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## **THE RIGHT TO ENVIRONMENTAL INFORMATION AS A TECHNIQUE FOR THE PROTECTION OF THE ENVIRONMENT**

### **ABSTRACT**

By analysing legal documents and case law the author has tried to show how the right to environmental information can be used as a technique for the protection of the environment, given the wide and numerous possibilities its provisions cast upon the entire society. Despite these obvious possibilities, the exceptions from the general rule of free access, are defined widely, and are so numerous that it is a real danger of public authorities abusing these exceptions, thus annihilating positive effects of the existence of such a right. Therefore, access to justice is an irreplaceable complementary right, since for the effective use of the right of access to environmental information, it shows itself as an inevitable remedy. As for the situation regarding the legal system in the Republic of Serbia, while the real results of the effectiveness of this right in the protection of the environment have yet to happen in future, it is important that most of the basic legal documents dealing with provisions on the access to environmental information have created a good basis for the judicial system to build upon.

*Key words:* environment, information, right of access, public participation, justice.

### **INTRODUCTION**

**T**he right on the accessibility of the information relating to the status of the environment, or as I have already put it in the title, right to an environmental information, owes its existence, in the contemporary form, to the long-running genesis of the idea that the improvement of the accessibility of the

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information on the environment and on the activities that have adverse or damaging effects upon the environment is the key goal of the environmental law.<sup>2</sup> The accessibility and the right of access to such accessible information is in the direct connection with one of the fundamental principles of the environmental law, the principle of preventive action. The essential aim of this principle is the minimisation of the damage to the environment, since only the activity well-informed on the object of the protection, can be efficient in its protection. Through the principle of the preventive action and on the basis of the qualitative ecological information, we reach the absolute aim and purpose of the environmental rules – the sustainable development, since only the ecologically educated environment can become the healthy environment, and therefore the sustainable environment for the future generations.<sup>3</sup> However, the form and contents of the right to an environmental information, as it stands today, in the Aarhus Convention,<sup>4</sup> despite the outstanding possibilities it offers in the field of the protection of the environment, is plagued by numerous constraints, namely the situations in which the right of access to the information is being denied to the interested individuals, for more or less justified reasons. The translation of the Convention in Serbian legislation, which was achieved by the Law from 2009<sup>5</sup> gives the opportunity for

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- 2 This idea is a rather old one in comparison with the other institutes of the environmental law. At the same time, it is characteristic that the formation of the essence and the scope of the idea has been parallel in the realms of the international and national law. This appearance is indeed the general characteristic of the environmental law as a branch of law. For the early beginnings of the practice on the usage of the information as an irreplaceable condition for the effective ecological management see: Michael Baram in his article “Risk Communication Law and Implementation Issues in the US and EC”, 6 *Boston University International Law Journal* 21 (1988).
- 3 The fields of informed ecological activities are spacious and numerous, and the relation between these three institutes of the environmental law are self-obvious. Of course, the leading role is played by the civil society through its mechanisms of self-organization. The important thing is that the awareness of the interplay among the information, ecological activity and the sustainable development becomes widely present among the civil society organizations worldwide. I will attach here the example of such an awareness, the report of the youth network „Komora“ which in the introduction on the page 4 brings the motivation of the responsibility for the rational waste management in this spirit. [http://www.cpd.org.rs/dokumenti/MLADI\\_I\\_UPRAVLJANJE\\_OTPADOM.pdf](http://www.cpd.org.rs/dokumenti/MLADI_I_UPRAVLJANJE_OTPADOM.pdf), 17th September 2010.
- 4 Adopted in 1998, came into power in 2001, text available at <http://www.unece.org/env/pp/documents/cep43e.pdf> 21st September 2010.
- 5 The Law on the confirmation of the Convention on the accessibility of the information, public participation in the decision-making and the right of access to justice in the questions concerning the environment, *Republic of Serbia Official Gazette-International Treaties*, number 38/09.

this advanced institute to be used as a technique of the environmental protection on the domestic level as well. In what measure this will be done remains to be seen, but I find it useful to give an overview of the possibilities and constraints which this institute offers in the field of the environmental protection, both in theory and practice. Thus, the first part of the essay will be devoted to the development of the definition of the right to environmental information, from the rudimentary beginnings to its final form from the Aarhus Convention text. In the second part, however, I will analyse several cases from the practice of various judicial forums in which the environmental information was the object of the dispute. Finally, in the third part, I will give my evaluation of the possible application of this right in the conditions of the Serbian society, bearing in mind especially the application of a similar, although by the object of protection slightly different right, regulated by the Law on the Free Access to the Information of Public Importance, but also other laws connected with various fields of environmental protection.

#### THE DEVELOPMENT OF THE RIGHT TO ENVIRONMENTAL INFORMATION IN THE INTERNATIONAL DOCUMENTS

When we talk about the right to environmental information, we must not lose the wider context in which this right exists, as a constitutive part of the complex structure of the environmental law. In this way, it will be much easier to understand why this right appeared in such a form as it exists in the Aarhus Convention, together with its relationship to the other two institutes the Convention regulates, the right of public participation in the decision-making relevant for the environment and the right of access to justice in environmental matters. The right to environmental information is closely related, but at the same time more advanced than the simple obligation to inform and educate the public. The first documents that deal with the environmental information and their accessibility, exactly remain on this lower level, not being able to go so far as to create a separate individual right of access to the environmental information.<sup>6</sup> But, the state of affairs in the beginning of the 90s culminating

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6 Two treaties signed in the framework of the International Agency for Atomic Energy, directly provoked by the Chernobyl incident, go in this path. They create the positive obligation of the parties to disseminate the information to the public, but they fall short of instituting civil right of access to information. These are the Convention on Informing and the Convention on Help, both from 1986. The famous Convention on Climate Change follows the same pattern.

with the Rio summit, brings with itself one of the principles that “every individual, on the national level, will have the adequate access to the information related to the environment and in the possession of the public authorities“.<sup>7</sup>

At about the same time, the development of the right to an environmental information switches to a somewhat narrower territorial and institutional terrain, namely to the European Union premises. The Directive of the Council of the European Union on the access to environmental information,<sup>8</sup> according to the recognized position of the English professor Philippe Sands, is the first international instrument which creates a *right* of access to the environmental information.<sup>9</sup>

Under the given Directive, any natural or legal person is entitled to the access to the information related to the environment, without the need to show the personal interest for the situation to which the information relates.<sup>10</sup> This type of provision on the active legitimation enables the widest possible group of people to request the information. Further advantages of the Directive, which are in line with the easy and efficient access to the information, are the provision in which is stated that the tax for the issuing of the requested information must be rationally priced,<sup>11</sup> and the provision from the same article,<sup>12</sup> that the public authority from which the person has requested the information must answer to the request in the course of two months. By this it is achieved, firstly, that every individual no matter what his material position be, can be properly informed about the environment that surrounds him, directly and in person, and not through the big NGO-s, fighters for the protection of the environment. The second provision is carved so as not to produce the obligation on the part of the organ of the public authority to issue the information, since it is possible that the requested information is not in the possession of the given organ. This is why the Directive uses the term “answer“ rather than the “issue the information“, because the answer might be as well that the information does not exist in the possession of the given organ. In that case, however, the Directive does not provide for the obligation of the organ to direct

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7 Rio declaration on the environment and the development, Principle 10.

8 Council Directive 90/313/EEC

9 Philippe Sands, *Principles of International Environmental Law*, Cambridge University Press, second edition, 2003, Cambridge, page 854.

10 Council Directive 90/313/EEC, Article 3(1).

11 Article 3(5).

12 Article 3(4).

the requesting person to the other organ, which might possess the given information, in its knowledge. I do not deem this solution as the most helpful one, since the nature of this right should oblige the organ of the public authority to show the best will towards the requesting person. This failure will be sanctioned later, in the Aarhus Convention. The Directive brings the definition of the information for its purposes. It is stated that the “information related to the environment“ designates “any available information in the written, visual, or database form on the state of water, air, soil, flora and fauna, natural habitats, and on activities (including those that provoke disturbances such as noise) or measures against them, including administrative measures or programmes of the ecological management“.<sup>13</sup>

Despite all the positive advancements which the Directive introduces in view of the possibility of using the right to an environmental information as a technique for the protection of the environment, its equally important part are the numerous constraints, which dull the efficiency of this technical tool, and in some cases render it useless. Unfortunately, creation of the numerous constraints under the name of exceptions to the possibility of the usage of this right will transform itself, with its further development, into a constant trend, which will follow it in step, as some menacing shadow. I will enumerate the following constraints of the Council Directive.<sup>14</sup>

First of all, it is the case when the revealing of the requested information is able to endanger the classified procedures in front of the public authorities. Therefore, it can be seen that already on the first step, there exists a very wide exception, which leaves to the will of the public authorities on whole to deny the issuing of the information, since the degree of the classification of the proceedings is being judged by themselves. However, the person thinking that his request was unduly denied, or simply met with silence, even inadequately responded, can request judicial or administrative revision of the decision, depending on how this is regulated in the national legislation of the particular Member State.<sup>15</sup> The possibility of the revision of the request is related to all the other reasons which the public authorities can, in the framework of the Directive, name as the causes of their inability to issue the information. It is important to mention the exception on the reasons of international relations and national defence and public security. This is another considerably wide

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13 Article 2(a).

14 All the constraints can be found in the Article 3, bullets (2) and (3) of the Directive.

15 Article 4.

definition, which enables public authorities to deny the issuing of the information to the interested persons under the mask of “primary“ state interests. The last exception is related to exclusively private law reasons: business and commercial confidentiality, including the intellectual property and the personal data confidentiality. Between these two reasons, first one is more suspicious, since it actually protects the interests of the great business, under the name of bussiness confidentiality protection.

Council Directive relates to the EU Member States, not to the EU organs. In line with the development of the right to environmental information in the national legal systems of the Member States, its formation took part in the EU institutions themselves. Already in the Treaty of Maastricht (1991), the Declaration on the need for advancing the access to the information in possession of the EU institutions for the public was adopted.<sup>16</sup> On the basis of the mutual agreement, so called Behaviour Codex, the Commission and the Council have brought the decisions on the public access to the documents (1993. and 1994.) The majority of the rest of the organs and bodies of the Union has followed their example. The contents of the rights from these documents, together with the exceptions, do not differ slightly from those consisted in the Directive 90/313, therefore I will not analyse them separately.

I will mention at this opportunity the popularly called OSPAR convention,<sup>17</sup> mainly because of the interesting arbitration proceedings which has been instituted on the basis of it between the Republic of Ireland and the United Kingdom (MOX case), which I will analyse in the second part of the essay. This 1992 Convention also contains specific rules on the right to environmental information, and it is the first international agreement to do so. It has been particularly inspired by the above mentioned Council Directive. Article 9 orders to all the parties to issue to every natural or legal person any available information related to the environment which is the object of the Convention, or to the activities which endanger that environment, or the activities that are being conducted according to the Convention.<sup>18</sup> All the other

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16 See more in Vid Vukasović, „Međunarodnopravno regulisanje informisanja o životnoj sredini u Evropi“, page 3, [http://sewa.sewa-weather.com/~ambassadors/new\\_site/srp/images/stories/Papers/02-05.pdf](http://sewa.sewa-weather.com/~ambassadors/new_site/srp/images/stories/Papers/02-05.pdf)

17 Convention for the Protection of the Marine Environment of the North-East Atlantic, [http://www.ospar.org/html\\_documents/ospar/html/OSPAR\\_Convention\\_e\\_updated\\_text\\_2007.pdf](http://www.ospar.org/html_documents/ospar/html/OSPAR_Convention_e_updated_text_2007.pdf) 17th September 2010.

18 Aarhus Convention, Article 9(2).

provisions that relate to the procedure for the issuing of the information, exception from the obligation to issue the information, and to the definition of the environmental information itself, are copied from the Council Directive, thus there is no need for their separate analysis.

Finally, the Aarhus Convention with its famous three pillars, was adopted after the long and excruciating negotiations in the framework of the UNECE, on the 4<sup>th</sup> ministerial conference “Environment in Europe“, in the Danish town of Aarhus, when the 35 EU and Member States governments’ representatives have signed the document. Numerous reforms have put this Convention on the top of the development chart for the right to an environmental information, giving this right its, at least until now, the most perfect, classical form.

Firstly, the definition of the environmental information has been widened; there is an explicit reference to the GMO’s, which is a testament to the higher degree of scientific knowledge on the dangers that threaten the uninformed population from these organisms. Then, among the information related to the environmental activities that the public authorities conduct, a thorough list of documents in whose form these activities can appear is shown (environmental agreements, policies, plans, programs, cost-benefit and other economical analyses).<sup>19</sup>

Other main breakthrough of the Aarhus is the provision which states that all the exceptions must be interpreted restrictively. Good example is the provision which regulates the business confidential information exception, that says that this exception is applicable only if “legitimate economical interests“ should be protected, and in any case it institutes the presumption in favour of disclosure of the information about emissions relevant for the environment.<sup>20</sup> This solution leads in practice most often to the need of the revision to measure on case by case basis the confronted interests, public interest for the disclosure of the information, and the interest which is the basis for the exception.<sup>21</sup> However, I am of the opinion that the better solution was impossible to reach at the moment. It is enough that the requesting person was offered the opportunity for independent, impartial and objective revision in the adequate procedure in front of the domestic national tribunal which will be in the right position to measure the interests in just way.

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19 Article 2(3).

20 Article 4(2) i (3)(d).

21 A good discussion of these voluntary “measurement“ gives Ludwig Kramer in his book: *EC Environmental Law*, Sweet and Maxwell, London, 2007, on page 152.

Another important advantage of the Aarhus is the introduction of the obligation for the public authority which has received the request, if it does not possess the information, to direct the requesting person to the other organ which might, by its knowledge be able to issue the given information.<sup>22</sup> This is the mending of the former misgivings of the Council Directive 90/313. It is a reflection of the whole spirit of the Convention, which is friendly to the requesting person as the beneficiary of the right. In the same spirit is the provision according to which the information, which only partly resembles some of the exceptions which would justify its confidentiality, can be revealed partly, in that part in which it does not fall under this category.<sup>23</sup> Although the successful application in practice of this provision is disputable, since it is hard to imagine the case where the disclosure of the partial information would pass without danger for the confidential rest, it is obvious that the main idea of the Convention, to enable the widest possible usage of the right to an environmental information as the technique for the protection of the environment, is present in it.

The revolutionary novelty of the Aarhus is the line of positive obligations of the parties on the institution of the system of the “free flow“ of the information that can seriously influence the environment.<sup>24</sup> Also, the obligations, to some extent vague, on the formation of the national catalogues of the pollution which would be publicly accessible were instituted.<sup>25</sup> This is the correlative aspect of the right to environmental information. The obligation of the public authorities is not initiated now only by the request, but they must, on continuous basis and in good faith to offer to the citizenship all the relevant information. This is visible even in cases of imminent dangers for human health or the environment (from any source), when the public authorities are obligated to immediately disseminate all the information that might allow the public to conduct measures for the prevention of the danger of the mitigation of its damaging effects.<sup>26</sup> Positive obligations on the reveal of information go farther than the simple obligation to inform the public, since as a part of a right to environmental information, they are liable for litigation.

However, lot of constraints previously existing have survived in the Aarhus, and since they are again vaguely defined, they are liable to discretionary

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22 Aarhus Convention, Article 4(5).

23 Article(6).

24 Article 5(1)(a) and (b).

25 Article 5(9).

26 Article 5(1)(c).



interpretation by the public authorities which apply them. It is questionable how much will every single state and its organs show respect for the principle of restrictive interpretation of the exceptions. Again, the salvation is the judiciary system of revision, contained in the third pillar of the Convention – access to justice. In the environmental law doctrine, the term of “environmental justice“ has developed as a social theory concept. Its crucial point is the uneven deal of negative implications of the contemporary industrial society, for example the exposure to the environmental pollution risk. Besides, the concept of environmental justice fights the lack of means for those hit by the negative influences to reach the contenting and acceptable solutions. From this clearly stems the need for the efficient approach to the administrative and judicial systems, for the rights to be defended, and the existing laws on the environment and health applied.<sup>27</sup>

#### THE RIGHT TO ENVIRONMENTAL INFORMATION IN JUDICIAL PRACTICE

The right of access to the information is rarely a direct object of the dispute in the judicial practice of the countries signatories of the Aarhus or in front of the EU organs. According to a survey conducted for the period 1996-2001 including Portugal, Belgium, Netherlands, UK, France, Denmark, Germany and Italy, the majority of these cases occurred in Portugal, where only the percentage passed fifty in relation to the whole number of cases with the environmental background for this period. Those were mainly the requests for insight into administrative documents. In the rest of the countries, except to some extent Belgium, the percentage is negligible, which is not encouraging. The percentage of the successful requests is proportionally high, but again mainly in Portugal. The fact is that in Portugal for the given period there occurred very small number of cases with environmental background, so the percentages cannot be reliable to testify about the intensive activities of the civil society on the fulfilment of their legal rights. One might conclude that the cases have been primarily led by the big environmental protection NGO-s, which were led by the good chances for winning the case.<sup>28</sup>

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27 See more about this in: Jonas Ebbesson, *Access to Justice in Environmental Matters in the EU*, Kluwer Academic Publishers, Hag 2002, pages 6-9.

28 The research was conducted by the Institute for environmental research of the Saint-Louis University and can be found on [http://ec.europa.eu/environment/aarhus/pdf/accesstojustice\\_final.pdf](http://ec.europa.eu/environment/aarhus/pdf/accesstojustice_final.pdf) 23rd September 2010.

There exist, however, extremely important cases which were primarily connected with the other objects of dispute, but have nevertheless touched upon the topic that interests us, so that the acting forums had the chance to authoritatively pronounce themselves on some disputable questions, and they did indeed, with more or less success.

The first case is connected with the problem of the implementation of the Council Directive 90/313 in the legislation of the EU Member States (*Wilhelm Mecklenburg v. Kreis Pinneberg*). The question raised in front of the ECJ was whether a document that expressed the view of a competent body, directed to the local authority for the protection of the environment, in the frame of the agreement on the development of the county, can be regarded as the environmental information. What is important from the discussion is that the ECJ, answering positively, has given a very brave and wide interpretation of the environmental information. ECJ was of the view that any document which can influence adversely or protect the environment, the way it is defined in the Directive, by its contents, is the act which contains environmental information.<sup>29</sup> In the behaviour of the Court we can recognize the wish to give to the right to an environmental information ever wider possibility of protecting the environment, by spreading the definition of the environmental information on the very large number of documents, even those of semi-formal nature, so as to enable better information for the citizens.

The second case happened again in connection with the implementation of the Council Directive, this time in front of the member state judiciary (*R. v. Secretary of State for the Environment*). The UK Court has followed the ECJ practice, interpreting widely the notion of the environmental information. The Court has firstly pronounced that the question whether some document contains the information relevant for the environment, and whether this information is confidential is an objective question, and it is the role of the court to decide on this in regular proceedings.<sup>30</sup> This is the obstacle to the arbitrariness of the public authorities in the interpretation of the confidentiality, therefore the inaccessibility of the information. The Court goes further in its argument and says that the document, even if it can be described as a commercial one, thus does not lose the ability to contain the information relevant for the environment, since the exceptions from the rule of the accessibility have to be

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29 Case C-321/96, [1998] ECR I-3809, paragraphs 19 i 20.

30 Case cited by Philippe.Sands, *Principles of International Environmental Law*, Cambridge University Press, second edition, Cambridge 2003, page 855, footnote 238.

interpreted restrictively according to the target of the Directive. We see from this case as well the wish to enable a wide field of application for the right to environmental information, using the technique of extensive interpretation of the object of this right, the environmental information.

The third case I will cite is the consequence of the complex dispute between the Republic of Ireland and the UK from 2001, about the installation of the nuclear plant MOX and its allegedly damaging effects for the Irish Sea ecosystem.<sup>31</sup> Ireland has instituted arbitral proceedings on the basis of the Article 9 OSPAR Convention, requesting the access to the information contained in two independent reports, which related to the license for the operation of MOX plant. The UK has denied the issuing of the information under the pretext that they do not fall under the definition of the information of the Article 9(1) of the OSPAR, or if it would be proven that they do, then the exception of “commercial confidentiality” is valid. Unfortunately, the Tribunal acting in this case did not follow the advanced argumentation of its predecessors from the previous cases. By the 2-1 majority, it found that Ireland has failed to prove that the categories of the information from the two reports, so far as they can be taken as activities or measures concerning the installation and operation of the MOX, are the information on the state of the marine environment. The Tribunal has, however, in the second part of its argument cleared its stance, by saying that even if the Ireland has proven that these information were related to the marine environment, the activities and measures provided by them did not adversely affect this environment, so such information were not relevant. In the dissenting opinion, arbiter Griffiths has claimed the opposite. He does not concur with the statement that those measures would not have adverse effects for the marine environment, providing the adequate argumentation. However, what is important for my purpose is that the Tribunal does not take into consideration the circumstances of the case, actually the possible effects which the measures and activities provided by these documents *might have* for the environment, even if it would be shown at the end that they were completely harmless. Because, once those activities and measures were related to the installation and operation of a nuclear plant, which by pure fact of its existence in such an environment, influences it, by simple interaction of existence and daily basis operation, the condition is fulfilled for it to be placed into a category of the information *relevant*

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31 The text of the case in front of the International Tribunal for the Law of the Sea, and all the ensuing argumentation presented can be found at [http://www.itlos.org/case\\_documents/2001/document\\_en\\_192.pdf](http://www.itlos.org/case_documents/2001/document_en_192.pdf). 17th September 2010.

for the environment in question, no matter its character. The Tribunal has in my opinion, wrongfully interpreted the Article 9(1) of the OSPAR, which for its better part, not only textually, but spiritually, reflects the Directive 90/313, and I had already indicates in two previously analysed cases, how the judicial bodies have acted in the interpretation of this Directive. Besides, even if by strictly textual interpretation one disputes my argument, in other words, if one would show that the OSPAR text is completely different than the Directive one, thus disabling the equal interpretation, it is regretful that three years after the ECJ decision in *Wilhelm*, the act of the honourable members of the Tribunal can be called reactionary.

The next case that I will analyse is from the human rights domain. A suit was filed in front of the ECHR by the Italian citizen against his state, which has allegedly breached his rights by failing to inform him on time about the negative consequences of the poisonous gases emitted by the local agricultural factory.<sup>32</sup> The appellant invoked Article 10 and 8 ECHR, where neither of the objects of protection of these rights was originally intended ended for the given circumstances. Namely, Article 10 relates to the Right of the public to receive the information and it was originally intended as the obstacle to the meddling of the public authorities in the free action of the press. Article 8, on the other hand, protects the right to privacy of personal and family life, originally intended as the obstacle to the threatening of the freedoms by the public authorities' arbitrariness in conducting their lawful activities. The ECHR has accepted the suit as founded by a very wide interpretation of the Article 8. I am of the opinion that despite the Court was in line with the spirit of using the right to environmental information as a technique for the protection of the environment in maximum possible scope and efficiency; it has chosen a wrong legal path. The Right to Privacy from the Article 8 is not enough connected with the essence of the object of the protection of the right to an environmental information. An argument like this opens the way for sum future judicial council to decide under the same circumstances, that the Article 8 is not applicable. This is a real possibility bearing in mind the Court is not binded by its previous decisions, but also a rather strenuous and arbitrary interpretation of the Article 8, although with best intentions. On the other hand, right from the Article 10, the way it is formulated, even though at the time of the adoption of

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32 Circumstances of the case and all the arguments of the parties and the Court which will be analysed can be found on [http://www.hrcr.org/safrica/environmental/guerra\\_italy.html](http://www.hrcr.org/safrica/environmental/guerra_italy.html) 17th September 2010.

the Convention it was not supposed to cover this particular case, is well-suited to absorb the right to environmental information, even in its positive, revolutionary form, as prescribed by the Aarhus. As I have shown in the first part of the essay, positive obligation on the part of public authorities to inform the citizenship about all the information related to the environment is correlative to the right to request the information, and thus raises in power above the simple obligation to inform and educate the public. It is obvious that the ECHR, in its decision brought before the adoption of the Aarhus, was guided by the same idea, guessing in a way the result which will arrive some two years later, but unfortunately, it has adorned that idea, at least in my opinion in the wrong argumentation.

#### THE RIGHT TO ENVIRONMENTAL INFORMATION IN THE REPUBLIC OF SERBIA

Republic of Serbia, because of the objective conditions of its past, is rather late in the application of principles from Aarhus, but one cannot call the situation dull. The first steps towards the preparation of the conditions for the ratification of the Convention were made in 1999, through the activity of the Regional Environmental Centre for Central and Eastern Europe. Those were mostly strengthening of the institutional capacities, harmonization of the connected legislation and general informing of the public about the ends and means of the Convention, thus also with the possibilities for the protection of the environment through the right to an environmental information. Our legal system was in the spirit of Aarhus even before the ratification of the Convention by the Law of 2009,<sup>33</sup> having in mind the constitutional provision that “everyone has a right to a healthy environment and actual and full information of its state”.<sup>34</sup> Not only the Constitution but the Law on Free Access to the Information of Public Concern is in the same spirit, no doubt adequate for the effective usage of the right. In the Article 4 of this law it is said that “it is taken that the justified interest of the public to know exists always when the information in the possession of the authorities is related to the endangering or the protection of the health or the environment”.<sup>35</sup> Furthermore there is a line

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33 Stevan Lilić, *The Aarhus Convention and Access to Environmental Justice in the EU and Serbia*, published in “Legal, Political and Economical Initiatives Towards Europe of Knowledge”, Institute of Europe, Kaunas University of Technology, Kaunas (Lithuania), 2007.

34 Constitution of the Republic of Serbia, Article 74(1).

35 *Republic of Serbia Official Gazette*, 120/04.

of other laws that deal with different environmental questions and contain at least the primary level of the obligation to inform the public about the measures, plans and acts related to the environment.

In the Law on Chemicals,<sup>36</sup> Article 6 states that the Chemicals Agency, as a body which deals with the application of the law, is competent to inform the public about the influence of the chemicals on human health and the environment.<sup>37</sup> After this general provision, information accessible to the public related to the chemicals is clarified. This list is quite thorough.<sup>38</sup> The exception from the principle of accessibility is the information classified as business secret.<sup>39</sup> The good thing is that in emergency cases, when the human health and safety are endangered, this exception is outlawed. The failure of this provision, in my opinion, is in that it does not designate the endangered environment as the exceptional situation. Therefore, this law contains some traces of the right to environmental information, in the form of the positive obligation to inform.

The Law on Biocidal Products<sup>40</sup> is using a somewhat different formulation of the principle of the accessibility of the information. It is said in the text of the law that anyone can request the information.<sup>41</sup> For the constraints, the law consults the Law on Free Access to the Information of Public Concern. The law also contains a list of information that cannot be classified as business secret.<sup>42</sup> This law is a bit unfinished. Nowhere can be found the definition of “anyone”.

The Law on the Air Protection<sup>43</sup> in its introductory provisions states as its principled aim the accessibility of the information on the air quality.<sup>44</sup> In further text, using the method of the positive obligation on part of public authorities, it defines the starting principle of accessibility on concrete information and methods of their delivery to the public. The obligation exists on part of business circles as well, which conduct activities that influence the air quality, to deliver

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36 *Official Gazette*, 36/09.

37 Law on Chemicals, Article 6(1), bullet 18.

38 Article 84(1).

39 Listed in Article 84 (3).

40 *Official Gazette*, 36/09.

41 Law on Biocide Products, Article 46.

42 Article 47.

43 *Official Gazette* 36/09.

44 Law on the Air Protection, Article 2, bullet 5.

the information about these activities to the Environmental Protection Agency.<sup>45</sup> Penalties are being provided for the failure to deliver this information.

The Law on the Protection of Nature,<sup>46</sup> institutes the public right to be informed on the condition and the protection of nature, on the basis of the request. Bad side of this law is in the way of definition of the exceptions from the general rule of accessibility. It exists every time the information is classified as secret, on the basis of other laws or regulations.<sup>47</sup> This constraint is too wide and clearly not in line with the spirit of Aarhus.

On the basis of all the above stated, I might conclude that the Republic of Serbia's legal system, notwithstanding some obvious failures in particular legislative solutions, is generally equipped with a good assortment of the regulations and instruments which at least on paper enable the wide possibility of using the right to an environmental information as a technique for the protection of the environment. By ratifying the Aarhus Convention, Serbia caught up with the European standards in this field. However, for this right to function in everyday life, jurisprudence must stop the abuse of its too widely regulated and numerous constraints by the public authorities.

## LITERATURE

### BOOKS AND ARTICLES

1. Baram Michael, "Risk Communication Law and Implementation Issues in the US and EC", 6 *Boston University International Law Journal* 21 (1988).
2. Ebbesson Jonas, *Access to Justice in Environmental Matters in the EU*, Kluwer Academic Publishers, Hag 2002.
3. Kramer Ludwig, *EC Environmental Law*, Sweet and Maxwell, London, 2007.
4. Lilić Stevan, "The Aarhus Convention and Access to Environmental Justice in the EU and Serbia," *Legal, Political and Economical Initiatives Towards Europe of Knowledge*, Institute of Europe, Kaunas University of Technology, Kaunas (Lithuania)
5. Sands Philippe, *Principles of International Environmental Law*, Cambridge University Press, second edition, 2003, Cambridge
6. Vukasović Vid, "Međunarodnopravno regulisanje informisanja o životnoj sredini u Evropi", [http://sewa.sewa-weather.com/~ambassadors/new\\_site/srp/images/stories/Papers/02-05.pdf](http://sewa.sewa-weather.com/~ambassadors/new_site/srp/images/stories/Papers/02-05.pdf)

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45 Operator's obligation from Article 68 (3).

46 *Official Gazette*, 36/09.

47 Law on the Protection of Nature, Article 115.

#### WEB SOURCES

7. [http://www.cpd.org.rs/dokumenti/MLADI\\_I\\_UPRAVLJANJE\\_OTPADOM.pdf](http://www.cpd.org.rs/dokumenti/MLADI_I_UPRAVLJANJE_OTPADOM.pdf)
8. [http://ec.europa.eu/environment/aarhus/pdf/accesstojustice\\_final.pdf](http://ec.europa.eu/environment/aarhus/pdf/accesstojustice_final.pdf)

#### CASES AND STATUTES

9. European Court of Justice, Wilhelm Mecklenburg v. Kreis Pinneberg, Case C-321/96, [1998] ECR I-3809
10. European Court of Human Rights, Guerra v Italy, [http://www.hrcr.org/safrica/environmental/guerra\\_italy.html](http://www.hrcr.org/safrica/environmental/guerra_italy.html), 17<sup>th</sup> September 2010.
11. Mox Plant Case, [http://www.itlos.org/case\\_documents/2001/document\\_en\\_192.pdf](http://www.itlos.org/case_documents/2001/document_en_192.pdf), 17<sup>th</sup> September 2010.
12. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, <http://www.unece.org/env/pp/documents/cep43e.pdf> 21<sup>st</sup> September 2010.
13. The Law on the Confirmation of the Convention on the Accessibility of the Information, Public Participation in the Decision-making and the Right of Access to Justice in the Questions Concerning the Environment, *Republic of Serbia Official Gazette-International Treaties*, number 38/09
14. Rio Declaration on the Environment and the Development
15. European Union Council Directive 90/313/EEC
16. Convention for the Protection of the Marine Environment of the North-East Atlantic, [http://www.ospar.org/html\\_documents/ospar/html/OSPAR\\_Convention\\_e\\_updated\\_text\\_2007.pdf](http://www.ospar.org/html_documents/ospar/html/OSPAR_Convention_e_updated_text_2007.pdf), 17<sup>th</sup> September 2010.
17. Law on Chemicals, *Official Gazette of the Republic of Serbia* 36/09.
18. Law on Biocide Products, *Official Gazette of the Republic of Serbia* 36/09.
19. Law on the Air Protection, *Official Gazette of the Republic of Serbia* 36/09.
20. Law on the Protection of Nature, *Official Gazette of the Republic of Serbia* 36/09.



**Mihajlo VUČIĆ**

**PRAVO NA EKOLOŠKU INFORMACIJU  
KAO TEHNIKA ZAŠTITE ŽIVOTNE SREDINE**

**APSTRAKT**

Analizirajući pravne tekstove i sudsku praksu autor je u ovom ogledu pokušao da ustanovi kako se pravo na ekološku informaciju može koristiti kao tehnika zaštite životne sredine, imajući u vidu mnoge mogućnosti koje odredbe ovog prava daju celokupnom ljudskom društvu. I pored očiglednih preimućstava, izuzeci od opšteg pravila o slobodnom pristupu informacijama su definisani veoma široko, i budući brojni, otvaraju vrata javnim vlastima da ih zloupotrebe i time ponište svaki pozitivni efekat ovog prava. Stoga, pristup pravdi je nezamenljivo komplementarno pravo pristupu informacijama. Ono služi kao lek za pomenute zloupotrebe. Situacija u pravnom sistemu Republike Srbije ne daje dovoljno uvida u efektivnost upotrebe ovog prava u svrhu zaštite životne sredine, ali važno je da osnovni pravni dokumenti koji se odnose na pristup informacijama o životnoj sredini čine dobru osnovu na kojoj bi se u budućnosti mogao stvoriti efektivan sistem zaštite.

*Ključne reči:* životna sredina, informacije, pravo pristupa, učešće javnosti, pravda.