds that such costs cannot be borne without prejudice to the necessary sustenance of the party or his/her family. The authority shall adopt such a conclusion at the request of the party, on the basis of a certificate of means issued by the competent authority. Exemption from the payment of costs shall also apply to exemption from fees and expenses of the authority conducting the procedure, such as travel expenses of officers, expenses for witnesses, expert witnesses and interpreters, on-site investigation, advertisements, etc., as well as to exemption from depositing a security for coverage of the costs.

61. A party or his/her legal representative may appoint an attorney to represent the party in the procedure, except in the actions where the party is required to make statements in person. The attorney may be any person having full legal competence, except persons engaged in the illegal practice of law.

#### **4.2. Court fees and other costs associated with the consideration of a case in a judicial proceeding**

62. The Law on Court Fees prescribes the fee for a lawsuit against an administrative act that initiates an administrative dispute in accordance with value of the subject matter but not less than 3000 dinars. The amount to be paid for a lawsuit submitted to the court of general jurisdiction that initiates a civil proceeding is determined in accordance with value of the subject matter: up to 10,000 dinars value - 1,900 dinars; more than 10,000 to 100,000 dinars - 1,900 dinars increased for 4 % of the value of the subject matter; more than 100,000 to 500,000 dinars value- 9,800 dinars increased for 2 % of the value of the subject matter; more than 500,000 to 1,000,000 dinars - 29,300 dinars increased for 1 % of the value of the subject matter; more than 1,000,000 dinars value- 48,800 dinars increased for 0.5% of the value of the subject matter, and not more than 97,500 dinars. Lawyer tariff also depends on the value of the subject matter.
63. The Law on Administrative Disputes stipulates that the provisions of the law governing the litigation procedure shall be applied accordingly to the matters relating to administrative disputes. The Civil Procedure Code stipulates that the court shall exempt a party from the liability of paying the costs of the proceedings where that party's material situation does not allow them to bear such costs. Exemption from the payment of the costs of proceedings includes exemption from the payment of fees and the deposit for the costs of witnesses, expert witnesses, on-site inspections and court notices. The court may also release a party from the liability of paying fees only, in accordance with a special law. Prior to the decision on exemption on cost of proceeding, the court shall carefully consider all the circumstances, in particular the value of the subject of litigation, the number of persons supported by a party as well as the earnings and property owned by the party and party's family members.
64. During the whole proceedings, the Court shall accept the right of the party to free representation when the party is completely exempt from paying the costs of the proceedings, if that is necessary for the protection of rights of the party, or if that is provided by a special law. The court is obliged to decide on the right to a free representative within eight days after submission of request, i.e., within eight days of the delivery of the complaint to the court of second instance. The financial expenses associated with the travel expenses of officers, expenditures for witnesses, expert witnesses, interpreters or translators and costs of on-site investigation should be paid in advance or after the procedure is completed. The Court fee should be paid within eight days. The court may decide that one party should pay all the costs, which the opposing party incurred, if the opposing party did not succeed in only a proportionally insignificant part of his or her claim and separate costs were not incurred as a result of that part.

#### **4.3. Costs of legal assistance associated with the judicial consideration of cases relating to the environment**

65. Parties may undertake actions in the proceedings personally or through an attorney. A party in a proceeding on extraordinary legal remedies must be represented by an attorney. An attorney-at-law is entitled to fees and expenses for his work in accordance with the tariff, approved by the Bar Association of Serbia. The reward for an attorney's work is determined by the attorney tariff,

depending on the type of proceedings, actions taken and the value of the dispute or the amount of prescribed sanctions. The reward for defense *ex officio* is determined by the act passed by the Minister of Justice. The calculation of the costs and fees of lawyers is a credible instrument in execution. The attorney's fees are paid before the hearing. The reward for an attorney's work is paid upon results of the consideration of the case. The attorney's fee does not depend on whether the applicant is a citizen or an NGO. The attorney is able to remunerate the cost from the client.

#### **4.4. Costs of evidence, involvement of experts or witnesses**

66. There is no special rule for cases related to the environment on who bears the judicial expenses (costs) related to the carrying out of the various evidences or the participation of experts and witnesses. According to the Law on Administrative Disputes and the Civil Procedure Code, if a party proposes that evidence is presented during a hearing, they shall, upon the request of the court, deposit funds which are sufficient to cover the costs incurred by the presentation of such evidence. A party who loses a case completely is obliged to pay the costs of the opposing party. If a party is partially successful in his or her suit, the court may, in view of the success achieved, order each party to bear their own costs or for one party to pay the other a proportional share of the costs. The court may decide that one party should pay all the costs, which the opposing party incurred, if the opposing party did not succeed in only a proportionally insignificant part of his or her claim and separate costs were not incurred as a result of that part. There are no differences in the determination of the amount of the costs referred to in the above paragraph depending on who is an applicant of the case: an individual or an NGO. Expert award is determined by dividing the basis for calculation with number of working hours in the month prior to the expert opinion, and the resulting amount is multiplied by the number of hours that were necessary for the expert. The exemptions from paying costs are not provided by the Rules on Compensation Costs in Court Proceedings.

#### **4.5. Bond and compensation for damage in the event of suspension of an activity as a security for claims in environmental matters**

67. During the proceedings, the court may *ex officio* order temporary measures, even without interrogation of the opposing party, in accordance with the law that regulates enforcement and securing in order to eliminate urgent risk of unlawful damage or to prevent violent actions or to eliminate unrecoverable damage. The court will decide on the temporary measure at the request of a party made within eight days following the submission of proposal. No special appeal is allowed against decisions about temporary measure of the court. According to the Law on Enforcement and Security, injunction may be issued before or in the course of a court or administrative procedure, as well as after the completion of those procedures, until the moment on which enforcement has been carried out. The court may, upon the request of a creditor, order an injunction even when the creditor has not evidenced the likelihood of the existence of a claim and danger. This is possible if the creditor deposits, within a set period, a guarantee determined by the court. This guarantee is supposed to cover possible damages that may be caused to the debtor by the injunction. The court may, upon the request of a debtor, according to the circumstances of the case, decide that the creditor should deposit the determined amount of guarantee for damages, even when the creditor has evidenced likelihood of existence of claim and danger.

68. In request for injunction, the creditor may state that he/she would accept the debtor's deposition of guarantee in lieu of injunction. Deposition of guarantee in lieu of injunction may also be ordered upon the request of an enforcement debtor. If the debtor deposits a guarantee, the court shall abort procedure and repeal all actions already carried out. The debtor has the right for compensation against the creditor, for damages suffered because of the injunction which was later found to be ungrounded or injunction that the creditor failed to justify later. There are no special rules for the bonds in the cases of environmental protection. There is no evidence on how interested the defendants are in cases relating to the environment in claiming compensation for damage from the applicant due to the application of injunctive relief. When the Court decides that the creditor should deposit a determined amount of guarantee for damages, even when the creditor has evidenced a likelihood of the existence of claim and danger, it may have a negative effect for the access to justice in environmental matters.

#### **4.6. Other issues regarding financial expenses**

69. According to the Statistical Office of the Republic of Serbia, the average salary for June 2013 is: gross salary 61399 RSD (about 540 EUR); net salary 44394 RSD (about 390 EUR). The average pension is 24968 RSD (about 220 EUR). According to the Government Decision on minimum wage in 2013, the minimum wage is from 19320 RSD (about 170 EUR) in March to 20240 RSD (about 178 EUR) in December.

70. A party who loses a case completely is obliged to pay the costs of the opposing party. If a party is partially successful in his or her suit, the court may, in view of the success achieved, order each party to bear their own costs or for one party to pay the other a proportional share of the costs. Each party bears his/her own costs if the litigation is concluded with a court settlement or settlement after successful mediation, if not otherwise agreed in the settlement or unless otherwise provided by special law. Co-litigants shall bear the costs in equal proportion. If there is a significant difference between the shares of the parties in the subject of the litigation, the court shall determine the proportion of costs to be covered by each defendant/plaintiff.

71. For the distribution of costs, it does not matter if the applicant is an individual or NGO. If the public prosecutor is a party to the proceedings, he/she is entitled to the reimbursement of costs but may not reimburse his/her fee. The costs of the procedure that the public prosecutor should bear shall be paid from funds of the public prosecutor's office. Each party shall bear their share of the costs incurred by the participation of the public prosecutor in the proceedings. The costs of the public prosecutor related to his/her participation in the proceedings are borne by the public prosecutor's office. The provisions referring to costs also apply to parties who are represented by the ombudsman. In this event, the costs of the proceedings also include the amount that would have been recognized as the attorney-at-law's fee.

72. There are no special funds that can be used for litigation. The cost of access to Court, related to the representation and expertise, may be a barrier for access to justice.

#### **V. Legal aid (Information on legal aid, which can be provided to the public in environmental matters)**

73. The Constitution of the Republic of Serbia stipulates that everyone shall be guaranteed the right to legal assistance. Legal assistance shall be provided by legal professionals, as an independent

and autonomous service, and legal assistance offices are established in the units of local self-government, in accordance with the law.

74. Bar Association can organize free legal aid on the territory of the first instance court. There are a number of NGOs in operation that provide legal aid to the public on environmental matters. Law schools in the Republic of Serbia introduced a new subject named Law Clinics. It is expected that Special Law Clinics for environmental law will be established where it has not already been done. There are no comprehensive and efficient systems of free legal assistance through legal aid programmes. A Draft on the Law on Free Legal Aid is in a procedure.
75. From time to time, free legal aid on environmental matters is organized by environmental NGOs. At the level of local self-government, offices offering free legal aid to citizens are established. Funds intended to initiative programs or matching grants for funding programs implemented by associations, which are of public interest, are made available from the Budget of the Republic of Serbia. Programs of public interest are also programs on environmental protection. The Government, i.e. the Ministry in charge of the sector within which the association is pursuing its principal objects, disburses the funds by means of a Public Competition and stipulates contracts on the implementation of the approved programs. There are no special funds that can be used for litigation.

## **VI. Concluding remarks**

76. The abuses of transparency of the procedure obstruct decision making by failing to make the best use of the opportunities to influence the decision of other competent authorities. Citizens are not educated about the role of courts in environmental protection. The access to court in environmental matters is very rare. Usually, citizens are not informed about the effects of the execution of court decisions in environmental matters. The court decisions should be adjudicated in short time limits and available to the public. Environmental information, access to environmental information and time limits should be defined in a special Law on Access to Environmental Information. A comprehensive and uniformed legal definition of environmental information should be implemented in the Serbian legal system. The definition of public and public concerned should be uniform and the same definitions should be applied in the legal system. Facilitation of public participation and involvement should be improved. The public should have better possibilities for protecting the right to equal treatment in administrative and judicial procedures. Environmental education and citizen awareness should be promoted. A special course should be established at the level of postgraduate education. A special course in environmental law and Aarhus Convention implementation should be a part of the regular specialization of public servants and judges.

## **VII. Practical situations**

77. The most important types of uses of natural resources are the use of soil, water, forests and mineral resources. The new Law on Energy better regulated the procedure for issuing energy permits for renewable energy sources. There are more and more applications for the use of renewable and new energy sources.
78. A decision for the environmental and construction permitting of an industrial facility (listed under the AC)

The technical documentation for construction and reconstruction of a facility is made as a general project, preliminary project, main project, performing project and the project of the constructed facility. The general project contains particularly the data on environmental impact assessment. The building permit for the construction of a facility is issued by the ministry authorized for the tasks in construction, or by the autonomous province for construction that is completely built on the territory of the autonomous province. With the request for the issue of the building permit, it is necessary to submit the general project with the report about the performed technical inspection. For the construction of energy facilities, it is also necessary to enclose the energy permit in accordance with a Law on Energy. The building permit is issued for the whole facility, or a part of it, if this part represents a technical and functional unit. The authorized agency delivers one copy of the decision about the building permit to the inspector, who carries out the supervision over the construction of the facility, and if the decision is made by the Ministry, or autonomous province, a copy of the decision is delivered to the local government unit on whose territory the facility is constructed. The decision about the building permit may be appealed. In EIA, the public concerned is entitled to file an appeal against the decision of the competent authority on the application for a decision on the need for an impact assessment. The public concerned is also entitled to file an appeal against the decision of the competent authority on the application for a decision on the scope and content of the EIA Study. The public concerned are entitled to initiate an administrative court procedure against the decision related to the application for approval of the EIA study or refusal of the application.

79. A decision to undertake the construction of a highway (listed under the AC)

For the territory of the Republic of Serbia, the Spatial Plan of the Republic of Serbia is passed. The Spatial Plan constitutes the basic planning document of spatial planning and development in the Republic. The Spatial Plan of the Republic of Serbia particularly includes spatial development of traffic and infrastructural systems of significance for the Republic of Serbia. The presentation of the planning document for public insight is announced in a daily and local newspaper, and lasts 30 days from the day of announcement. The presentation of the planning document for public insight is overseen by the Agency of the Republic for spatial planning, i.e., the agency of the unit of local administration with jurisdiction over affairs of spatial and urban planning. The responsible agency, i.e., the committee for plans, writes a report on the completed public insight into the planning document, which includes data on the completed public insight, with all remarks and decisions for each remark. According to the Law on Strategic Environmental Impact Assessment, the strategic environmental impact assessment procedure is divided into three phases: a) preparation, which aims at decision making on a strategic impact assessment, b) drafting stage of the environmental impact assessment report, and c) phase of consent, i.e., adoption of the report. The Law on Strategic Environmental Impact does not stipulate the possibility of protecting public rights in administrative proceedings or on appeal, not even in administrative court proceedings. The absence of the right to appeal or file a lawsuit consequently leads to the situation in which the public opinion loses legal weight. It means that the public does not have the opportunity to defend the position expressed in the process of public participation in strategic environmental impact assessment. The construction of motorways, express roads, the construction of a new road of four or more lanes, or the realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 km or more in a continuous length, are the projects for which environmental impact assessment is obligatory. The public concerned are entitled to initiate an administrative court procedure against the decision on approval of the EIA study.



80. On-going polluting operation of an industrial facility with a permit

The integrated permit sets the conditions for the operation of installations and execution of activities and operator's obligations. In case where pollution originates from the installation that the permit has been granted for or that is subject to permit granting, the operator shall rehabilitate the consequences of such pollution within the shortest possible period at his own expense, taking into account all technical and economic possibilities. If the operator fails to carry out the rehabilitation, the competent authority shall rehabilitate the pollution at the expense of the operator. The competent authority delivers to the operator the decision on permit granting, or refusal of the permit granting application, and informs other authorities and organizations and the public concerned accordingly within eight days from the date of decision making. An appeal cannot be filed against the decision of the competent authority while the administrative court proceeding can be instigated. In the procedure for permit review, the competent authority has the obligation to inform the public about the review, but the right to appeal in administrative procedure or to initiate an administrative court procedure is not provided for the public or public concerned. The public concerned may initiate inspection control. An appeal against the decision of the inspector can be submitted to the Minister within 15 days from the date of receipt of the decision.

81. On-going polluting operation of an industrial facility without a permit

Everyone can demand from everyone else to remove the source of danger that may cause considerable damage to them or to an unspecified number of individuals and to refrain from an activity that causes harassment or potential damage, if the cause of harassment or damage cannot be prevented by applying appropriate measures. On demand by an interested person to eliminate a danger of injury or loss, the Court may order the taking of adequate measures to prevent the emergence of damage or to eliminate the source of danger. If loss occurs in the course of an activity undertaken in the interest of the general public, and otherwise permitted by a competent agency, the only recovery to be demanded concerns loss exceeding normal limits. However, in such a case, it shall also be possible to demand the taking of socially justified measures in order to prevent the emergence of damage or to reduce it. Activities and installations that the integrated permit is granted for relate to both new and the existing installations. In execution of inspection control, the inspector has the right and duty to determine whether the new installations have been granted the permit in accordance with this Law and whether the existing installations have submitted the permit granting application in accordance with this Law. The public concerned may initiate inspection control.

82. A clear cutting of a forest threatening a nature reserve/biodiversity area.

The project leader, i.e., legal person, entrepreneur and natural person using natural resources and carrying out construction and other works, activities and interventions in the nature is obliged to act in accordance with the nature protection measures established in the plans, bases and programmes and in conformity with the project-technical documentation, in such a way so as to avoid or minimize the endangerment of and danger to nature. Nature protection conditions are an integral part of the EIA for projects for which there exists an established obligation of drafting the EIA. The public concerned may participate in EIA by the regulations established in the Law on EIA. The public concerned may initiate inspection control. An appeal against the decision of the inspector can be submitted to the Minister within 15 days from the date of receipt of the decision. The public may initiate a criminal procedure for offences relating to the Devastation of Forests and Forest Theft as well as for offences Damaging the Environment and

Destroying, Damaging and taking abroad a Protected Natural Asset. The public may initiate a Demand to Eliminate a Danger of Injury or Loss in accordance with the Law on Contracts and Torts.

83. A decision to undertake an infrastructure construction project on a nature reserve

During the development of regulations, i.e., acts on the proclamation of protected natural goods, plans on protected areas management and plans on the utilization of natural resources, public participation is ensured in compliance with the Nature Protection Act. This Act does not stipulate the possibility of protecting rights in administrative proceedings or on appeal, not even in administrative court proceedings for the public or public concerned. The public concerned are entitled to initiate the administrative court procedure against the decision on approval of the EIA study. The building permit for the construction of a facility within national parks and facilities within a protected natural property of exceptional importance (except residential facilities, agricultural and economic facilities and infrastructure facilities which are important for them and which are built in villages) is issued by the ministry authorized for the tasks in construction. The general project and the preliminary project, the previous feasibility study and the feasibility study for facility within national parks and facilities within a protected natural property of exceptional importance is subject to review (professional inspection) by a commission formed by the minister authorized for tasks in construction. The professional inspection is concerned with the concept of the facility, particularly from the aspect of: adequacy of the location in view of the type and use of the facility; the conditions for the construction of the facility in view of the application of measures for the protection of the environment; the seismic, geological and technical, traffic and other conditions; the provision of energy conditions in comparison with the type of planned energy sources; the technical and technological properties of the facility; the technical, technological and organizational solutions for construction of the facility; updatedness of the technical solutions and compatibility with the development programs in this field, as well as other prescribed conditions for the construction of the facility. The review commission delivers the report to the investor with measures which must be applied when preparing the main project. The building permit is issued by decision, within eight days of the submission of the proper request. The integral part of the decision is the main project. Appeal cannot be made to the decision which is made by the authorized ministry or the authorized agency of the autonomous province, but a lawsuit can be initiated.

## THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

### I. ENVIRONMENTAL LEGISLATION, ADMINISTRATION AND COURTS

#### 1.1. Environmental legislation and administration

1. Environmental protection in the former Yugoslav Republic of Macedonia formally holds “elevated legal position” with the single fact that it is incorporated in the legal system as the “fundamental value of the constitutional order”. Envisaged as separate social right, the Constitution [Устав] stipulates that “everyone has the right to a healthy environment ... everyone is obliged to promote and protect the environment” and that the public authorities are obliged to provide conditions for the citizens to live and promote a healthy environment. Moreover, all natural resources are constitutionally considered as “amenities of common interest for the Republic and enjoy particular protection”.
2. The Aarhus Convention [Архуска конвенција] was ratified by the Assembly of the former Yugoslav Republic of Macedonia on July 01, 1999, and as an international agreement ratified in accordance with the Constitution, is part of the internal legal order. Ratified international agreements enjoy “legal supremacy” whenever they are in collision with the national laws and by-laws, and formally, legal subjects may directly use the Aarhus Convention, including in front of the courts. There are a number of environmental legal acts within the environmental legislation in the former Yugoslav Republic of Macedonia.
3. The Ministry for Environment and Physical Planning, or shortly, МОЕПП [Министерство за животна средина и просторно планирање] is the responsible authority for the transposition, implementation and enforcement of the environmental legislation. As a constituent part of the МОЕПП, the Office of Environment [Управа за животна средина] is responsible for providing the Ministry with environmental expertise concerning nature protection, waste management, water management, industrial pollution and risk management, etc. The Office for Environment is also responsible for conducting the EIA and IPPC procedures.
4. The supervision and enforcement of the environmental legislation is performed by the State Inspectorate of Environment [Државен инспекторат за животна средина] as a body within the МОЕПП. The local and national state inspectors perform their supervision according to annual and monthly working plans and/or *ad hoc* inspections, which may be performed also upon a request by the public. In order to efficiently carry out its function, the Inspectorate has a wide specter of rights, including “ascertaining whether [the public authorities] ... provide access to information they hold and whether they have done it in a specified time limit and format.” Corollary, the Inspectorate has the power to issue decisions against private or public subjects to stop environmentally harmful activity and/or to oblige them to undertake concrete preventive or restorative activities.
5. Moreover, in the МОЕПП there is established a Public Relations Office [Канцеларија за комуникација со јавноста] with the basic role to “provide transparency and public accessibility to information on different aspects of environmental protection”. This Office is responsible for the promotion of the rights of the Aarhus Convention and also for preparing and submitting the national reports on the implementation of the Aarhus Convention in the former Yugoslav Republic of Macedonia.

6. Finally, municipalities are empowered with environmental rights and responsibilities as well, mainly related to preparing and monitoring local environmental action plans, providing access to environmental information, conducting SEA for local planning documents, participating in EIA procedures, etc. Besides these, the local municipalities are responsible for issuing B integrated environmental permits, as the main administrative tool for integrated pollution prevention and control of smaller polluters.
7. The Public Prosecutor's Office [Јавно обвинителство], as a constitutionally established public authority (enshrined in art. 106 of the Constitution), is regulated by the Law on Public Prosecutor's Office, as well as the Criminal Procedure Code. A specialized environmental prosecutor's office does not exist.
8. The Public Prosecutor's basic duty is to prosecute criminal offenders for crimes that the prosecution has initiated *ex officio* or upon an indictment proposal filled by citizens or another public authority. Everyone may report a crime being prosecuted *ex officio*. Besides the above, the public prosecutor may file an initiative to the Constitutional Court for the assessment of the constitutionality of legal acts. Moreover, in administrative procedures, "the public prosecutor ... when authorized by law, can file an appeal against the decision that violates the law for the benefit of some individuals or legal entities, yet to the detriment of the public interest". Finally, in accordance with the Law on General Administrative Procedure, the public prosecutor has a right to submit a "request for protection of the lawfulness against a legally valid decision" if the legally prescribed conditions are met and he/she considers that the decision in question has violated the law.
9. The competences and the manner of the work of the Public Attorney [Народен Правобранител] are regulated by the Law on Ombudsman and the Rules of Procedure of the Ombudsman. The Law on Ombudsman envisages its role as an independent and autonomous body that protects the constitutional and legal rights of the citizens and legal entities that are infringed by administrative acts, actions and omissions. Everyone, including NGOs, may file a complaint to the Ombudsman if he/she believes that his/hers rights have been infringed by the public authorities (or organizations/bodies vested with public authorities). The Ombudsman is responsible for the protection of the constitutional and legal rights of the citizens within the four main areas, including "the right to work, ecological rights and consumer rights". If the Ombudsman ascertains that the environmental rights of the person(s) filing a complaint are violated, he is authorized to give recommendations on the manner of elimination of the issue, proposals for the recondition of certain procedures within the limits of the law, raise an initiative for disciplinary procedure against an official and/or file a motion to the public prosecutor for the initiation of a procedure in order to determine a criminal liability. Moreover, if he/she assesses that the implementation of the disputed administrative act may cause "irreparable damage" to the right of the interested party, he/she may request an injunctive relief until the decision by the higher authority is adopted. However, the Ombudsman cannot intervene in judicial proceedings, except in cases whereas the issue is related to "unjustified prolongation of the court proceedings".
10. Although the Aarhus Convention (formally) is directly applicable as an international agreement ratified in accordance with the Constitution, still it is transposed via the Law on Environment. As noted above, in cases of collision, the Aarhus Convention' provisions should prevail. Still, in these

cases, the public authorities do not apply the Aarhus Convention directly, even when the implementation of the Convention would enable more favorable conditions for effective access to justice, public participation and/or access to information. In the only environmental case that was considered by the courts (Municipality Veles and the environmental NGOs vs. the former Yugoslav Republic of Macedonia), the Basic court Veles in his explanation of the verdict noted that the Aarhus Convention was considered as well, but the same did not influence the opinion of the court.

11. Beginning from 2006, when the Law on Mediation entered into force, citizens, NGOs and legal entities may voluntarily initiate mediation procedure. According to this Law, mediation is allowed in civil disputes between the parties that may freely dispose with their claims (if the dispute may affect the interests of a third party not involved in the mediation, it cannot be subject to this type of dispute resolution). However, mediation in administrative disputes is not envisaged in the Law on Mediation. Third parties may participate by permission of both parties who initiated the mediation. Mediation is not used in environmental matters.

### **1.2. Decision-making in environmental matters and administrative review**

12. The decision-making procedure on specific activities related to the environment is relatively complex (especially for lay people) and is generally divided into several stages (decision or agreement on realization of the project, approval of the project in relation to the general urban plan, decision in EIA procedure, IPPC permit, permission for construction, etc.), whereas the noted decisions/permissions are made by different public authorities. Foremost, the investor [private or public entity that acquires the right to construct the project] may commence with building the project only after the issuance of the construction approval in accordance with Chapter V of the Law on Construction. Depending on if the project is first or second category, according to the categorization in the Law on Construction, i.e., projects “significant for the Republic” or projects of “local significance”, the construction approval is issued by the Ministry of Transport and Communication or the concerned municipality. As an exception, the construction approval for projects in the technological industrial development zones is issued by the Directorate for Technological Industrial Development Zones.
13. Before the construction approval (permit), the investor must obtain verification of his project by the Ministry of Environment and Physical Planning whether the local urban planning documentation anticipates the construction of the project. Moreover, the investor must obtain other related licenses/permissions prior, depending on what type of project he/she is planning to construct (ex: if the project concerns protected cultural heritage, a conservatory approval issued by the Directorate for Cultural Heritage Protection is obligatory).
14. However, more important is that via the Law on Environment and the relevant by-laws, the activities determined in Annex I of the Aarhus Convention are subject to mandatory environmental impact assessment procedures (EIA) and/or fall under the procedure for industrial pollution prevention and control (IPPC). The MOEPP is responsible for carrying out both procedures that, *inter alia*, enables public participation in the decision-making process when all options are open. The procedure ends with the Decision by the Ministry whether to grant consent or to reject the application for the project (in EIA procedures) or a Decision on granting/refusal of an integrated environmental permit. Most important is that the construction

approval (permit) may not be issued without the EIA decision, i.e., if the construction permit is issued without EIA/IPPC decision, the project is invalid.

15. In cases related to projects for which there is no mandatory EIA, the MOEPP carries out a screening procedure in accordance with the relevant bylaws that determine the criteria on the basis of which a need for EIA is identified. The public concerned, including the investor and environmental NGOs, have the right to lodge an appeal against the screening and the final Decision of the Ministry before the State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance [Државна комисија за одлучување во управна постапка и постапка од работен односво втор степен]. The Law on Environment also clearly stipulates an obligation for the MOEPP, whenever it reconsiders or updates the operating conditions for a project that was previously subjected to EIA procedure or possesses an integrated environmental permit, to apply the same provisions regarding public participation.
16. The public concerned have a right to challenge both the substantive and the procedural legality of the environmental administrative decisions above (with the possible exception for the Decision by the MOEPP regarding projects that fall under the “national defense clause” and regarding the License for deliberate release of GMOs). Having in mind the principle of hierarchy, the public concerned may challenge the decisions first in front of the State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance (hereinafter: State Commission) as a formally independent and impartial body specifically created with responsibility to review administrative decisions. Afterwards, if not satisfied with the decision of the State Commission or due to the silence on the matter, the public concerned may file a lawsuit in front of an administrative court, as a superior authority.
17. Anyone may report a breach of environmental laws by private persons or public authorities to the supervisory authorities, i.e., the State Environmental Inspectorate, which is obliged to act upon the report. If the Inspectorate establishes that there is an infringement of environmental laws, it may issue an order or prohibition of the activity or initiate a misdemeanor procedure. Moreover, *anyone* may file an indictment to the public prosecutor for the (potential) crimes against the environment by public authorities or private persons. As noted above (question 1.1.4), anyone may file a complaint to the Ombudsman if he/she believes that his/her environmental rights have been infringed by public authorities.
18. Last but not least, the Law on acting upon complaints and proposals prescribes a general right for citizens to file free-of-charge complaints for the purpose of protecting their personal rights and interests, but also protecting the public interest as well. The public authorities are obliged to provide an answer regarding the “legal grounds and the results of the actions taken” within a period of 15 days/30 days for more complex issues. Moreover, if it is established that there is a violation of the public interest, the public authority is obliged to send a request to the competent body to take over the necessary measures to eliminate the violation and the damage caused. However, there is a possibility for “indirect citizen’s enforcement” of the environmental law, i.e., if it may be used to protect the environment as a “public good”.
19. The administrative procedure for challenging decisions related to environmental issues is essentially the same if it is initiated by an individual, group of individuals or an NGO/other entity. Namely, in accordance with the Law on General Administrative Procedure, the party of an

administrative procedure has a right to file an appeal against a decision adopted in the first instance. Thus, in most cases noted above, the public concerned may lodge an appeal against the decisions of the public authorities in front of the second instance State Commission. The appeal must be directly submitted to the body that adopted the first instance decision. The Commission adopts a decision within a period of 2 months of the day when the complaint is submitted. The decision of the Commission may be appealed in front of the administrative court.

20. The State Commission, as an independent state body with the capacity of a legal entity and its own expert service on disposal, is established by separate law. The State Commission has the authority to issue binding decisions that may only be appealed via the initiation of an administrative dispute in front of the administrative court. There is a possibility for third party intervention into administrative procedures, in situations where organizations (NGOs, workers unions, etc.) may become involved in already initiated procedure against its members, in order to defend them or if the “third person would be directly harmed by an annulment of the disputed administrative act”.
21. The Ministry for Environment and Physical Planning, within five days of issuance, shall publish the Decision on granting consent/rejecting the application for the project implementation in at least one daily newspaper available in the whole territory of the former Yugoslav Republic of Macedonia, on its own website, as well as on the notice board in the premises of the Ministry. In the IPPC procedure, within 15 days MOEPP publishes the A integrated environmental permit on its own website and at least in one daily newspaper available in the whole territory of the former Yugoslav Republic of Macedonia.
22. The Law on Administrative Disputes clearly stipulates that administrative disputes may be initiated against final administrative acts adopted in second instance. Thus, the individuals, groups and NGOs must “respect the legal hierarchy” and firstly to lodge an appeal to the State Commission. Only when the complainant isn’t satisfied with the decision by the Commission or the Commission is silent on the matter, may he/she initiate an administrative dispute.

### **1.3. Courts**

23. The judicial system is structured and regulated in accordance with the Constitution and the Law on Courts. Thus, the judicial power is exercised on “three-level” structure:
  - Basic courts** [основни судови], established as courts with basic and expanded competences. Basic courts have jurisdiction to decide upon environmental misdemeanors and the prosecution of environmental crimes and in civil claims of the individuals and NGOs against other private parties or public authorities (ex. property and other civil disputes, compensation for damages, etc.);
  - Appellate courts** [апелациони судови], established to decides upon appeals against the decisions of the basic courts.
  - Supreme Court** [Врховен суд], established to decide in third and last instance upon appeals against the decisions of the appellate courts, to decide upon extraordinary legal remedies against the legally valid decisions of the courts (ex. revision of the second instance decision) and to decide upon a request of the parties in procedures for violation of the right to trial within a reasonable time period.

24. Furthermore, the judicial power is vested also in the Administrative Court [Управен суд], as competent to decide, *inter alia*, upon a dispute resulting from the implementation and enforcement of concession agreements or contracts for public procurements which are of public interest, as well as against individual acts of the public authorities. The Higher Administrative Court [Виш управен суд] is established by law to decide upon appeals against the decisions of the Administrative Court. Besides the right to appeal the decision of the Administrative Court as ordinary legal remedy, the Law on General Administrative Procedure envisages the repeating of the procedure, petition for protection of lawfulness (that may be filled only by the public prosecutor) and extraordinary abolishment as available extraordinary legal remedies.
25. Besides the above, the Constitution establishes the Constitutional Court as a judicial body protecting constitutionality and legality. Thus, in accordance with the Rules of Procedure of the Constitutional Court, anyone (including NGOs) may submit an initiative for an assessment of the constitutionality of a law and/or assessment of the constitutionality or legality of an (environmental) regulation or other common act (administrative act that affects more individuals and/or legal entities). The Constitutional Court may repeal or invalidate a law (or specific legal provision) and other regulation or enactments, if it deems it as non-conforming with the Constitution or the law.
26. Moreover, the Constitutional Court protects the freedoms and rights of individuals relating to freedom of expression (conviction, conscience, thought ...), political association and activity, as well as right to non-discrimination on any basis. Any citizen may request protection by the Constitutional Court if it deems that an individual act or action (by private or public entity) has infringed his above noted freedoms (ex. this may be used as protection against SLAPP claims against environmental activists that publicly protest against environmentally harmful corporate activities).
27. Individuals, groups and NGOs may initiate civil and administrative proceedings relating to environment issues. Also, the “damaged party” may submit a criminal private lawsuit where this possibility is envisaged in the laws or indictment proposal to the public prosecutor for crimes that are prosecuted *ex officio*. In accordance with the litigation laws, the courts are obliged to rule within the frames of the claims being filled in the procedure for which they are competent. Thus, the courts examine the procedural and substantial legality of the case, but within the claims that are raised from the applicant.
28. The judicial function in the former Yugoslav Republic of Macedonia is exercised by judges. Lay-judges (jurors) participate in the trials when so determined by procedural laws. So, lay-judges may adjudicate in environmental cases if the legally prescribed conditions are fulfilled. However, it is important to note that although the lay-judges are non-legal experts, they still attend a mandatory specialized training in the [Academy for Judges and Public Prosecutors](#), after which they take an exam to test their acquired knowledge. Only the ones who successfully pass the exam may be lay-judges. The involvement of technical experts as lay-judges is a possibility, but a possibility whereas no party may have any influence (although, I do not see reason why experts should not be included as lay-judges upon the proposals of the party in the dispute and this law not to be amended to allow this opportunity).
29. There is no *ex officio* principle regarding the particulars of the case in the appellate procedure. The unsatisfied party of the first instance court decision may challenge the decision due to actual



violation of the procedural provisions, wrong or incompletely determined factual condition and/or misapplication of the material law. New facts or evidence in the appeal may be stated only if they refer to the actual violations of the provisions of the litigation procedure for which an appeal is filed, and the complaining party itself must show the violations.

30. The national legislation is clear that “the legally valid court decision shall have undisputed legal effect” and that “the court decision may only be amended or abolished by a competent court in a procedure prescribed by law”.
31. As prescribed by the Law on Courts, the courts are obliged to publish the adopted decisions on their website within a period of two days as of the day of their preparation and signing. The public may be informed for the court decisions via utilizing the registers that may be found on some of the courts’ websites. Moreover, the public may file a request for information in accordance with the Law on Environment under the same conditions as any other request related to environmental information, whereas the courts are obliged to answer in the shortest possible period, but not longer than 30 days from the day when the request is submitted.
32. Foremost, there is no developed environmental case law, nor is there any advisory/mandatory opinion of the Supreme Court adopted in this field. Furthermore, as far as I am aware, minorities of the judges have a basic knowledge of environmental law (mostly via self-education and (few) organized trainings by the Academy for judges and Public Prosecutors), but there aren’t any specialized and more knowledgeable judges concerning environmental law. On a positive note, the Programme for continuous training of the judges and public prosecutors for 2013-2014 envisages trainings on environmental law in particular, as well as trainings on other subjects that are indirectly connected to the environmental law (urban land planning, criminal, civil and administrative procedural law, etc.). Moreover, this institution is also open for organizing specialized trainings on environmental law in cooperation with NGOs and other third parties (such training was recently organized by REC).

## **II. CHALLENGING THE REFUSAL OF ACCESS TO ENVIRONMENTAL INFORMATION**

33. The right of access to environmental information is regulated in the Law on Environment, as well as with the general Law on Free Access to Public Information. In accordance with the Law on Environment, everyone has a right to request validated environmental information from public authorities (and legal entities with public authorizations or performing environmental services of public interest based on law and/or an agreement) without having to prove its interest. The public authorities are obliged to provide access to the requested environmental information within the shortest possible term, but not later than one month from the date of receipt of the request (in practice, almost always they are using the 30 days maximum deadline, even for simple requests). Only in exceptional cases, whereas that prolongation is needed because of the volume and complexity of the requested information, public authorities have two months period to provide the access. Public authorities may refuse the request for environmental information only if the disclosure of the information would have a negative effect on the conditions explicitly prescribed in art. 55, p. 2. Still, prior the refusal of the request, public authorities are obliged to “assess whether the protection of the public interest, to which the requested information pertains, is of higher importance than the interest served by the disclosure of the information.” The environmental information requested must be available in the part that does not affect the conditions and also, the whole information shall become available when the reasons for

unavailability seize to exist. Public authorities do not charge any compensation for expenses related to the delivery of the requested information. Whenever they charge compensation, the compensation, which is determined with a separate bylaw, is reasonable and does not exceed the real costs incurred for the provision of the information.

34. Administrative disputes may be initiated against final administrative acts adopted in second instance. Thus, the individuals, groups and NGOs must “respect the legal hierarchy” and lodge an appeal to the Commission for protection of the right to free access to the public information [Комисија за заштита на правото на слободен пристап до информации од јавен карактер] against the holder of information that has refused their request. Only if the Commission does not adopt a decision upon the appeal within 15 days, nor does not adopt it within 7 days after the repeated request, or the applicant is not satisfied by the decision, may he/she initiate an administrative dispute in front of the court.
35. Within 15 days, the requesting party has the right to lodge an appeal against the decision or conclusion for refusal of request for environmental information to the Commission for protection of the right to free access to the public information. The applicant may use his/her right to appeal if he/she considers that his/her request for environmental information was ignored, wrongfully refused in part or in full or inadequately answered. The applicant may initiate an administrative dispute by filing a complaint to the Administrative Court in a period of 30 days as of the day of receiving the second instance decision. Also, in cases where the Commission has not decided upon the appeal within 15 days and fails to adopt a decision within 7 days as of receiving the repeated request by the applicant, he/she may initiate an administrative dispute for “O-decision” (silence on the matter).
36. Refusals of requests for environmental information must contain the reasons for the refusal of the request, as well as reference concerning the available remedies. The applicant may lodge the appeal and represent himself in this procedure without counsel. If the request for environmental information is denied by a municipality or legal entities with public authorizations or performing environmental services of public interest based on law and/or an agreement, the appeal should be lodge in front of the MOEPP. Still, most citizens and NGOs are lodging their appeals to the Commission for protection of the right to free access to the public information even in these cases. The Commission is accepting these appeals and is deciding upon the same. Furthermore, as noted above (see answer 1.4), the State Environmental Inspectorate has the authority to ascertain whether the public authorities provide access to information as prescribed in the Law on Environment.
37. The Ombudsman as well may act upon a claim of the public related to the refusal of access to environmental information. He is authorized, *inter alia*, to request information, explanations and evidence regarding the complaint, as well as to have direct insight into the relevant files of the public authority that refused the request to information. More important, the public authorities are obliged to cooperate with the Ombudsman and at his request “to furnish him/her with all the evidence, data and information, regardless of the degree of confidentiality”.
38. In administrative disputes, the public authorities’ act may be abnegated if the material right is misapplied. So, the judges, of necessity, must read the disputed document before making its judgment on the merits. Moreover, the Law on Classified Information allows access to the

classified information to the state bodies for the purpose of performing their duties, in accordance with the “need to know” principle.

39. In general, there aren't serious practical challenges associated with challenging refusals of access to environmental information. In most environmental cases, the issues are resolved in the second instance. However, a troubling issue is that in many cases (most often, related to important public projects/investments) the public authorities creatively evade their obligations. Namely, there are cases where the public authorities consciously are not following the decision of the second instance Commission, compelling the applicant to go back to the second instance (“ping-pong” issue) and/or to file a complaint to the State Administrative Inspectorate, losing precious time to obtain the needed information. Here, the problem is that the second instance Commission does not have any authority to issue a fine against the public authority for not respecting its decisions, creating a loophole that may be exploited by the authorities. Also, the lack of environmental lawyers who are familiar with the particulars of the rights to access to information, especially when the public authorities are refusing access on the basis of the legally prescribed “exceptions”, pose a practical challenge associated with challenging the refusals of requests for environmental information”.

### **III. CHALLENGING DECISIONS, ACTS AND OMISSIONS BY PUBLIC AUTHORITIES AND PRIVATE PERSONS**

#### **3.1. Standing in environmental cases**

40. The public concerned may challenge both the procedural and/or substantial legality of the administrative decisions on specific activities in front of the State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance and/or Administrative Court.
41. The legal standing [активна легитимација] is dependent on the type of proceeding in question, but in general is based on the “impairment of rights doctrine”. Namely, in civil proceedings, “any natural or legal entity can be a party in the procedure” and the court may “recognize the capacity of the party and of those forms of joining that lack the capacity of a party ... should it be confirmed that, in regard to the subject of the dispute, they actually meet the conditions for acquiring the capacity of a party and should they have at their disposal property whereof enforcement can be conducted”. On the other hand, in administrative procedures, “a party ... is a person who request a procedure to be initiated ... or who has the right to participate in procedure in order to protect the rights or interest”. Moreover, art. 47, p. 2 of the Law on General Administrative Procedure clearly states that NGOs and group of people may be party “if they can be considered as holders of rights and responsibilities subject to administrative procedure”.
42. In this manner, it is important to note that the Law on Environment defines environmental NGOs and the individuals for whom there is high probability to experience the effects of a particular decision, as public concerned, i.e., public that have an interest in the making of decisions concerning the environment. Thus, it is highly probable that civil and administrative courts will deem environmental NGOs and the affected individuals as parties in these procedures. Moreover, the Law on Environment grants a right to the public to participate in the EIA, SEA or

IPPC procedures and subsequently, to ask courts to review the final decision in these procedures.

43. The public has a *locus standi* in front of the Administrative Court. It must show that with the challenged administrative act, his rights or interest are damaged or it should be a party of the administrative procedure in the first instance (ex: to participate with comments in the EIA procedure). According to the Law on Environment, environmental NGOs are considered as public concerned that have an interest in the environmental decisions. Last but not least, the public may challenge the administrative decision in front of the court only after exhausting the available remedy (the appeal) in the second instance or if the law prescribes that the decision may directly be challenged in front of the administrative court.
44. There is no significant difference whether the acts/omissions that infringe environmental legislation are conducted by private or public entity, regarding the *locus standi* issues. Concerned individuals and environmental NGOs whose right or legitimate interest is infringed by acts or omissions by private persons or public authorities have legal standing to act in administrative or civil court and to bring an action for damages and/or to request prohibition of the operator's harmful activity. Moreover, *everyone* may request a potentially harmful activity to be stopped in front of the civil court. What is more important is that this is confirmed in the only court case related to the Veles Smelter, wherein the Court took a clear position that environmental NGOs have a right to challenge act/omissions which contravene environmental law in front of the courts "because the same are legal entities who are working on issues related to the protection of the environment".
45. There aren't any territorial variations in the regulation and practice regarding legal standing. However, there are many sectoral environmental laws wherein only the applicant for licenses and the responsible public authorities are parties in the procedure. In these cases, the right of the public concerned to challenge the administrative act that it believes may have negative environmental influence is limited.
46. In accordance with the Law on Obligations, any member of the public may take an action in court against the operator that is the owner of a "potential source of danger" that threatens to cause significant damage to an indefinite number of person (i.e., the potential harm that threatens the public interest). Also, in legally defined situations, the Public Prosecutor, the Ombudsman and other state bodies may file an appeal against decisions that violate the law to the detriment of the public interest. Moreover, the Rules of Procedure of the Constitutional Court envisages that *anyone* can submit an initiative for assessment of the constitutionality of law or assessment of the constitutionality and legality of a regulation or other common act to the Constitutional Court. Last but not least, any member of the public may participate in an administrative judicial proceeding if he is fulfilling the "party criteria" noted in the answer above regarding the concept of legal standing.
47. Procedural laws (Civil Procedure Law and Law on Administrative Dispute) enable a third party to intervene in judicial proceedings if the intervener has legal interest in the litigation. The intervener has the possibility to enter/intervene in an ongoing litigation in the whole process, until the court decision becomes final, meaning, in the period anticipated for filling extraordinary legal remedies. Regarding the *Amicus curiae*, although it is rarely used by our lawyers and

organizations, and there are no specific regulations related to it, and it is allowed to be submitted to the courts.

48. The public concerned may initiate a criminal prosecution for environmental crimes only if it is a “damaged party” (his personal or property rights are affected), the sentence for the environmental crime in question is less than three years and this opportunity is prescribed in the law. In these cases, the “private prosecutor” has the same rights as the public prosecutor (except those that the public prosecutor has as a public authority).

### **3.2. Procedural and other remedies in environmental matters**

49. Foremost, the reviewing authority (State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance or the Commission for protection of the access to information) may dismiss the appeal if it is not legally allowed, not filled in time, or has been filed by an unauthorized person. If the second instance authority accepts the appeal, it may take the following decisions:

- To reject the appeal, if it determines that the first instance procedure was implemented correctly and that the appealed decision is correct and based on the law;
- To request amendments in the procedure by the first instance authority, if it finds that the facts from the first instance procedure have been incompletely or incorrectly determined, the rules of the procedure have not been followed or that the disposition of the abnegated decision is unclear or contradictory in the explanation;
- To revoke the decision of the first instance completely or partially, if the second instance authority finds out that it is a necessary matter to be resolved differently even after the amendment of the procedure and corrections of the noted deficiencies. In this case, the second instance authority will annul the first instance decision and shall decide the matter itself; and/or
- To reverse the first instance decision for the same reasons as above.

50. The first instance decision cannot be enforced within the deadline for the appeal until the decision on the appeal is adopted and submitted to the parties. The appeal has an automatic suspensive effect on the first instance decision. Only as exceptional cases of undertaking emergency measures, or if due to a delay of the enforcement some of the parties would suffer irredeemable damage, the decision may be immediately executed irrespective of an appeal or court action. In most of the appeals in EIA, SEA or IPPC procedures, the appeal does not postpone the enforcement of the first instance decision. The public concerned (in these cases, complainant) may request the postponement of the enforcement of the first instance decision “when the enforcement of the administrative act would cause harm to the complainant that would be difficult to repair, and when the postponement of the enforcement would not be against the public interest nor would cause irreparable damage to the opposing party”. Upon the request of the complainant, the public authority whose act is to be enforced is obliged to make a decision no later than three days from the date when it receives the request. Also, the complainant may initiate an administrative dispute against the relevant public authority and may request for temporary measures – postponement of the enforcement of the administrative act. The administrative court shall grant the request only if it deems it “necessary in order to avoid more serious harmful consequences and threatening violence.” Moreover, in order to suspend the first instance decision, the applicant may also obtain assistance from the Ombudsman who is authorized to request injunctive relief until the second instance procedure ends.

51. The State Environmental Inspectorate has the right/authority, as well as the technical capability, to temporarily suspend/stop an activity which contravenes environmental legislation and to order the individual or the public authority to take over corrective measures in a specified time period. If they fail to act in accordance with the decision of the Inspectorate and fail to eliminate the non-compliance with environmental regulations, then the Inspectorate initiates a misdemeanor procedure or criminal charges in front of the court and initiates a procedure for revoking the permits/authorizations of the subject.
52. The claim to the Administrative Court does not prevent the enforcement of the administrative act against which is lodged. Still, the appellant, at first, is entitled to request that the public authority that adopted the decision to postpone its enforcement until the administrative dispute ends, if the following conditions are fulfilled:
- i. The enforcement of the administrative act would cause harm to the appellant that is difficult to repair;
  - ii. The postponement of the enforcement of the administrative act would not be against the public interest;
  - iii. The postponement of the enforcement of the administrative act would not cause irreparable damage to the opposing party.
53. If the public authority that adopted the decision rejects the request for postponement of the enforcement of the administrative act, the appellant may request the Administrative Court to bring “temporary measure” to postpone the enforcement, only if the injunction relief is “*necessary to avoid more harmful consequences*” (*Periculum in mora*). Also, it may (it is not mandatory) relate the temporary measure with condition that the appellant must provide compensation for the eventual damages to the opposing party. The criteria for granting injunctive relief are relatively vague, i.e., the Administrative Court have full discretion, within the above conditions, to decide upon the request for injunctive relief and it is obliged to elaborate its decision.
54. Whenever the courts annul an act in administrative dispute, the public authority that adopted the decision in the first instance is obliged to reinstate the situation as prior to the adoption of the annulled act. Thus, the responsible public authority is obliged to adopt a new act if it is necessary instead of the annulled administrative decision or to adopt an act for enforcement of the court’s decision within 30 days at the latest. If the public authority does not act within the deadline, the procedure for enforcement may be prolonged and this is something that is occurring in practice. In these cases, the party must file a special request to the responsible public authority to act upon the court’s decision in a period of 7 days. If this also is not successful, the party must go back and lodge another complaint to the administrative court. In this instance, the court is authorized to bring a decision “which in every aspect substitutes the act of the competent body” and shall notify the State Administrative Inspectorate. The responsible authority is obliged to enforce the court decision as is ordered with no postponement or it may be criminally charged for obstructing justice.
55. The courts have the authority and competences to temporarily and permanently ban an activity which is in non-compliance with environmental legislation. There is no clear guidance regarding the stopping of an activity, i.e., the courts have relative discretion to decide upon the request for

an injunctive relief/ban, leaving space for the courts to deem the ban as “against the public interest”.

56. The compensation for damages in general is regulated in the Law on Obligations. In accordance with this Law, the right to claim damages for environmental harm belongs to the “harmed party” and it must show damages to its personal or property rights. NGOs may take an action in court against the operator that is the owner of the source that caused the environmental harm and ask for a temporary or permanent ban of the activity, but is not entitled to ask for compensation for damages caused to the environment. The right to request compensation for damages for environmental harm as “protecting public good” is reserved for the government.

### **3.3. Timeliness**

57. An appeal should be filed within 15 days from the day on which the receipt of the decision/omission occurred, unless other deadlines are stipulated in other laws (for example, regarding the A integrated environmental permit, that the public concerned may challenge the permit within a deadline of 30 days). The second instance authority is obliged to decide upon the appeal as soon as possible, but within 60 days of the date of the receipt of the appeal at the latest. If the appeal is not filed within the specified time limit, the relevant decision becomes final in administrative procedure. The final decisions may be annulled, abolished or amended only in special cases envisaged by the law. However, the Law on General Administrative Procedure prescribes the possibility for reinstatement, i.e., due to justifiable reasons, the party that failed to appeal the administrative act in the specified deadline may ask for reinstatement of the conditions prior to the omission to appeal the act and all decisions and conclusions adopted afterwards to be annulled.
58. The parties may file a complaint in front of the administrative courts within a period of 30 days of the day of the submission of the administrative act or the second instance decision to the complainant. Also, in cases where the second instance authority will not adopt a decision on the appeal within 60 days, and fails to do so in an additional period of 7 days after the complainant submitted a repeated request, he/she may initiate an administrative dispute for silence on the matter. The unsatisfied party can file an appeal against the decision of the Administrative Court in front of the Supreme Administrative Court within 15 days of the day of the receipt of the verdict.
59. In civil proceedings in the first instance, the court does not have a specified legal deadline for adopting the decision. In practice, depending of the complexity of the case and how responsible are the parties in the procedure, the case may last around 2-3 years. The losing party may file an appeal within 15 days of the day of the receipt of the copy of the first instance verdict. The Appellate Court is obliged to adopt a decision on the appeal in a period of 3 months (in more complex cases, in a period of 6 months from the day of the receipt of the appeal). In the administrative proceeding, the public concerned may file a complaint within 15 days in EIA/30 days in IPPC procedure of the announcement of the decision. The State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance is obliged to decide upon the appeal as soon as possible, but within 60 days of the day of the receipt of the appeal at latest. If the complainant is not satisfied of the decision or the commission is silenced even after the request for adjourning, then it has a right to lodge an administrative lawsuit. There are no specified deadlines for the Administrative Court to adjourn the dispute. In practice,

most often these types of cases take around 1.5 years to be decided. The unsatisfied party may file an appeal against the decision of the Administrative Court in front of the Supreme Administrative Court within 15 days of the day of the receipt of the verdict.

60. The time limits for the administrative review (15 or 30 days to file an appeal; 60 days at most to decide upon the appeal) are expressly stipulated in the procedural laws. As such, the time limits may be deemed as sufficient for the complainant to prepare its case and reasonable for the review authority to analyze the issue and reach a grounded decision. However, in more complex cases where scientific inquiry would be required, these deadlines may be short for the complainant to appropriately develop his/her case. In judicial proceedings, there are no established time limits for adopting the decision in the first instance courts (due to the nature of the disputes, except that they should be ruled within a reasonable time). In practice, there are serious issues with delays of judicial proceedings – mainly due to systematic problems, such as a lack of expertise of the judges, inefficient proceedings, judicial congestion, non-responsible acting of the parties, etc. Thus, the public is often discouraged from pursuing their rights, meaning that the timeliness may be a serious barrier to the access to justice.

### **3.4. Assessment of effectiveness**

61. At first, the public may face problems with the State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance, when appealing the administrative acts adopted in the first instance. In many cases, the Commission is silenced on the matter, but still is absorbing 60 days at least. Thus, the complainant's only choice after the "O-decision" of the Commission is to challenge the decision before the Administrative Court. However, the Court is overloaded with cases and it may take more than a year to adopt a decision; enough time for the decision, even if it is favorable for the complainant, to be not effective in practice, i.e., not to succeed in the prevention of environmental harm. The extremely low use of alternative mechanisms for dispute resolutions is not easing the issue with court congestion. Moreover, the criteria upon which the injunctive relief is granted are vague, and it is left to the discretion of the court to determine if the injunction is necessary to prevent more harmful consequences. There is also the issue that it is reasonable to guess that the court will not grant the relief in most of the environmental cases due to different reasons (non-understanding of the issue, pressure not to stop an important investment project, etc.). On top of all these is that the complainant may be sued for damages that were caused by the injunctive relief, making its use financially risky. Also, the enforcement of the relief itself is questionable (due to lack of court practice, its effectiveness and enforceability may not be analyzed properly). No matter what, it would be a great challenge to develop a coherent legal framework, related to the issuing of an injunctive relief, that will make it an effective remedy in environmental cases.
62. Considering the above, the answer is negative – the remedies can hardly be adequate and effective, except in the simplest environmental cases. There is a limited possibility to obtain injunctive relief, and the enforceability of the same is ambiguous. These, in combination with lengthy procedures, may be serious barriers to access to justice. The major obstacles constraining the application of injunctions in matters relating to the environment are:  
Lack of clear standards and consistent practices in granting injunctions;  
Discretion of judges who are lacking the relevant knowledge of environmental law;  
Danger of being sued for damages by the defendant; and  
Questionable effectiveness of the enforcement of the ruling.



#### **IV. Costs: Information on court costs and other expenses associated with environmental cases**

##### **4.1. Financial expenses associated with an administrative appeal (in relation to cases covered by art. 9, p. 1, 2 and 3)**

63. The party that initiated the administrative appeal procedure covers the costs of the procedures (travel expenses of the official persons, witnesses, experts, inspection, legal representation, loss of working days, etc.). Administrative appeals in environmental matters are relatively inexpensive and the main financial expenses are the administrative fees (which are 250 MKD/less than 5 EUR for an appeal against a decision). Only in more complicated cases the complainant may need the help of the experts and so will be obliged to cover its costs. Legal representation is not obligatory in the administrative appeal procedure. Any natural person or legal entity (through his legally authorized representative) may be a party in an administrative procedure and can perform on its own all of the activities in the procedure, including in the appeal.

##### **4.2. Court fees and other costs associated with the consideration of a case in a judicial proceeding**

64. The following court and associated fees would be paid if the public initiates a court proceeding related to the environment issue:

- i. Fees for submissions (filing a lawsuit; requesting an injunction relief; appeal of the first instance court decision; reply to an appeal; filing an extraordinary legal remedy; etc.).
- ii. Fees for the court decisions (decisions, verdicts);
- iii. Fees for legal representation and expert witnessing; and if necessary
- iv. Damage compensation in cases where injunctive relief was requested.

65. The court fees are calculated in accordance with the Fee Tariff that is part of the Law on Court Fees and they are determined in fixed amounts when the fees are related to administrative or criminal proceedings. In the civil procedure, the amount of the court fees is dependent on the value of the claim, but it does not matter who is the plaintiff or whether the case is of private or public interest. On the proposal of the party, the court may exempt the party from payment of the costs in the procedure (or allow the deferred payment of the costs) if paying the costs would “significantly decrease the funds whereby the party and the members of its family are being supported”. Thus, the key (and only relevant) element of consideration regarding the proposal for cost exemption is the material condition of the party (the criteria are set low). The exemption concerns the court fees, as well as the costs for witnesses, expert witnesses, inspection, court announcements, etc. Also, the court may reward the exempted-costs party an attorney-in-fact to represent his/her interest. In these cases, all the court fees and the associated costs will be borne by the court’s funds. Furthermore, the Law on Court Fees generally determines other cases when the party is exempted from paying the court fees (but these do not affect environmental claims).

66. According to the Law on Court Fees (art. 4), the fees should be paid when the fee obligation will occur. Namely, the Law envisages that the fee obligation occurs when actions to the court are submitted; for the court decision, the fee obligation occurs before the party receives a copy of

the decision; etc. Moreover, according to the Law on Civil Procedure, each party must previously cover the costs being caused by its actions in judicial proceedings. The court will not act upon a lawsuit or undertake any other action for which the court fee is not paid in advance or at latest, within 15 days of the day of the proposed action/filed lawsuit. The deferred payment is prescribed in the Law on Court Fees, but only for cases where the court deems that the party's material condition will be seriously affected if he pays the court fees and the associated expenses. The first instance court may waive the court fees and take over the costs by itself, as explained above.

#### **4.3. Costs of legal assistance associated with the judicial consideration of cases relating to the environment**

67. The party must be represented by an attorney-in-fact if the value of the claim exceeds 1,000.000 MKD in civil proceedings. Moreover, due to the procedural rules in judicial proceedings and the substantial complexities in environmental issues, the use of attorneys (best case scenario: *pro bono* lawyers from environmental and human rights NGOs) is highly preferable. The attorney's fees are determined in accordance with special Tariff for the reward and the fees for the attorney's work, adopted by the Attorney's Chambers, and are related to the value of the claims in question. In practice, the attorney's fees (attorney's fee + attorney's reward) are determined by an agreement with the client, but the fees may not be determined lower than the one that is determined in the Tariff. The attorney's fees are paid at the end of the case, upon determination of the relevant court, but an "in-front partial payment" may be and usually is agreed to and requested by the attorneys. Last but not least, at the request of the winning party, the court may oblige the losing party to pay the lawyer's costs, but only if the costs are properly documented and presented to the court. The status of the applicant – NGO, citizen, legal entity – does not influence the attorney's fees, unless otherwise agreed in the concrete case. However, practice identifies that the attorney's fees are higher for legal entities than individuals. Attorneys reported no issues regarding the remuneration of the full costs from the client.

#### **4.4. Costs of evidence, involvement of experts or witnesses**

68. As a rule, the party who proposes the evidence bears the costs. Moreover, the proposing party is obliged to deposit the necessary amount for covering the costs that will occur as a result of exhibiting the evidence. The costs will be shared only when the both parties will propose exhibiting evidence, or the court determines a need for exhibiting new evidence that should be borne by the both parties. The legislation does not make a difference between individuals and NGOs in relation to the determination of the amount of the costs. As noted above, the costs must be paid up front, or the court would not accept the proposal for exhibition of the evidence. Furthermore, the costs are determined by the expert itself. The costs of evidence are not dependent of the subject who initiated the evidence.

#### **4.5. Bond and compensation for damage in the event of suspension of an activity as a security for claims in environmental matters**

69. In administrative judicial proceedings, the courts may ask for a financial guarantee whenever one of the parties in the dispute is requesting an injunctive relief. The court will ask for a financial guarantee if it deems that the injunctive relief would cause damage to the opposing party. In the proceedings in disputes due to the hindering of possession, the civil court may issue

an injunctive relief for the purpose of “removing urgent risk of unlawful damaging or removing uncompensable damage”. Although the amount of the bond is determined in accordance to the related expenses and estimated damages, it may be said that there are no clear guidelines regarding the determination of the amount of the financial guarantees that the courts may request. There is no obligation in environmental cases to compensate for damages to the defendant due to the application of injunctive relief. However, the court may relate the temporary measure- in the moment when it decides on this request in the proceeding – with a condition that the requestor must provide compensation for the eventual damages to the opposing party. In these cases, if the court decides against the party who requested injunctive relief, the other party may claim damages related to the termination of the activity.

70. In administrative proceedings, the courts have relative discretion to decide upon these issues, having in mind that the temporary measure should be approved if it is necessary to avoid more harmful consequences. But what constitutes “more harmful consequences” or “uncompensable damages” is left to the court to decide. The court’s decision may be appealed in front of the Supreme Administrative Court within 3 days that is obliged to decide upon the appeal within 3 days of the day of accepting it. Although the legal norms related to injunctive relief exist, there is a lack of environmental case-law necessary to analyze how this issue is tackled in practice.

#### **4.6. Other issues regarding financial expenses**

71. As for 2013, the net amount of the: 1) minimum wage is 8.050 MKD/**129 EUR**; and 2) minimum pension income is from 5.963 to 8.284 MKD/**96-133 EUR**, depending on the pension category.
72. The “loser pays” principle is firmly established in the procedural laws and is relevant for environmental cases as well. For example, in civil litigations, “the party which completely loses the case shall be obliged to compensate the costs of the opposing party and its intervener.” The first instance court may waive the court fees and take over the costs by itself, as explained above. It does not matter for the distribution of costs between the parties/for the exemption of the payment of costs that the plaintiff/applicant is an individual or an NGO. It does not matter either if the case is a public interest environmental dispute. In administrative review procedures, the costs are low, except in extreme, complicated cases. In court proceedings (especially in civil proceedings), the court fees are reasonable, although the court fees are dependent on the value of the claims. Thus, the more important and complex the case, the higher the court fees that will burden the plaintiffs. In some cases, only the court fees may reach prohibitively high levels.

#### **V. Legal aid (Information on legal aid, which can be provided to the public in environmental matters)**

73. Beginning from 2009 when the Law on Free Legal Aid was adopted, citizens may use free legal aid for legal issues that are of their special personal interest and that are directly related to their material existence. Thus, the system is framed in a way that free legal aid may not be used in environmental matters, with possible exception if there are damages to the property rights of the individual. Moreover, free legal aid may be used only by individuals who are fulfilling the legally prescribed conditions (all related to his material condition). As of August 2013, in the former Yugoslav Republic of Macedonia there are only two environmental organizations (Front 21/42 and Florozon) that may provide legal aid in environmental disputes, although their

capacities are limited (Front 21/42 have only one lawyer and Florozon have *ad hoc* lawyers with whom it cooperates). Also there are few public interest organizations in the human and social rights area that may assist the affected citizens and NGOs in environmental matters as well. The NGOs noted above are providing their assistance *pro bono*. On the other side, the opportunity to receive free legal aid from lawyers and law firms is small, except if, for the case in question, there is serious public interest and it is media attractive. NGOs are funded by grants and other types of donations. For the former Yugoslav Republic of Macedonia, characteristically the funds that the NGOs are receiving are coming from few sources (SOROS foundation, EU funds, etc.). Moreover, there are no legal or other obstacles for NGOs to get public funding which they may use for litigation in environmental cases. However, until now no environmental NGO has received public funds for this purpose.

## VI. Concluding remarks

74. The analysis of the legislation, of the NGOs practice related to access to justice in administrative review and the practice of access to courts in non-environmental cases, allows me to emphasize the following main barriers in access to justice in environmental matters (which I believe are common with countries with undeveloped environmental law):

**Limited standing in particular cases.** It is ambiguous whether the public concerned may challenge permits/licenses issued in accordance with the “sectoral laws” (ex. A license for the deliberate release of GMOs);

**Ineffective remedies in administrative review procedures.** Namely, the second instance state commission often does not make decision on the appeals. Thus, the public lacks an effective remedy to prevent or stop the harmful activities;

**Non-suspensive automatic effect of the appeals exactly in the EIA, SEA or IPPC procedures;**

**Lack of access to qualified legal and expert assistance;**

**Restricted access to free legal aid for NGOs;**

**Ineffective injunctive relief.** As explained above, the criterion upon which injunctive relief is granted are vague and left to the discretion of the court. Also, there is the issue that the court will not grant the relief in most of the environmental cases due to different reasons (non-understanding of the issue, pressure not to stop an important investment project, etc.). On top of all these is the fact that the complainant may be sued for damages that were caused by the injunctive relief, making its use financially risky;

**Significant court fees in civil court disputes.** The court fees are dependent on the value of the claims. Thus, the more complex and valuable the case, the higher are the fees. In particular cases, this may easily reach court fees of around 48.000 MKD (800 EUR) for just filing the lawsuit, which may present a serious financial barrier for NGOs and individuals;

**Significant costs for expert witnesses.** The expert witnesses also may pose significant expenses for the party who is proposing the witness, especially if significant pollution must be proven or if it should be proven that a larger area is polluted than is legally allowed;

**Application of the loser pays principle as a rule;**

As noted in the previous section, the main issue regarding financial expenses is not so much that the court and other costs constitute a barrier for access to justice, but that there is lack of **any** “appropriate assistance mechanisms to remove or reduce financial barriers to access to justice”.

75. Having in mind the identified main barriers to access to justice in environmental matters above, it is obvious that lot of creative work would be needed for the situation to be improved and wide

support of different stakeholders would be necessary. The following are the main practical challenges for improving the access to justice in environmental matters:

Foremost, there is low awareness and knowledge of the public, NGOs, public authorities (especially the second instance commissions) and judges on national and international environmental law. In addition, the lack of environmental lawyers in the NGO sector contributes to the almost non-existence of legal protection of the environment by non-authorities;

The first issue results in a lack of studies and analysis of the implementation of the access to justice pillar. This study is the first of its kind that reviews this matter in detail. However, for some of the issues identified here, further analysis will be necessary (ex. injunctive relief) and a wider debate between the lawyers, judges, NGOs and the public authorities will be beneficial;

There is also a lack of court practice, which in turn makes it more difficult to ascertain whether our environmental legislation and procedural laws are effective and whether the public has access to justice as envisaged in the Aarhus Convention;

The overall socio-economic conditions aren't quite positive as well. In a country where the protection of the environment is low on the political agenda, and having in mind the accent that the politicians are putting on large scale investments, there is a public and political pressure that is usually going against claims for environmental protection; and

On top of the issues above, the judiciary system has a problematic reputation among citizens due to a lack of independence, corruption, timely procedures, work overload, etc. Thus, citizens and NGOs are often discouraged from pursuing their claims in front of the courts and view court proceedings with distrust.

## **VII. Practical situations**

76. The former Yugoslav Republic of Macedonia is relatively rich with natural resources. The activities concerning agriculture, mining and energy production are the most resource-exploiting activities. The most frequently operated facilities listed in Annex I of the AC are chemical installations for the production of basic organic chemicals (ex. MAKPETROL AD – Skopje, TGS TEHNICKI GASOVI AD – Skopje etc.), and installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes (SILMAK JEGUNOVCE, VESNA SAP, FENI INDUSTRY, etc.). Also, in the last couple of years, there are ongoing governmental projects for constructing 500 small and mini hydro power plants. Many of these are planned to be constructed in sensitive environmental areas, such as national parks and similar.

77. A decision for the environmental and construction permitting of an industrial facility (listed under the AC)

The public may challenge a decision for the environmental and construction permitting of an industrial facility in the EIA and in the IPPC procedure. The legal standing is dependent on if the public was a party in these administrative procedures (sent comments, requested information, etc.), therefore obtaining the right to appeal the final decision for these type of projects to the second instance commission within 15 days in EIA procedure/30 days in IPPC procedures of the announcement of the decision. Usually, up to this phase the public concerned does not have any significant costs. The State Commission for Decision-Making in Administrative Procedure and Labor Relations Procedure in Second Instance is obliged to decide upon the appeal as soon as possible, but within 60 days of the day of receipt of the appeal at the latest. The fee for filing the complaint is less than 5 EUR. If the second instance commission is silent on the matter, the complainant must file a request for adjourning (+3 EUR), whereas the commission must reach a

decision in a period of 7 days. If the complainant is not satisfied of the decision or the commission is silent even after the request for adjudication, then it has a right to lodge an administrative lawsuit (+ 8 EUR). There are no specified deadlines for the Administrative Court to adjudicate the dispute. In practice, these types of cases most often take around 1 year to be decided. The party is obliged to pay a fee for the verdict of the Administrative Court in the amount of 13.5 EUR. The unsatisfied party may file an appeal against the decision of the Administrative Court in front of the Supreme Administrative Court within 15 days of the day of the receipt of the verdict (+ 13.5 EUR). Here as well, the party will be obliged to pay an additional 13.5 EUR for the verdict of the Supreme Administrative Court. If the party is represented by an attorney in the above explained proceedings, his costs will be approximately 550 EUR. Therefore, at the beginning of the case, the costs of the party will be negligible, less than 5 EUR. At the end of the case, they will be around 60 EUR without attorney's costs/600 EUR with attorney costs included. The whole procedure explained above will usually be finished within a 2 – 2.5 years period, starting from the day when the party will submit a complaint to the second instance commission.

78. Ongoing polluting operation of an industrial facility with a permit

In these types of cases, anyone, including environmental NGOs, may file a civil lawsuit against the operator of the facility and request prohibition of the operator's harmful activity. There is no requirement for personal and proprietary rights to be infringed, except if the plaintiff is asking for compensation for damages. The court fees are dependent on the value of the lawsuit. In these types of lawsuits, the value is higher than 100.000 MKD (around 1.600 EUR), which means that middle court fees will apply. For this example, it is assumed that the value of the case is 900.000 MKD (around 14.500 EUR), which is a conservative estimation for environmental lawsuits. In addition, the attorney's fee is determined on the basis of the relevant Tariff which presents a minimum amount that may be agreed with the clients. Thus, for initiating the lawsuit, the plaintiff(s) is obliged to pay upfront around 16.000 MKD (around 260 EUR). The first instance court does not have a specified legal deadline that it must follow regarding the adoption of the judgment, and in practice these types of cases will last around 2-3 years, depending of the complexity of the case and the type of expert witness needed. If the plaintiff is not represented *pro-bono*, the minimum attorney's cost for preparing the lawsuit is 3.900 MKD (around 65 EUR) and additional expenses for representation on a hearing, 4.680 MKD (around 75 EUR). At least three hearings will be needed, which means that the attorney's costs for representation would be around 19.000 MKD (around 300 EUR). Moreover, expert evidence may be necessary for proving its claims, the expenses for which fall on the party who is arguing that there is harmful pollution (and is beyond the limits determined in the permit). At least 60.000 MKD (1.000 EUR) will be necessary for the expert to support the plaintiff's arguments with his expert opinion in medium-complex environmental cases. If the plaintiff is requesting an injunctive relief, he is obliged to pay a fee in an amount determined as half of the fee for filing the lawsuit, i.e., 8.000 MKD (around 130 EUR). The attorneys' fee for filing the injunctive relief will be approximately 4.680 MKD (around 75 EUR). All in all, assuming relative efficiency of the court and a relatively medium-complex case, the total expenses in the first instance would be around 1.900 EUR. This amount may very easily reach 5.000 – 10.000 EUR, depending on the case (complexity of the case, the engaged attorney's fees, the number of the actions taken by the attorney, the number of the hearings, and similar). The losing party may file an appeal within 15 days of the day of receipt of the copy of the first instance verdict. The Appellate Court is obliged to adopt a decision on the appeal within a period of 3 months (in more complex cases, in a period of 6 months from the day of receipt of the appeal). The court fee for the appeal is double that of the fee that is

determined for launching the lawsuit. In this case, it would be around 36.000 MKD (around 600 EUR). Plus, the attorney's fee for preparing the appeal is at least 50% higher than the fee for representation, i.e., 9.300 MKD (around 150 EUR). In the end, the reasonable estimation is that the lawsuit, including the appeal procedure, will last around 2 to 3 years and it will cost the plaintiff around 2.750 EUR (not including the expenses of the opposite party if the plaintiff lose the case). However, as noted above, these costs very easily may reach 10.000 – 15.000 EUR in most environmental cases (medium and high complexity) that will end before the court and will pass all the instances available.

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