BASELINE STUDY OF LEGISLATION, POLICY AND JUDICIAL PRACTICE ON HUMAN RIGHTS AND ENVIRONMENT IN SOUTH-EAST EUROPE

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Executive Summary

Large-scale pollution, biodiversity loss, climate change and other environmental harms are negatively impacting human rights in Europe and across our planet. As a result, there is growing interest in how human rights frameworks could support a world where nature, ecosystems and people can all thrive. This baseline study, part of the Council of Europe regional project on "Human Rights and Sustainable Environment in South-East Europe", sets the groundwork for improvements to the protection of the environment and human rights in South-East Europe.

In July 2022, the UN General Assembly recognised the human right to a clean, healthy and sustainable environment, following its recognition by the UN Human Rights Council in October 2021. The human right to a healthy environment is also recognised in a number of regional human rights treaties, agreements, and national constitutions across the world. The Council of Europe prioritises the protection of the environment and human rights and has adopted several legal instruments on environmental protection. The European Court of Human Rights (ECtHR) has adjudicated over 300 environmental cases on a wide range of issues, ranging from industrial activities to climate change, as well as procedural matters such as access to environmental information and the registration of an environmental association.

In this baseline study, six reports draw on a common methodology, to provide a comprehensive overview of the domestic legislation, judicial practices, and policies relating to human rights and environmental matters in Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia, and Serbia. All six jurisdictions seek EU accession and are in the process of harmonising their environmental legislation in accordance with EU standards. In assessing the implementation of environmental and human rights legislation across the region, the baseline study highlights promising practices, identifies challenges, and offers specific recommendations for improvement both within each jurisdiction and across the region as a whole.

Common environmental challenges identified across the region include air and water pollution, hydropower plants, development in protected areas, mineral exploration and environmental crime. Overall, the legal framework appears to protect the environment and human rights across all jurisdictions, but the implementation of the legislation needs to be further strengthened and enforced in practice. In some jurisdictions, the case law of the ECtHR has been used to strengthen environmental outcomes in legal proceedings. However, in other jurisdictions, knowledge of the ECtHR case law is limited and/or court decisions are not harmonised. Additionally, while some jurisdictions respect and implement rights related to environmental protest and assembly, others face increasing restrictions or have insufficient public awareness of environmental issues, hindering the exercise of these rights. Challenges also remain in accessing adequate information about environmental problems and decision-making processes. Furthermore, in certain jurisdictions, there are growing concerns about the weakening of environmental protection, regarding, for example, legislation for protected areas and laws governing community participation in mineral exploration activities. Finally, findings indicate that environmental crimes are underreported and prosecuted. Common challenges identified across the region underline the need for a coordinated response, including peer-to-peer learning and exchanges, both within the South-East European region and beyond.

Drawing on the conclusions in the individual reports in each jurisdiction, the baseline study goes on to provide general recommendations for the region. These include a call for the right to a healthy environment to be explicitly protected within domestic constitutions and supporting legislation, with oversight of its implementation by the Constitutional Court. Additionally, it is recommended that diverse or conflicting domestic laws are harmonised in favour of the strongest environmental and human rights outcomes. Further, the general

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* All references to Kosovo, whether to the territory, institutions, or population, in this text shall be understood in full compliance with United National Security Council Resolution 1244 and without prejudice to the status of Kosovo.

recommendations underline the importance of timely and effective access to information and public participation in environmental matters, suggesting that checklists are provided to public institutions on how to fully implement rights in these areas. To support the right of access to justice and remedy, the general recommendations emphasise the need for a broad definition of standing, measures to protect against excessive legal costs, thorough investigation of environmental cases and the preparation of well-reasoned judgments. They also stress the importance of safeguarding Environmental Human Rights Defenders and providing effective remedies for environmental harm. Finally, the recommendations stress the importance of building institutional capacity, including coordination, collaboration and information-sharing across government departments, as well as between central and local levels of government. Alongside this, appropriate legal training, public awareness campaigns relating to environmental rights and sufficient financing of environmental public bodies are all highlighted as overall recommendations.

Although the study focuses on South-East Europe, the challenges and recommendations identified could be relevant beyond the region. By highlighting the value and effectiveness of a human rights-based approach, it is hoped that its findings will support concrete environmental improvements on the ground.

Protection of the environment and human rights under International and European Frameworks

Pollution, biodiversity loss, climate change and other environmental factors have a significant impact on the enjoyment of human rights in Europe and across the world. This section examines the protection of the environment and human rights at the international level, before going on to explore the European framework and proposals for a new Council of Europe instrument on human rights and the environment.

1. Human Rights and environmental protection at the international level

1.1. United Nations and international fora

Links between the environment and human rights have been made for quite some time in international treaties and practice and continue to develop apace.[1] On 8 October 2021, the United Nations (UN) Human Rights Council (HRC) recognised the human right to "a clean, healthy and sustainable environment" (RHE) as well as the implications of environmental damage for the enjoyment of human rights.[2] This was followed up by a UN General Assembly resolution, also recognising the RHE in similar terms, with 161 states voting in favour (including all Council of Europe member states) and none voting against.[3] More recently, the HRC has passed a further resolution on the RHE, calling on states to adopt and implement laws on access to environmental information and participation, as well as access to justice and remedies, while also ensuring an effective legal framework for the implementation of the RHE.[4]

Additionally, connections between human rights and the environment are reflected in environmental frameworks. For instance, the Paris Agreement, adopted at COP 21 of the UN Framework Convention on Climate Change (UNFCCC) sets out in its preamble that "[p] arties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights".[5] The Kunming-Montreal Global Biodiversity Framework (GBF), adopted at COP 15 of the Convention on Biological Diversity, acknowledges the RHE and provides that parties should follow a human-rights based approach, "respecting, protecting and fulfilling human rights" in the implementation of the GBF.[6]

The Special Procedures have engaged in extensive consideration of the content of the RHE. In 2018, the UN Special Rapporteur on the Human Right to a Healthy Environment presented the Framework Principles on Human Rights and the Environment, which set out the Special Rapporteur's understanding of "basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment".[7] In addition, in a report on good practices, the Special Rapporteur has delineated the components of the

1 See for example the 1972 Stockholm Declaration https://docs.un.org/en/A/CONF.48/14/Rev.1 and the Rio Declaration at the Earth Summit of 1992 https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

2 UN HRC Resolution, The human right to a clean, healthy and sustainable environment, 4 April 2023 A/HRC/48/13

3 UN General Assembly resolution, The human right to a clean, healthy and sustainable environment, 26 July 2022, A/RES/76/300.

4 UN HRC resolution, The human right to a clean, healthy and sustainable environment, 4 April 2023, A/HRC/52/7.

5 Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, Preamble

6 Decision 1/COP.15: Kunming-Montreal Global biodiversity framework, CBD/COP/15/L.25 Section C 7(g)

7 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/37/59 (2018), para. 1.

RHE.[8] The substantive elements include clean air, a safe and stable climate, access to safe water and adequate sanitation, healthy and sustainably produced food; non-toxic environments in which to live, work and play; and healthy biodiversity and ecosystems. Furthermore, the RHE covers the procedural components of the access to information, participation, access to justice and effective remedy- including to be free from reprisal and retaliation in the exercise of the other rights.

In addition, UN Human Rights Treaty bodies have engaged in numerous and detailed examinations of the relationship between human rights and environmental matters. This has included hearing a range of complaints on issues from the toxic spraying of agrochemicals to the impacts of climate change on indigenous peoples.[9] Treaty bodies have also elaborated on this relationship in General Comments. For example, the UN Committee on the Rights of the Child has found that "[c]hildren have the right to a clean, healthy and sustainable environment".[10] The UN Human Rights Committee has stated that, in order to uphold the right to life, states must undertake measures "to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors".[11] In General Comment No. 26 on Land, Economic, Social and Cultural Rights in 2022, the UN Committee on Economic, Social, and Cultural Rights held that "[t]he sustainable use of land is essential to ensure the right to a clean, healthy and sustainable environment and to promote the right to development, among other rights". Likewise, the UN Committee on the Elimination of Discrimination against Women published its General Recommendation No. 39 in 2022, recommending that States "[a]dopt legislation to fully ensure the rights of Indigenous women and girls to land, water and other natural resources, including their right to a clean, healthy and sustainable environment."

The UN Guiding Principles on Business and Human Rights (UNGPs) provide key guidance on the human rights responsibilities of businesses. These focus on 1) state responsibility to protect human rights, 2) Corporate responsibility to protect human rights (including through due diligence), and 3) state and corporate responsibility to provide access to remedy. Further, the Organisation for Economic Co-operation and Development (OECD) guidelines for Multinational Enterprises on Responsible Business address the importance of due diligence to assess environmental and human rights impacts associated with operations, products and services. States adhering to the guidelines are required to establish National Contact Points as (non-judicial) grievance mechanisms.

The relationship between human rights and environmental obligations is also actively being considered by international judicial fora. The International Tribunal for the Law of the Sea recently delivered an advisory opinion noting that climate change "represents an existential threat and raises human rights concerns."[12] The International Court of Justice has also been asked to consider human rights obligations in the context of climate change, in a request for an advisory opinion from the UN General Assembly.[13]

1.2. Regional and national level protection

At the regional level, treaties recognising the RHE include the African Charter on Human and People's Rights; the Arab Charter on Human Rights; the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental

8 David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), Right to a healthy environment: good practices, UN Doc A/HRC/43/53, 30 December 2019, paras. 8-18 https://www.ohchr.org/en/special-procedures/sr-environment/good-practices-right-healthy-environment

9 See para 45 of CDDH report for a summary of these complaints.

10 See General Comment No 26 On Children's Rights and the Environment.

11 See Human Rights Committee General Comment No 36, para. 62.

12 International Tribunal for the Law of the Sea, Advisory Opinion, 21 May 2024, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf

13 See resolution A/77/276, adopted by consensus https://documents.un.org/doc/undoc/ltd/n23/094/52/pdf/n2309452.pdf?token=dhVrmVpLUBCTH5Yczm&fe=true

Matters (Aarhus Convention); the Protocol of San Salvador to the American Convention on Human Rights; and the Escazú Agreement. In addition, the RHE has been considered by judicial bodies under these treaties; for example, the Inter-American Court of Human Rights (IACtHR) has held that the right is an "autonomous" right and so "protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals".[14] The IACtHR is also expected to deliver an advisory opinion on climate change and human rights duties in the course of 2025.[15]

At the national level, 156 countries or 80% of UN member states, have also recognised the RHE through national and regional frameworks. This includes most of the Council of Europe member states, some of which have recognised the RHE at the constitutional level.

The Sofia Declaration on the Green Agenda for the Western Balkans (November 2020) also sets out a Green Agenda for the Western Balkans, covering climate change, a circular economy, pollution, agriculture and biodiversity.[16]

2. Council of Europe

Protection of the environment and human rights is a key priority for the Council of Europe, which has adopted several legal instruments on environmental protection. These include the 1979 Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention), the 2008 Landscape Convention, the 1993 Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment.[17] In addition to these, the Council of Europe Convention on Access to Official Documents (the Tromsø Convention) is the only international legal instrument to guarantee a general right to access official documents held by public authorities, including on environmental matters.[18]

The European Convention on Human Rights (ECHR) was the Council of Europe's first convention, and it is not possible to join the organisation without ratifying it. Neither the ECHR nor the European Social Charter (ESC) contain specific environmental protections. However, the conclusions of the European Committee of Social Rights (ECSR) and the jurisprudence of the European Court of Human Rights (ECtHR) have addressed the impact that harm and damage to the environment have on human rights.

2.1. Judgments of the European Court of Human Rights

The ECtHR has heard over 300 cases relating to environmental matters.[19]

- Dangerous industrial activities, nuclear radiation and natural disasters have been addressed under Article 2 of the ECHR (right to life) where the ECtHR has found that the nature of such harms endangered human life as well as Article 3 (prohibition of human or degrading treatment).[20]

14 Advisory Opinion OC-23/17 ('The Environment and Human Rights'), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 62 https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf

15 Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf, and Public hearings: https://www.youtube.com/watch?v=t6D9LyXKSOE

16 Sofia Declaration on the Green Agenda for the Western Balkans, 10 November 2020, https://www.rcc.int/docs/546/sofia-declaration-on-the-green-agenda-for-the-western-balkans-rn

17 ETS No 104; 176, 102 and 150 respectively, see further paragraph 3 of Draft revised CDDH reporton the need for and feasibility of a further instrument or instruments on human rights and the environment ('CDDH report') https://rm.coe.int/steering-committee-for-human-rights-cddh-drafting-group-on-human-right/1680afa8ee

18 CETS No.205, the Convention currently has 15 parties.

19 See https://www.echr.coe.int/documents/d/echr/FS_Environment_ENG for further details.

20 See for example *Budayeva and Ors v. Russia* (Application No 15339/02), where the ECtHR found a violation of Article 2 due to the failure of Russian authorities to protect the residents of a town from mudslides, by failing to implement land planning and emergency relief polices and *Florea v. Romania* (Application No. 37186/03) where the ECtHR found a violation of Article 3 relating to a prisoner with chronic hepatitis and arterial hypertension who was subjected to passive smoking for 3 years while in detention.

- Contamination of water and soil, waste management, urban development and pollution from industries, noise and vehicles, the adequacy of climate policy as well as environmental risk assessment and access to information have been considered in case law under Article 8 (right to respect for private and family life).[21]
- The importance of environmental protection as a legitimate aim has been considered under Article 1 of Protocol No.1 to the ECHR (protection of property).[22]
- Article 10 (freedom of expression) has come into play when considering the freedom to impart and receive information on environmental matters.[23]
- Article 11 (freedom of assembly and association) has been applied in the context of collective action on environmental issues.[24]
- The need for an effective remedy in the environmental context has been explored under Article 13 (right to an effective remedy) and the rights of access to court on environmental matters and the need to enforce environmental decisions have been considered under Article 6 (1) (right to a fair trial).[25] The ECHR has also been invoked at the national level in relation to environmental matters.

The ECHR is a 'living instrument', interpreted in the light of the changing world around it. In the environmental context this approach can be seen in the recent judgments of the ECtHR in the area of climate change. For instance, in the landmark case of *Klimasenniorinnen v. Switzerland* the ECtHR found that Article 8 encompasses a right to effective protection from the serious effects of climate change on lives, health, well-being and the quality of life.[26] The ECtHR held that Switzerland had breached this right due to inadequate climate legislation and failure to meet past greenhouse gas emissions reduction targets. At the same time, two other climate change cases were declared inadmissible.[27] Within its decisions in respect of all three cases, the Grand Chamber addressed issues such as extraterritorial jurisdiction over environmental impacts, causation, victim status and the standing of civil society organisations.

Like the ECHR, the ESC is also considered a living instrument, meaning that the ECSR, similarly to the ECtHR, can respond to new challenges through its interpretation. Under the ESC, rights considered in connection with the RHE include the rights to just conditions of work and safe and healthy working conditions, as well as protection of health and housing. The ECSR has found that public health systems must respond appropriately to risks that can be controlled by human action, including environmental threats.

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21 See for example *Guerra and Ors v. Italy* (Application No. 14967/89) where the ECtHR found that Italy had failed take adequate steps to protect the applicants from severe environmental pollution from a neighbouring chemical factory.

22 See for example *Fredin (No.1) v. Sweden* (Application No. 12033/86) where the ECtHR found that there was no violation of the applicant's Article 1 Protocol 1 of the Convention in the revocation of a licence to operate a gravel pit on the basis of the Nature Conservation Act.

23 See, for example, *Steel and Morris v. the United Kingdom* (Application No. 68416/01) where the ECtHR found a breach of Article 10 due to defamation proceedings against the applicants relating to a campaigning leaflet about the McDonalds fast food chain. The court found a breach of Article 10 due to a lack of procedural fairness and a disproportionate award of damages against the applicants.

24 In the case of *Costel Popa v. Romania* (Application No. 47558/10) the ECtHR found a violation of Article 11 in the State's refusal to register an environmental association without complying with the requirements of legislation.

25 For example in the case of *Hatton v. United Kingdom* (Application No. 36022/97), the ECtHR found that the legislation in place at the time meant that the UK courts were not able to consider whether the night flights complained of were a justifiable interference with the applicant's Article 8 rights. Further, in the *KlimaSeniorinnen* decision, the ECtHR also found a violation of Article 6(1) relating to the rejection by the Swiss Courts of the applicant's case at domestic level.

26 Verein KlimaSeniorinnen v. Schweiz and Ors v. Switzerland, Application No. 53600/20 https://hudoc.echr.coe.int/eng#{%22itemid%22

27 *Carême v. France*, application No. 7189/21 (press release); and *Duarte Agostinho and Others v. Portugal and 32 Others*, application No. 39371/20 (press release); see also https://www.echr.coe.int/w/grand-chamber-rulings-in-the-climate-change-cases.

To support understanding of developments in this area, decisions and conclusions under the ECHR and ESC are considered in detail in a Manual produced by the Council of Europe.[28] The Court's Case-law Guide on the environment is updated annually and the Human rights Education for Legal Professionals (HELP) course on the environment and human rights, has been running since 2021.[29]

2.2. Developing the Council of Europe's Human Rights and Environmental Framework

2.2.1. The Right to a Healthy Environment

The Council of Europe has not recognised the RHE. However, Committee of Ministers presidencies and other bodies within the Council of Europe have called for the strengthening of tools to address environmental harms. Since 1970, the Parliament Assembly of the Council of Europe has made a succession of attempts to propose an Additional Protocol to the ECHR on Human Rights and the Environment.[30] In recommendation CM/Rec(2022)20, the Committee of Ministers of the Council of Europe calls on member States to "reflect on the nature, content and implications" of the RHE and, on that basis, actively consider recognising it at the national level "as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law".[31] Following these efforts, the Committee of Ministers asked the Steering Committee on Human Rights (CDDH) to consider the need for and feasibility of a further instrument or instruments in the field of human rights and the environment. The CDDH's study[32] in this area was finalised in November 2024.

The Council of Europe has also issued recommendations on specific topics falling within the umbrella of climate change and human rights. For example, recommendation CM/Rec(2024)2 on countering the use of Strategic Lawsuits Against Public Participation (SLAPPs) sets out a non-exhaustive list of indicators to identify SLAPPs, as well as setting out legal and policy safeguards and remedies in this area.[33] Recommendation CM/Rec (2024)6, related to young people and climate action, is the first international text of its nature. It aims to protect the rights of young people and young environmental defenders to take part in climate-related decision-making processes and activism as well as access climate education and green jobs, amongst other matters.[34]

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28 Steering Committee for Human Rights (CDDH), Manual on Human Rights and the Environment (3rd edition), February 2022, https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/-/manual-on-human-rights-and-the-environment

29 HELP course on the Environment and Human Rights, https://help.elearning.ext.coe.int/enrol/index.php?id=6264

30 Subsequent efforts were made in 1990, 1999, 2003 and 2009 and more recently. See PACE. 1999. Recommendation 1431: Future action to be taken by the Council of Europe in the field of environmental protection; PACE. 2003. Recommendation 1614: Environment and human rights; PACE 2009. Recommendation 1885: Drafting an additional protocol to the ECHR concerning the right to a healthy environment; PACE Recommendation 2211 (2021): Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe.

31 Council of Europe, *Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment*, 27 September 2022, https://rm.coe.int/0900001680a83df1

32 CDDH Study on the Need for and Feasibility of a Further Instrument or Instruments in the Field of Human Rights and the Environment, CDDH(2024)R101 Addendum 2, 29/11/2024, https://rm.coe.int/steering-committee-for-human-rights-cddh-cddh-study-on-the-need-for-an/1680b2b196

33 Council of Europe, *Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)*, 5 April 2024, https://www.coe.int/en/web/freedom-expression/-/council-of-europe-adopts-recommendation-on-countering-the-use-of-slapps

34 Council of Europe*, Recommendation CM/Rec(2024)6 of the Committee of Ministers to member States on young people and climate action*, 23 October 2024, https://www.coe.int/en/web/portal/-/council-of-europe-urges-measures-for-young-people-and-climate-action-investing-in-green-jobs-and-skills-addressing-eco-anxiety-access-to-rights-for-vulnerable-groups

2.2.2. Protection of the Environment under European Criminal Law

Environmental crime is growing at 2-3 times the rate of the global economy, with negative impacts on health, well-being and food security. It creates industrial pollution and harm, contributing to the degradation of natural resources and the disruption of the climate. Having both global and systemic dimensions, it is linked to other serious crimes such as human and drug trafficking, counterfeiting, cybercrime, corruption and financing of terrorism.

In response, a Committee of Experts on the Protection of the Environment though Criminal Law (PC-ENV) has been set up and tasked with developing a Convention on the Protection of the Environment through Criminal Law, to apply as a Pan-European Framework.[35] The new Convention will be a legally binding instrument, intended to contribute to the struggle against climate change and pollution, as well as supporting biodiversity and ecosystems. In addition to this, the Consultative Council of European Prosecutors has adopted Opinion No.17 (the Opinion) on the role of Prosecutors in the Protection of the Environment.

The Opinion highlights the key role of prosecutors in protecting the environment, public health and safety, setting out guidelines and recommendations for action in criminal, administrative and civil proceedings in environmental cases. It points to the necessity to strengthen relevant national legal frameworks, for example by including the involvement of organised crime or corruption as an aggravating element in offences. The Opinion covers investigations and prosecutions, institutional aspects and cooperation and co-ordination across disciplines and structures. The importance of non-governmental and civil society stakeholders is also stressed. Further, the Opinion points out that connecting environmental crimes with any linked money laundering offences can be an effective tool to identify larger criminal networks and curtail profiteering from such crimes. Additionally, it calls for international cooperation requests on environmental matters to be given the same priority and attention as national matters, flagging the importance of establishing mechanisms and procedures to enable cross-border investigations to take place.

2.2.3. Business and Human Rights

Building on the UNGPs, the Committee of Ministers recommendation CM/Rec (2016) on Business and Human Rights aims to provide guidance to member states on preventing and remedying human rights abuses by business enterprises and measures to encourage businesses to respect human rights.[36] The recommendation elaborates on the right to remedy and emphasises the additional protections necessary for workers, children, indigenous peoples and human rights defenders.

3. Other key frameworks at the European regional level

3.1. European Union

Over half of the members of the Council of Europe are also members of the European Union (EU). Although none of the jurisdictions in this study are yet members of the EU, they are all candidates for accession and therefore in the process of harmonising their environmental legislation with the EU's, as part of the accession process.

The Treaty on the Functioning of the European Union sets out a number of environmental principles and objectives for environmental protection and the Charter of Fundamental Rights of the EU states that a high level of environmental protection and improvement of the quality

35 Although the Council of Europe prepared a legal instrument in this area: the 1998 Convention on the Protection of the Environment Through Criminal Law, this has not entered into force and will be superseded by the Convention currently being prepared.

36 Council of Europe, Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, 2 March 2016, https://search.coe.int/cm?i=09000016805c1ad4

of the environment must be integrated into policies at EU level.[37] The Court of Justice of the EU has ruled on approximately 50 cases related to access to justice in environmental matters, including confirming that NGOs should have standing in environmental cases. It has also passed a wide range of environmental legislation, including directives on Environmental Impact Assessment and Strategic Environmental Assessment which feature public consultation as a central aspect.[38] The EU recently approved a Nature Restoration regulation with targets to cover at least 20% of the EU's land and sea areas by 2030 and all ecosystems in need of restoration by 2050.[39]

The EU's Non-Financial Reporting directive requires companies to provide non-financial information, including on environment and human rights, in their financial reports or separate filings. In January 2023 the Corporate Sustainability Reporting Directive (CSRD) entered into force, strengthening the rules on environmental and social reporting and applying them to a wider range of companies.[40] In May 2024, the Corporate Sustainability Due Diligence Directive (CSDD) entered into force. This introduces obligations for companies relating to human rights and environmental protection as well as liability for breach of such obligations, including for company subsidiaries and business partners.[41]

EU directives also protect the environment through criminal legislation.[42] In March 2024 the Council of the EU formally adopted a new directive on the protection of the environment through criminal law, establishing EU minimum rules on the definition of environmental crimes and penalties.[43] The directive introduces new environment-related criminal offences, with detailed requirements on sanctions for both individuals and companies and the measures to be taken to prevent or effectively prosecute offences. It provides for more severe offences in the case of 'Ecocide'.[44]

3.2. Aarhus Convention[45]

The parties to the Aarhus Convention include 41 of the 46 members of the Council of Europe. The Aarhus Convention links environmental and human rights by protecting the rights to access environmental information, participate in environmental decision-making and access justice in environmental matters and setting minimum standards in these areas. The Aarhus Convention was the first international treaty to recognise the rights of both present and

37 See for example. Treaty on Functioning of the European Union Article 191 and Article 37 of the Charter of Fundamental Rights

38 See https://www.europarl.europa.eu/factsheets/en/sheet/71/environment-policy-general-principles-and-basic-framework#:~:text=Legal%20basis,waste%20management%20and%20climate%20change for a general outline of the EU environmental framework.

39 European Union, Regulation of the European Parliament and of the Council on nature restoration and amending Regulation (EU) 2022/869, 15 March 2024, https://data.consilium.europa.eu/doc/document/PE-74-2023-INIT/en/pdf

40 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance), L 322/15, 16.12.2022, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464

41 Cases against companies are also beginning to be brought within the EU region, for example Royal Dutch Shell is currently appealing a decision by a Dutch Court that that its contribution to climate change is violating its human rights obligations and duty of care under Dutch law https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/

42 See for example Directive 2008/99/EC, Directive 2005/33/EC, Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste

43 Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC, OJ L, 2024/1203, 30.4.2024 30.4.2024 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024L1203

44 Ecocide is defined as "(a) the destruction of, or widespread and systematic damage, which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or (b) widespread and substantial damage which is either irreversible or long lasting to the quality of air, soil, or water"

45 At present, the parties to the Aarhus Convention are largely from the European and Central Asian region but it is now open to ratification by all states and has been ratified by Guinea-Bissau.

future generations to an environment adequate to their health and well-being.[46] It was also the first multilateral environmental agreement to grant the public the right to bring complaints before its Compliance Committee and has also established the world's first rapid response mechanism to protect environmental defenders.[47] The Aarhus Convention was an inspiration for the Escazú Agreement in Latin America and the Caribbean.[48]

46 See Article 1.

47 The Compliance Committee has received 200 communications from the public, a strong sign of public engagement.

48 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú, 4 March 2018, https://www.cepal.org/en/escazuagreement

Albania: Baseline study of legislation, policy and practice on human rights and environment

1. Introduction

Albania joined the Council of Europe on 13 July 1995, while the ECHR entered into force in Albania on 2 October 1996. Currently, Albania considers EU membership as the main objective of its foreign policy. In the current stage of the integration process, in the framework of the Stabilisation and Association Agreement (SAA), Albania's undertakings regarding the environment are defined in its Article 108 which provides that *"The Parties shall develop and strengthen their cooperation in the vital task of combating environmental degradation, with the aim of promoting environmental sustainability. Cooperation shall mainly focus on priority areas related to the Community acquis in the field of environment."*[49]

The EU Council welcomed Albania's progress on the rule of law and the continued implementation of reforms in the justice system and public administration, and the progress made on the fight against corruption and organised crime, underlining the need to further strengthen the protection of fundamental rights.[50] The assessment of Chapter 27 on "Environment and climate change" indicated that Albania still needs to step up its efforts to achieve full alignment and implementation in most areas. The processes of the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) need to be significantly improved, while recommendations from EIAs are rarely implemented, and they should be enforced and then monitored. Public participation and consultation in decision-making need to be improved. Moreover, inspections and enforcement capacity should be strengthened, especially to address environmental crimes more effectively.[51]

2. Substantive law and practice

2.1. Laws relating to environmental human rights

2.1.1. Environmental/human rights protections in the national constitution

The 1998 Albanian Constitution adopted the fundamental principle of the right of public access to information, on issues related to the environment and its protection, but it did not include the Aarhus Convention rights of participation and access to justice. The right to a healthy environment is not provided as a separate right, in the substantive sense. Article 56 of the Albanian Constitution contains only a procedural right and guarantees the right to

49 Art. 108, Stabilisation and Association Agreement between the European Communities and their member states, and the Republic of Albania, Official Journal of the European Union, L 107/166, 28 April 2009, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22009A0428%2802%29.

50 European Commission, *Albania 2024 Report*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 30 October 2024, SWD(2024) 690 final, https://neighbourhood-enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf

51 Commission Staff Working Document, Albania 2023 Report, p.119. https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_690%20Albania%20report.pdf

environmental information, whereas Article 59 sets out social objectives.[52] This means that these objectives should be reflected in the development of policies and the relevant legislation, but they are not enforceable in a court of law, because the second paragraph of Article 59 provides *"2. Fulfilment of the social objectives may not be claimed directly in* court. *The law defines the conditions and extent to which the realisation of these objectives can be claimed."*

As for the protection of human rights, Article 17 of the Constitution makes the ECHR part of the Albanian domestic law, and it considers the level of protection that it offers, as the minimum standard guaranteed by the Albanian legislation.[53] This must be read in conjunction with Article 122 of the Constitution, which provides that the primacy of the international agreements that are been ratified by law, over the domestic laws that are not compatible with it.[54]

2.1.2. Specific pieces of legislation

The legal framework is overall complete, regarding the right to information, including information about the state of the environment, its pollution, and the measures taken. This legal framework consists of Law No. 10431, dated 9 June 2011, "On the protection of the environment", which sets out the right to be given timely information about the state of the environment, provisions on the environmental information system, informing the public on environmental issues, the right to environmental information;[55] the right to take legal action in a court against the public authority or natural or legal person, which has caused damage to the environment or which risks damaging it;[56] it provides for the liability for environmental damage and the compensation for environmental damage.[57] Together with Law No. 119/2014, dated 18 September 2014, "On the right of information",[58] they guarantee the first pillar of the Aarhus Convention regarding access to environmental information.

The second pillar of the Aarhus Convention regarding public participation in environmental decision-making, is guaranteed by several laws. Law No. 10440, dated 7 July 2011, "On Environmental Impact Assessment" (EIA Law) aims to guarantee an open decision-making process, and the involvement of all interested parties in the process; including the public and non-profit organisations. It obliges the National Environmental Agency to organise

52 Constitution of the Republic of Albania, Art. 56: *"Everyone has the right to be informed about the state of the environment and its protection".* Art. 59: *"The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with: a healthy and ecologically adequate environment for the present and future generations; and rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development."* https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=178&catid=9&m=0

53 Ibid., Art. 17: *"1. The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. 2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights."*

54 Ibid., Art. 122: *"1. Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law. The amendment, supplementation and repeal of laws approved by the majority of all members of the Assembly, for the effect of ratifying an international agreement, is done with the same majority. 2. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it. 3. The norms issued by an international organization are superior, in case of conflict, over the laws of the country, when the agreement ratified by the Republic of Albania for its participation in this organization, expressly provide for the direct applicability of the norms issued by this organisation."*

55 Law No. 10431, dated 9 June 2011, "On the protection of the environment". https://akm.gov.al/ova_doc/ligji-10431-date-9-6-2011-per-mbrojtjen-e-mjedisit/

56 Ibid., Art. 48.

57 Ibid., Art. 50-52.

58 Law No. 119/2014, dated 18 September 2014, "On the right to information". https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=165&catid=55&m=0

hearing sessions with the public and interested NGOs, in order to receive their opinion as part of the decision-making process.[59] The rules, requirements and procedures for informing and involving the public in environmental decision-making are defined by the Decision of the Council of Ministers (DCM) No. 247, dated 30 April 2014.[60] However, a clear requirement for development consents for projects to include the EIA conclusion, environmental conditions, as well as associated measures and monitoring protocols, is not envisaged by the EIA Law. There is a lack of essential secondary legislation required for the proper implementation of the EIA,[61] despite the enactment of a bylaw on the approval of rules, responsibilities and deadlines for the EIA procedure.[62] The EIA Law, together with Law No.146/2014, dated 30 October 2014, "On Notification and Public Consultation," guarantee the second pillar of the Aarhus Convention. Law No.146/2014 regulates the process of notifying the public on draft legal acts and other strategic national and local documents. The Commissioner for the Right of Information receives the complaints regarding the denied access to information, while a Public Consultation Coordinator exists in every public institution. An electronic register includes information on all planned acts and the relevant documents on planned public hearings.[63]

Law No. 91/2013, dated 28 February 2013, "On Strategic Environmental Assessment" (SEA Law) follows the same pattern as the EIA Law. The proposing authority, before starting the drafting of the EIA report, among others, must consult with environmental NGOs.[64]

Also, Law No. 146/2014, "On Notification and Public Consultation" was enacted with the aim of serving both the first and second pillar of the Aarhus Convention, *i.e.*, informing the public and making it part of the environmental decision-making process through consultations on draft legal acts and other strategic national and local documents. The information on all planned acts and the relevant documents on planned public hearings are included in the electronic register. Currently, there are notifications for public consultations on draft Decisions of the DCM on proclaiming several areas as "Protected Landscapes",[65] following the amendment of the Law No.18/2017, "On Protected Areas" in February 2024.

The third pillar of the Aarhus Convention, access to justice, is guaranteed by special environmental legislation, as well as by Law No. 49/2012, "On the administrative courts and adjudication of administrative disputes".[66]

There is a specific law on corporate criminal liability, which includes also the cases

59 Law No. 10440, dated 7 July 2011, "On Environmental Impact Assessment". https://akm.gov.al/ova_doc/ligjit-nr-10440-date-07-07-2011per-vleresimin-e-ndikimit-ne-mjedis/

60 DCM No. 247, dated 30 April 2014, "On determining the rules, requirements and procedures for information and public involvement in environmental decision-making". https://akm.gov.al/ova_doc/vkm-nr-247-dt-30-04-2014-per-percaktimin-e-rregullave-te-posacme-per-informimin-dhe-perfshirjen-e-publikut-ne-vendimmarrjen-mjedisore/.

61 Energy Community Country Report, Albania, 2023, p. 23. https://www.energy-community.org/implementation/report/Albania.html

62 DCM No. 686, dated 29 July 2015, "On the approval of rules, responsibilities and deadlines for the EIA procedure and the transfer procedure for the Environmental Declaration Decision." https://turizmi.gov.al/wp-content/uploads/2018/09/VKM-686-2015-Procedurat-e-VNM.pdf

63 Public Consultations Register https://www.konsultimipublik.gov.al/Konsultime/Qytetar

64 Law 91/2013, "On strategic environmental assessment", Art. 2 & Art. 9. http://www.akbn.gov.al/wp-content/uploads/2013/11/LIGJ-91-2013-Per-vleresimin-strategjik-mjedisor.pdf

65 Draft DCM "On proclaiming "Protected landscape Bredhi i Drenovës - Sinica", Category V". https://www.konsultimipublik.gov.al/Konsultime/Detaje/757 ; Draft DCM "On proclaiming "Rrushkull protected water/terrestrial landscape", Category V". https://www.konsultimipublik.gov.al/Konsultime/Detaje/756 ; Draft DCM "On proclaiming "Protected water/terrestrial landscape "Buna - Velipoja River", Category V". https://www.konsultimipublik.gov.al/Konsultime/Detaje/755 ; Draft DCM "On the proclaiming "Protected water/terrestrial landscape Lake Pogradec", Category V". https://www.konsultimipublik.gov.al/Konsultime/Detaje/753 ; Draft DCM "On proclaiming "Protected landscape Kuturman - Qafë Bushi", Category V". https://www.konsultimipublik.gov.al/Konsultime/Detaje/752 .

66 Law No. 49/2012, "On the administrative courts and adjudication of administrative disputes" https://ild.al/wp-content/uploads/2021/07/Ligj_49_03052012_perditesuar_2018.pdf

of crimes against the environment.[67] The law provides that a legal person is responsible for criminal offences committed on its behalf, or for its benefit, by its bodies and representatives, by a person who is under the authority of the person who represents, directs, and administers the legal entity, in his name or for his benefit, due to the lack of control or supervision by the person who directs, represents and administers the legal entity. As such, this law can be used to prosecute companies in cases of criminal offences carried out against the environment, pursuant to the provisions of the Criminal Code of Albania.

Some of the more debated pieces of legislation are related to Protected Areas, which include several DCMs,[68] and Law No. 21/2024 "On some additions and changes Law No. 81/2017, 'On Protected Areas'" which provides for the status of a protected area to be changed if its condition changes.[69] This recent amendment of February 2024 open the possibility for projects - such as Vlora Airport - to be carried out in the protected areas. One of its most debated provisions is the introduction of the "Principle of suitability",[70] which is not commonly found in the environmental legislation of any other country, or in any international environmental treaty. The amendment grants to the National Council of Territory (NCT),[71] significant authority over the protected areas. Read together with Law No. 55/2015, "On strategic investments in the Republic of Albania",[72] it seems that the most important decision-making on large infrastructure objects (those with the greatest potential environmental impact), are left to the same group of people, the Strategic Investments Committee (SIC), with an almost identical composition as the NCT. It disregards the will of the locally elected officials, by stating that the SIC *"…can invite in its meeting the heads of local government units, but with no right to vote"*.[73]

2.1.3. Ratification of international treaties

Articles 122(3) and 123 of the Constitution of the Republic of Albania state the primacy of the norms deriving from an international organisation over the domestic law, in case of conflict between these norms, and the transfer of state competencies to the international organisations, for certain issues, pursuant to agreements with these organisations. In view of these constitutional provisions, the EU has the status of a higher organisation.

The Albanian legal framework is generally harmonised with the relevant EU legislation, as it relies on the same principles that the European environmental legislation does, it has been drafted with the assistance of foreign experts and generally reflects the requirements of international conventions to which Albania is a party. Among these, can be mentioned the Aarhus Convention, the Council of Europe Convention on Access to Official Documents (Tromsø Convention),[74] the Council of Europe Convention on the Conservation of European Wildlife

67 Law No. 9754, dated 14 June 2007, "On the criminal liability of legal persons". https://www.pp.gov.al/rc/doc/ligj_pergjegjesia_penale_e_personave_juridike_38.pdf

68 DCMs No. 59 and No. 60, dated 26 January 2022, on changes in the status of existing surface areas of protected areas. [Annex I, p. 38.]

69 Law No. 21/2024 "On "On some additions and changes to Law No. 81/2017, 'On Protected Areas'". https://qbz.gov.al/eli/fz/2024/50/5bdc6cdb-3e60-4dbb-b62d-78f08ab4df6e.

70 Ibid., Art. 2: "d) "Principle of suitability". The category of a protected area must be changed if from its assessment at a given time results that the characteristics and objectives for which the area it was proclaimed as "protected", do no longer match those of that certain category." In practice, this provision risks causing significant adverse effects on the protected areas. Instead of serving to protect certain areas as habitats for flora and fauna, this provision may encourage "environmental criminals" and/or powerful developers to destroy them. Consequently, these areas may be declared as "unsuitable" environments and removed from the "protected" category. This, in turn, could open the way for development, which would not otherwise be permitted in these areas.

71 Law No. 107/2014, "On territorial planning and development".https://planifikimi.gov.al/index.php?eID=dumpFile&t=f&f=6004&token=8a49182e9a8fd4b738deb28f07e2a7d41f729f14

72 Law No. 55/2015, "On strategic investments in the Republic of Albania". https://www.euralius.eu/index.php/en/library/property-legislation/laws?task=download.send&id=43&catid=117&m=0

73 Ibid, Art. 9(1) and Art. 9(2).

74 The Council of Europe Convention on Access to Official Documents has entered into force in Albania in November 2022. https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=205.

and Natural Habitats (Bern Convention), the UN Framework Convention on Climate Change (UNFCCC), the UN Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), the Kyoto Protocol, the Convention for the Protection of the Mediterranean against Pollution (Barcelona Convention), the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), the Convention on Transboundary Effects of Industrial Accidents, the Montreal Protocol on Substances that Deplete the Ozone Layer, etc. Most recently, in June 2024 Albania joined the International Union for Conservation of Nature (IUCN) as its newest member.[75]

2.2. How law on human and rights and the environment is applied in practice.

2.2.1. An analysis of the effectiveness of constitutional provisions

As discussed above, the right to a healthy and ecologically adequate environment is related to the social objectives provided by Article 59 of the Albanian Constitution. In its judgment No. 3, dated 30 January 2024[76], the Constitutional Court ruled that the right to be informed about the state of the environment and its protection are guaranteed directly by the Constitution. However, although the right to a healthy and ecologically adequate environment are related to the social objectives provided by Article 59 of the Constitution, the Court assessed them in the light of international law. In this context, the Constitutional Court emphasised that even the ECtHR has not considered them as separate rights, but they have been treated in the case-law of the ECtHR as related to other rights set out in the ECHR.[77]

In the end, the Constitutional Court assessed that the petitioners' claim for the violation of the right to be informed about the state of the environment and its protection were well-founded. However, taking into account Article 56 of the Constitution and the Aarhus Convention, it found that the violations that occurred during the phase before the adoption of Law No. 38/2021 could still be repaired through the involvement of the public in activities and information related to the different phases of the development and implementation of the project, as well as in decision-making,[78] As a result, the Constitutional Court, found no ground for repealing Law No. 38/2021 based on its interpretation of the Aarhus Convention.

The role of the judiciary is to protect the public interest, the right to a healthy environment, by restricting work that leads to the destruction of protected areas and the irreplaceable natural values that they hold, especially in cases where significant financial interests may create external pressures. The Constitutional Court plays a crucial role in this regard.

2.2.2. Judicial practice and decisions

Albanian judges refer extensively to the ECHR and the case-law of the ECtHR. The most important is the Supreme Court of Albania, whose judgments are binding on the lower courts. One of the most positive environmental cases is Judgment No. 00 – 2021 – 1177, dated 21.07. 2021, in which the plaintiffs – 27 inhabitants and an environmental NGO – filed a lawsuit for the suspension of the construction of two dams in the Drini river in Northeast Albania. The Supreme Court ruled that based on the systematic interpretation of the provisions and standards of the Aarhus Convention, specifically its Article 9, as well as the provisions of the Albanian law on administrative courts and adjudication, associations and interest groups, enjoy active legitimacy in filing environmental lawsuits, as long as a "sufficient interest" is proven in the specific case.[79]

75 https://www.iucn.org/press-release/202406/albania-joins-iucn-its-newest-state-member .
76 Judgment of the Constitutional Court of Albania, No. 3, dated 30 January 2024, paras. 61 and 64. https://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php [Annex II, p. 32].
77 Ibid., para. 22.
78 Ibid., para. 64.
79 Judgment of the Supreme Court of Albania No. 00 – 2021 – 1177, dated 21 July 2021. [Annex III, p. 33].

Within nine days, the Supreme Court issued another judgment that granted *locus standi* to an NGO, alongside the residents that were impacted by a decision to allow a slaughterhouse to be built in the forest they had planted. It held that access to court for environmental associations and interest groups, deserves special attention by guaranteeing the procedural rights of these subjects in matters involving environmental protection. They enjoy *locus standi* in filing lawsuits related to environmental issues, as long as a "sufficient interest" is proven in the specific case.[80]

However, certain challenges persist within the Albanian judiciary regarding access to justice in environmental matters. For instance, the judgment of the Constitutional Court No. 3, dated 30 January 2024, indicated in part 2.2.1 above raises concerns about the effectiveness of the available remedy, as far as the rights of the plaintiffs are concerned. Another case in point is that of Vlora Airport. There is a string of decisions by the government that creates a possibility to proceed with the project, even though it was within the protected area. The Protected Areas' boundaries were defined by a decision of the National Council of Territory.[81] After that, the protected area was reduced through a Decision of the Council of Ministers.[82] Thus, the legal set-up was complete, for the construction work to begin. These legal acts were challenged in the Administrative Court of Appeal by two environmental NGOs in December 2022. Up until the writing of this report in January 2025, the adjudication of the merits has not yet even started, as the courts have yet to decide, firstly, on the *locus standi* of the two NGOs,[83] and then, on the request for interim measures.[84]
The case of Vlora Airport stands in stark contrast to that of Lisbon Airport, where the Portuguese government abolished the plan to build the airport in a protected area.[85]

2.2.3. Alternative Dispute Resolution Mechanisms

There is a specific law on mediation for the resolution of disputes, which include disputes in the field of civil, commercial, labour, family, intellectual property, consumer rights and disputes between public administration bodies and private entities.[86] Moreover, the Code of Civil Procedure provides for the obligation of the court to initially attempt to resolve the case through conciliation, offering the litigants the opportunity to resolve the issue through mediation. Despite this legal framework, and the fact that the special law on mediation has been in force for more than a decade, it has had no real impact in practice. More so, in the field of environmental dispute resolution, where alternative dispute resolution means do not

80 Judgment of the Supreme Court of Albania No. 00-2021 – 1259, dated 30.07 2021, para. 21.
81 Decision of the National Council of Territory No. 10, dated 28 December2020, "On the approval of the Protected Areas' Boundaries." https://planifikimi.gov.al/index.php?eID=dumpFile&t=f&f=6099&token=cc165dfe23b6652028a4de33944dee2fca23bd8f
82 DCM No. 694, dated 26 October 2022, "On changing the status and the surface area of the Natural/Wetland Ecosystem "Pishë-Poro - Nartë" from "Managed Natural Reserves", into "Protected landscape", and the removal of the status of "Protected Area" of the reduced surface area. https://akzm.gov.al/wp-content/uploads/2020/07/vendim-2022-10-26-694-1.pdf
83 NGOs were denied locus standi by Judgment No. 80-2022-3301, dated 02 December 2022 of the Administrative Court of First Instance of Tirana. [Annex V, p. 35].
84 The plaintiffs filed a lawsuit at the Administrative Court of Appeal, a request for interim measures, the suspension of work for the construction of Vlora Airport, because of the irreparable damage to the Protected Area. The Administrative Court of Appeal in its Judgment No. 49, dated 22 June 2023, declared its lack of competence for the interim measures and sent the case to be adjudicated by the Administrative Court of First Instance of Tirana. The Administrative Court of First Instance of Tirana sent the case to the Supreme Court, which decided in its judgment No. 00-2023-3466, dated 31 July 2023 that the competent court for the interim measures is the Administrative Court of Appeal. Following the judgment of the Supreme Court, the Administrative Court of Appeal in its judgment No. 3, dated 16 January 2024 refused to order interim measures.
85 ClientEarth, "Portugal abandons plans to build new airport on nature reserve following lawsuit", 16 May 2024. https://www.clientearth.org/latest/press-office/press/portugal-abandons-plans-to-build-new-airport-on-nature-reserve-following-lawsuit/?utm_source=uk_newsletter&utm_medium=email&utm_campaign=6-month-2026&utm_term=uk&utm_content=hyperlink
86 Law No. 10 385, dated 24 February 2011, "On mediation for the resolution of disputes", Art. 2. https://www.drejtesia.gov.al/wp-content/uploads/2019/02/Ligj_10385_04022011_perditesuar_2018.pdf

have an impact on environmental issues. There are several reasons for this, including the lack of institutional tradition, culture, mentality, economic interests (defence attorneys advise their clients not to accept mediation, as their fees will be lower), lack of experience, etc. Legal amendments may help to support mediation, for example, by obliging the notaries public to include mediation, alongside adjudication, as an alternative dispute resolution method in the contracts that they draft.[87]

3. Environmental Procedural Law and Practice

3.1. Environmental rights of information and participation

3.1.1. Access to environmental information

While the amendments to Law No. 119/2014, "On the right to information" introduce positive changes, there are still opportunities to further enhance its implementation.[88] For example, it is sometimes difficult to secure the requested information in environmental matters by the public authorities (e.g. Environmental Impact Assessment and Feasibility Study for Kalivaç project in the Vjosa River), even when this information is officially requested.[89] This, in turn, undermines the effectiveness of the right to appeal.

3.1.2. Rights of participation

In line with the legal provisions discussed in section 2.1.2 above, the public and interested parties need to have real opportunities to participate in the procedures for identifying the state of the environment, drafting and approving strategies, plans and programmes that are related to the protection of the environment and the components of the environment.

In this context, there is still a lack of essential secondary legislation required for the proper implementation of the EIA. Law No. 146/2014, "On Notification and Public Consultation" regulates the process of notifying the public on draft legal acts and other strategic national and local documents. An electronic register includes information on all planned acts and the relevant documents on planned public hearings. However, the general public has to specifically check the website for a given act, something that does not really happen in practice. There is a need to adopt a more proactive approach on the right to environmental information. More importantly, public authorities do not participate in the consultation procedures when large public works are involved, such as the construction of HPP in the Vjosa river.[90] Challenges regarding the quality of the legislative process include the limited effectiveness of public consultations.[91]

87 Interview with Mr Artion Beqiraj, Mediator, 10 July 2024.

88 European Commission, "2024 Rule of Law Report Country Chapter on the rule of law situation in Albania", 24 July 2024, p.1. https://commission.europa.eu/document/download/0154dce1-5026-45de-8b37-e3d56eff7925_en?filename=59_1_58088_coun_chap_albania_al.pdf

89 Report by the Complainant, "Presumed negative impact of hydro-power plant development on the Vjosa river in Albania", 38th meeting of the Standing Committee of the Bern Convention, 27-30 November 2018. https://rm.coe.int/other-complaints-albania-presumed-negative-impact-of-hydro-power-plant/168079284a

90 Such consultation procedures have been successfully challenged in the Judgment of the Administrative Court of Appeal No. 1240, dated 27 June 2024, p. 65. The Administrative Court of Appeal upheld judgment No. 1813, dated 2 May 2017 of the Administrative Court of First Instance of Tirana, which declared as invalid the Environmental Declaration issued by the Minister of Environment for the construction of a Hydro-Power Plant in Poçem, in the Vjosa River, and the relevant subsequent acts of the Minister of Energy and Industry, including the concession contract for the construction of the HPP. The court decided that "Referring to the evidence submitted in the court file, the National Environmental Agency, The Regional Environmental Agency, and the local government units of the location of the construction of the HPP, had not fulfilled their legal duties in the procedure of the environmental impact assessment, in any of the phases of the EIA, both in terms of informing and involving the public in the environmental decision-making."

91 Supra, note 60

A case in point is the Petrolifera case, in which the public concerned was not notified or consulted in the decision-making for the planning of an industrial park comprising oil and gas pipelines, installations for the storage of petroleum, three thermal power plants, and a refinery, in the protected area near the lagoon of Narta, at the vicinity of the coastal city of Vlora, south-west Albania. Despite the massive protests of the inhabitants of Vlora in favour of the preservation of a legally declared protected area,[92] the construction of the industrial park was carried out, resulting in the clearing of an area of 500 hectares of land and the logging of thousands of pine trees. As a result of the action taken by a number of environmental NGOs before the Compliance Committee of the Aarhus Convention, the Committee recommended that Albania should *"…take the necessary legislative, regulatory, administrative and other measures to ensure that: a) A clear, transparent and consistent framework to implement the provisions of the Convention in Albanian legislation is established, including a clearer and more effective scheme of responsibility within the governmental administration…."*[93]

On paper, legal acts have been enacted, however, in practice, there have been no significant improvements, as shown by the case of Vlora Airport. In the same city, the EIA for Vlora Airport has been broadly criticised by civil society and other stakeholders. One of the issues raised was the lack of consideration for the 'protected area' status of the selected site.[94] In 2016, an official complaint was submitted to the Standing Committee of the Bern Convention, on the presumed negative impact of developments on the Vjosa river including the hydro-power plant development and Vlora International Airport.[95] The management and protection of the Ramsar wetland, which is of international importance,[96] and the Vjosa-Narta Protected Area, remains unresolved with ongoing infrastructure projects within the site.[97]

In April 2023, the Standing Committee of the Bern Convention urged the Albanian government to suspend construction works for Vlora airport within the protected area of Narta lagoon and Vjosa delta. Likewise, the European Parliament urged the Albanian Government to halt projects that risk violating national and international biodiversity protection norms, such as Vlora International Airport, and to stop hydropower development in protected areas.[98] In September 2023, the Standing Committee of the Bern Convention issued Recommendation No. 219 (2023), which was revised in December 2023, on the possible impact of infrastructure and urbanisation developments, particularly Vlora International Airport, on the Vjosa-Narta Protected Area. It recommended to the Government of Albania to suspend the construction of Vlora International Airport until a new and sufficient EIA procedure is conducted, as well as a Proper/Appropriate Assessment; to initiate a comprehensive Wildlife Monitoring Programme; to adopt and implement an ecosystem approach, as advocated by the Convention on Biological Diversity (CBD); to start an intensive capacity building programme on sustainable

92 Lindita Arapi, "Vlora, a city of oil, or tourism?", 29 January 2008. https://www.dw.com/sq/vlora-qytet-nafte-apo-turizmi/a-3095063

93 Aarhus Convention Compliance Committee Communication ACCC/C/2005/12 Albania. Findings adopted on 15 June 2007 – Non-compliance found. https://unece.org/env/pp/cc/accc.c.2005.12_albania

94 Supra, note 51.

95 Presumed negative impact of developments on the Vjosa river including hydro-power plant development and Vlora International Airport, Case 2016/5. https://www.coe.int/en/web/bern-convention/-/2016-5-albania-presumed-negative-impact-of-hydro-power-plant-development-on-the-vjosa-river.

96 Although not directly linked in the ecological context to the freshwater river ecosystem of the River Vjosa estuary, the brackish Narta Lagoon is of significant conservation value at the national and even global scales. The coastal lagoon covers an area of 59 km2. Its national conservation value was already recognised in 2004, when the area became part of Vjose-Narta Protected Landscape. Its European conservation potential is reflected in the site's inclusion in the possible future Natura 2000 list. The Narta Lagoon is a Key Biodiversity Area (KBA), as a site with international conservation value. Dr Andrej Sovinc, "Protection study of the Vjosa River Valley based on IUCN protected area standards", p. 21. https://portals.iucn.org/library/sites/library/files/documents/2021-011-En.pdf On a single day around 5000 flamingos were present in the Vjose-Narta Protected Landscape. https://www.balkanweb.com/foto-mbi-5000-flamingo-pushtojne-lagunen-e-nartes-dhe-peisazhin-e-mbrojtur-vjose-narte/#gsc.tab=0 .

97 Supra, note 61

98 European Parliament Resolution on the 2022 Commission Report on Albania, 12 July 2023, para. 84. https://www.europarl.europa.eu/doceo/document/TA-9-2023-0285_EN.html

infrastructure development and biodiversity conservation; to build a deeper cooperation with the full spectrum of stakeholders who can be engaged in an informative, consultative, or collaborative way in infrastructure development projects; and to initiate collaborations with the most relevant NGOs, using their expertise to fulfil the needs and obligations for biodiversity conservation in Albania.[99]

No new mechanisms have been introduced to enhance the consultation process with NGOs.[100] Relevant information on environmental decision-making has been published in the environmental register, and there is a draft DCM "On the proclamation 'Protected water/ terrestrial landscape' Pishë Poro-Nartë', Category V". However, in practice, these acts have no meaningful impact for the protection of the environment, since it is in the same area where the Vlora Airport is being built.[101] Article 5 of the above-mentioned draft DCM permits, inter *alia,* the construction of motorways within it.[102]

Overall, public participation and consultation in the process of environmental decision-making could be further strengthened. This could, *inter alia*, be ensured by not only inviting relevant actors to participate in the decision-making process but also by providing detailed and reasoned arguments explaining why certain demands, proposals, or objections have not been taken into account. This approach ensures that the decision-making process benefits from genuine and meaningful input from the relevant members of the society, fostering greater trust and transparency.

3.1.3. Rights of Assembly and Protest

The freedom to participate in peaceful and unarmed assemblies are guaranteed in the Constitution, subject to procedures provided by law regarding assembly in public squares and in places of public transit.[103] The specific law that guarantees the freedom of peaceful assembly for everyone was enacted in 2001, three years after the Constitution.[104] Environmental protests do not differ and they are guaranteed the same level of protection as any other protest.

However, aside from the protests relating to Vlora airport discussed above, environmental protests in Albania either are rare, because of the low level of awareness among the population, or do not receive publicity by the media, due to several factors.

First, at the current stage of the Albanian economic and social development, environmental protection seems to be given less priority compared to economic development. Even the institutional framework reflects this. The ministry responsible for the environment is named the Ministry of Tourism and Environment, where tourism, and the revenue generated from it, are considered a priority. In general, even the environment is portrayed as a tourist attraction, a commodity to be exploited, in order to generate revenue by businesses. This

99 Recommendation No. 219 (2023) of the Standing Committee, adopted on 5 September 2023 and revised on 1 December 2023, on the possible impacts of infrastructure and urbanisation developments particularly Vlora International Airport, on the Vjosa-Narta Protected Area (Albania). https://rm.coe.int/2023-rec-219e-rev-vlora-airport/1680ad922d.

100 Supra, note 61

101 Annex IV.

102 Draft DCM "On the proclamation 'Protected water/terrestrial landscape 'Pishë Poro-Nartë', Category V". According to Article 5, permitted activities include, among others: dh) activities developed in agritourism accommodation structures and any other supporting activity/infrastructure; ë) renewable energy installations; ll) activities such as construction, sewage treatment in farms, construction of floating canals, highways, urban areas, as well as activities similar to these, in cases where the subject is provided with a permit by the National Council of the Territory. Therefore, after allowing the construction of Vlora Airport, the National Council of the Territory may continue to complete the infrastructure by allowing the construction of motorways and urban areas, within an area of unique habitats that currently it is still home to sea turtles, sea birds and mammals. https://www.konsultimipublik.gov.al/Konsultime/Detaje/754

103 Constitution of the Republic of Albania, Art. 47.

104 Law No. 8773, dated 23April 2001 "On assembly". https://partnersalbania.org/wp-content/uploads/2016/01/Ligj_nr.8773_23.4.2001_Per_tubimet.pdf

is a clear case of institutional incompatibility within the same central government institution. Therefore, it is recommended that a Ministry of Environment should be re-established, separated from tourism.

Second, big business owns the media channels, which has a negative impact on press freedom and media independence, which are threatened by conflicts of interest between the business and political worlds, a flawed legal framework and partisan regulation. There are very few media outlets that focus their attention on environmental problems, leading to a very low level of environmental awareness among the population. Even when environmental protests are held, they attract few participants, usually the local residents that suffer the immediate impact of investments made in their neighbourhood, and possibly, a number of NGOs that support them. Among others, indifference by the media leads to indifference/feeling of powerlessness by the public.

There are no specific legal protections for environmental human rights defenders, only the general safeguards offered by human rights legislation. There have been no reported cases of harming environmental human rights defenders in Albania, under the Rapid Response Mechanism of the Aarhus Convention,[105] but lawsuits against investigative journalists have been used to discourage them (the chilling effect), as indicated in part 3.2.2, below.

3.2. Rights of Access to Justice, Remedies and their effectiveness

3.2.1. Access to Justice

The rules on standing for NGOs are set out in Law No. 49/2012, "On the administrative courts and adjudication of administrative disputes", which provides that the right to file a lawsuit belongs, among others, to any association or group of interest that claims that a legitimate public interest has been violated by a normative act or by an administrative act, in case such a right is recognised by law.[106] This means that an NGO that has included the protection of environment in its statute may file a lawsuit against an act of the public administration that may have consequences for the environment.

However, as indicated in part 2.2.2 above, judicial practice is inconsistent regarding the *locus standi* of environmental NGOs. There is, therefore, a need for a unifying judgment of the Supreme Court, that will be binding on lower courts.

The right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court.[107] In the case of Albania, there exist some barriers regarding access to courts, i.e., financial, etc. For vulnerable groups and those who do not have the financial means, Law No. 111/2017 "On the legal aid guaranteed by the state" assures access to courts by excluding them from the payment of general or special fees, court expenses (expenses for witnesses, experts, etc.) and the fees for the execution of the judgment.[108] However, environmental cases include by default the need to engage experts in a range of areas such as flora, fauna, wildlife, fishing, forestry, impact assessment, etc. Often, more than one such expert is needed, which makes the costs considerable. In addition, there are the costs of legal counsel and judicial fees. Overall, court fees in themselves are not high, but the other costs, for lawyers and experts, are

105 United Nations Economic Commission for Europe, "Information note on the situation regarding environmental defenders in Parties to the Aarhus Convention from 2017 to date", Twenty-fourth meeting Geneva, 1–3 July 2020. https://unece.org/fileadmin/DAM/env/pp/wgp/WGP_24/Inf.16_Situation_of_environmental_defenders_in_Parties_to_the_Convention.pdf

106 Supra, note 66, Art. 15.

107 ECtHR: Kart v. Turkey, no. 8917/05, par. 79, ECtHR 2009; Arrozpide Sarasola and Others v. Spain, nos. 65101/16 and 2 others, para. 98.

108 Law No. 111/2017 "On the legal aid guaranteed by the state". https://www.drejtesia.gov.al/wp-content/uploads/2019/02/LIGJ-nr.-111-2017-date-14.12.2017.pdf

considerable.[109]

The Code of Administrative Procedures provides that, in principle, the interested parties may file a lawsuit only after they have exhausted the administrative complaint process.[110] Law No. 91/2013, "On strategic environmental assessment", provides that interested groups, including the public, can file an administrative complaint against a minister's decision within 30 days.[111] It is possible for communities and individuals to take industrial and corporate actors to court for environmental harm. This is provided in the Civil Code, which states that the person who has culpably violated the environment, deteriorating, changing or damaging it, in whole or in part, is obliged to remedy the damage caused.[112] There are also the provisions of the Criminal Code on the criminal offences against the environment that include air pollution, transportation of toxic waste, water pollution, illegal fishing, illegal logging, arson in forests, and breach of quarantine for plants and animals.[113]

Despite the legal framework, the current situation regarding general access to the courts in Albania, as well as for environmental matters leaves room for improvement. Because of the ongoing justice reform and the vetting process of judges and prosecutors, Albanian justice institutions are experiencing critical shortages of judges and prosecutors and are operating at half capacity. There is a huge backlog of judicial cases in the Albanian courts, that causes severe delays in settling disputes, including environmental ones. Those are generally adjudicated in the administrative courts, where the situation is acute. At the Administrative Court of Appeal, where the judgments become binding, while in 2014 the number of backlog cases was approximately 6000 cases, in 2023 it reached 23,056 cases. At the current rate of adjudication, a case would take on average of 5,326 days (14.6 years).[114] The respect of the right to access justice and the adequacy of the courts' infrastructure remains insufficient, most seriously at the Court of Appeal.[115]

3.2.2. Access to remedies and their effectiveness in practice

There are legal remedies available for environmental/human rights laws, including breaches of procedural rights. Breaches of procedural rights may cause the annulment of an act, because they are considered by the Code of Administrative Procedures as one of the core elements of the validity of an administrative act, alongside the competence of the issuing authority and the compliance with the aims and objectives of the law.[116] Decisions made by public bodies can be annulled by a superior public body or failing that, by the courts. Therefore, both administrative and judicial review are available, but not fully effective in practice.

Civil remedies are also available, which include compensation, injunctions, orders for restitution, as well as orders holding corporate or industrial actors liable for environmental harm. As indicated in part 3.2.1 above, the Civil Code permits communities and individuals to take industrial and corporate actors to court for environmental harm, by providing that the person who has culpably violated the environment, deteriorating, changing or damaging it, in whole or in part, is obliged to remedy the damage caused. However, these provisions have

109 The lawyers' and experts' fees depend on the type of the case, but they are rarely under 1000 Euros each, in a country where the minimum wage is 400 Euros/month. E.g., in judgment No. 20, dated 05. 03 2024 of the Administrative Court of Appeal, the costs incurred were: Judicial tax 30 Euros + Expert Fee 1,400 Euros, in total 1,430 Euros.

110 Code of Administrative Procedures, Art. 137(3). https://www.drejtesia.gov.al/wp-content/uploads/2017/11/Kodi_i_Procedures_Administrative-1.pdf

111 Law No. 91/2013, "On strategic environmental assessment", Art. 14.

112 Civil Code, Art. 624. https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=231&catid=71&m=0.

113 Criminal Code, Art, 201-207. https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=11&catid=10&m=0

114 High Judicial Council, "National Strategy for the Reduction of Backlog in the Courts 2024-2027", p. 11.

115 Supra, note 60

116 Code of Administrative Procedures - elements of the validity of an administrative act: (i) competence (Articles 21 et seq. of the CAP); (ii) procedure (Article 46 et seq. of the CAP); (iii) compliance of the act with the content of the law (Article 9 of the CAP); (iv) compliance of the act with the aims and objectives of the law (Article 107 of the CAP).

not been fully effective in practice. There is a limited number of cases in the case-law of the Albanian courts, out of which only one has been successful at the first instance and is now under appeal.[117]

Criminal liability for environmental crimes and misdemeanours includes fines and imprisonment, under the Criminal Code, as well as fines and the dissolution of the legal person, as corporate criminal responsibility sanctions.[118] However, these provisions have not been fully effective in practice. According to recent statistics, there has been a 20% reduction of the environmental criminal proceedings and a 33% reduction of the number of the accused for environmental crimes, compared to 2022.[119]

The special environmental crime unit in the Prosecution of Tirana, that led to the identification of money-laundering, is a positive model that has to be replicated in other prosecution offices.

There are no groups that are particularly marginalised when exercising their rights, within the meaning of environmental rights. By their nature, the effects of environmental degradation have a negative impact on all, but for those categories that are vulnerable, the support available is that which is granted by Law No. 111/207 "On the legal aid guaranteed by the state", as indicated in part 3.2.1 above.

A very positive contribution to the protection of human rights and the environment is given by environmental NGOs that have kept a high profile by voicing the public concerns for the protection of the environment and have brought the most significant cases before the courts.[120] However, there is a need for more robust institutions to uphold the rule of law and a strong judicial system to ensure available and effective remedies in practice. The environmental public administration is not consistently recruited on merit-based processes.[121] This affects the whole environmental decision-making process. One example is the enactment of Law No. 21/2024 on protected areas (as indicated in part 2.1.2 above),[122] which was rushed through the Parliament committee in seven minutes, in an online hearing, without a single debate, while there was a strong civil society campaign against it.[123] Positive developments in the case law are the judgments of the Supreme Court of Albania that upheld the enlargement of the "Mali I Tomorrit" National Park, despite opposition from mining companies.[124][125][126]

4. Key environmental concerns in the national context

This section explores how human rights apply in the context of the core environmental issues being faced in the national context.

117 Three cases have been adjudicated by the courts of first instance of Fier, Kurbin, Tirana, and the Supreme Court. The only successful case is judgment No. 363, dated 03. March 2021 of the Court of First Instance Fier, in which a farmer was awarded compensation of approximately 13,000 Euros for the damage caused to his olive groves by discharges of a petrol company.

118 Law No. 9754, dated 14 June 2007, "On the criminal liability of legal persons", Art. 9. https://www.pp.gov.al/rc/doc/ligj_pergjegjesia_penale_e_personave_juridike_38.pdf

119 General Prosecution Annual Report 2023, p. 35. https://www.pp.gov.al/rc/doc/Raporti_1_PP_2023_date_28_03_2024_7383.pdf

120 The most active NGOs, inter alia, include: Res Publica https://www.respublica.org.al/ ; EcoAlbania https://ecoalbania.org/?lang=en ; Albanian Ornithological Society https://aos-alb.org/ ; Protection and Preservation of Natural Environment in Albania (PPNEA) https://ppnea.org/?lang=en ; The Resource Environmental Centre Albania (REC Albania) https://www.recshqiperi.org/

121 Supra, note 51

122 Law No. 21/2024 "On some additions and changes to Law No. 81/2017, On Protected Areas". https://qbz.gov.al/eli/fz/2024/50/5bdc6cdb-3e60-4dbb-b62d-78f08ab4df6e

123 Joint Press Declaration of Environmental NGOs, 16 February 2024. https://www.recshqiperi.org/news.php?id=91

124 Judgment of the Supreme Court of Albania no. 322-2021 dated 21 July 2021. [Annex IV, p. 34].

125 Judgment of the Administrative Court of Appeal no. 20, dated 05 March 2024. [Annex V, p. 35].

126 In this case the plaintiffs were the Association of Mining Activity Societies of the city of Berat, businesses that were affected by the enlargement of the National Park "Mali i Tomorrit", through the DCM No. 611, dated 11 September2019 "On the enlargement of the surface area of the National Park 'Mali i Tomorrit'". The court, put the public interest first, by dismissing the lawsuit, upholding the Decision of the Council of Ministers.

4.1. Key national concerns

A persistent challenge in Albania is related to the weak implementation of environmental and human rights legislation in practice, as indicated among others by the Petrolifera cases analysed in part 3.1.2, above.

Construction permits are issued for developments within the protected areas, contrary to legal provisions. The most recent case is the construction within the Butrint Park, a UNESCO site.[127]

Another challenge is the unclear competences of state authorities, in cases of environmental harm. The most recent case is the environmental concern caused by the large number of dead fish in a reservoir in the city of Fier, in south-west Albania, which is not dealt with by any of the authorities. Claims are traded between the Fier Municipality, the Regional Environmental Agency, the Ministry of Agriculture, and the Ministry of Tourism and Environment.[128]

Recycling is rudimentary, almost inexistent, because the focus has been put on building three incinerators in a country of less than three million people. Only 65% of waste is collected and there is no recycling of demolition waste. Economic instruments to promote separate collection, recycling and preventing waste generation remain limited. The incinerators pose concerns in terms of compliance with EU Waste Directives, the waste hierarchy principle with incineration as the least preferred waste management option, and with the EU recycling targets.[129]

Finally, at this stage of its economic and social development, corruption continues to be a challenge in Albania.[130] Certain businesses may exploit shortcomings in decision-making processes to influence the management of natural resources and secure economic benefits. Albania is mentioned in international reports for money laundering through corruption and construction. Currently, the construction industry is booming in Albania, including the construction of hydro-power plants and coastal resorts,[131] with a huge environmental impact. A major corruption scheme was uncovered by the Special Prosecution Against Corruption and Organised Crime, following initial media investigations,[132] involving waste treatment through incinerators in three Albanian cities, in Elbasan in 2021, in Fier in 2022, and in Tirana in 2023.[133] The Special Prosecutor's Office has announced that the investigations into the Tirana incinerator had revealed a scheme of money laundering.[134] The former Minister of Environment and former Secretary General of the Ministry of Environment have been imprisoned and other

127 Auron Tare, "Construction begins within the Protected Area of Butrint Lake", 28 June 2024. https://www.balkanweb.com/auron-tare-nis-ndertimi-nr-2-brenda-zones-se-mbrojtur-te-parkut-te-butrintit-dy-gardianet/#gsc.tab=0

128 Balkanweb, "Over five tons of dead fish on the shores of the Petova reservoir in Fier, a source of infections", 1 July 2024. https://www.balkanweb.com/mbi-5-tone-peshk-i-ngordhur-pushton-brigjet-e-rezervuarit-te-petoves-ne-fier-burim-per-infeksione/#gsc.tab=0

129 ANNEX IV to Commission Implementing Decision on the financing of the annual action plan in favour of Albania for 2021, p. 4. https://neighbourhood-enlargement.ec.europa.eu/document/download/7d8e1f37-e937-46ea-9b23-60e9fec169e4_en

130 Transparency International, Corruption Perceptions Index, 2023. https://www.transparency.org/en/countries/albania

131 Organization for Security and Cooperation in Europe, "Illicit financial flows. The lifeblood of crime and corruption", July 2021. https://www.osce.org/files/f/documents/2/1/505096_0.pdf

132 Aleksandra Bogdani and Besar Likmeta, "Politics behind waste: Who is the shadow businessman of the incinerator monopoly", 17.09.2020. https://www.reporter.al/2020/09/17/politika-pas-plehrave-kush-eshte-biznesmeni-ne-hije-i-monopolit-te-inceneratoreve/

133 Euronews Albania, "Special Anti-Corruption Structure seizes Tirana incinerator and landfill", 01 August 2023. https://euronews.al/en/spak-sequesters-tirana-incinerator-and-landfill/

134 CAN: "VOA: Over 20 million euros laundered by the organized criminal group of the Tirana incinerator", 16 July 2024. https://www.cna.al/english/aktualitet/voa-mbi-20-milione-euro-te-pastruara-nga-grupi-i-strukturuar-inal-i403600.

officials are under investigation.[135]

The persistent challenge remains the implementation of the law in practice, where courts have a crucial role to play, as the last barrier of protection for the environment.

4.2. Major environmental incidents or accidents

Accidents have occurred, where oil has been spilled in the sea from the deposits of oil companies. Despite the existing legal framework on the civil and criminal responsibility of legal persons (as indicated in part 2.1.2 above), no action has been taken against them.[136] For example, the owner of the oil company that caused the spill was uncovered in a recent court case as being the sponsor of an expensive retreat of the Independent Qualification Commission (IQC), the body responsible for conducting the ongoing vetting of judges and prosecutors in Albania.[137] The most pressing concerns include the construction of Vlora Airport, tourist resources, and hydro-power plants within the protected areas, permitted under the debated Law No. 21/2024; the activity of oil extraction companies that have forced even the evacuation of inhabitants,[138] and the continuation of oil waste discharge in rivers; lack of sanitary landfills; lack of urban wastewater treatment plants; and the existence of illegal and unsanitary landfills along river banks.[139]

5. Concluding summary and recommendations

Albania has become a party to all the major international treaties on the protection of human rights and the environment. Overall, its legislative and institutional framework have been adapted so that the country acquires the capacities to fulfil the obligations that derive from such treaties. However, certain challenges remain with their implementation in practice.

Recommendations

- Amendment of Art. 59(2) of the Constitution, so that "the right to a healthy and ecologically adequate environment, including environmental procedural rights of public participation and access to justice" becomes enforceable in a court of law.
- Improve the environmental legislative process through increased effectiveness of public consultations and by complying with respecting the precautionary principle. The legislator should give a prominent role to environmental expertise. A proposed act should not be approved when the expertise is against it, or even uncertain.
- Annulment of Law No. 21/2024 "On some additions and changes to Law No. 81/2017, On Protected Areas", due to its lack of compliance with Aarhus Convention, part of the Albanian legal order.
- Improve public participation and consultation in the process of environmental and strategic impact assessments of projects, plans and programmes. Public participation and consultation in the process of environmental decision-making should not be

135 Special Prosecution Against Corruption and Organized Crime Press Release, 19 December 2022. https://spak.gov.al/njoftim-per-shtyp-10/ ; Euronews Albania, Incinerator Archive. https://euronews.al/en/tag/incinerator/ .

136 Euronews Albania, "Pollution in Porto Romano, environmental expert: The consequences will be serious.", 27.04.2020. https://euronews.al/ndotja-ne-porto-romano-eksperti-i-mjedisit-pasojat-do-te-jene-te-renda/

137 Edmond Hoxhaj, "The "secret" sponsor of IQC is the insurance company of Shefqet Kastrati", 19 July 2024. https://www.reporter.al/2024/07/19/sponsori-sekret-i-kpk-eshte-kompania-e-sigurimeve-e-shefqet-kastratit/

138 Gjergj Erebara, "Oil Well Blast Forces Albania Villagers to Flee", 1 April 2015. https://balkaninsight.com/2015/04/01/albania-village-evacuated-after-gas-explosion-at-oil-field/.

139 Westminster Foundation for Democracy "Mapping of environmental issues along the Albanian coast", 2021. https://www.wfd.org/sites/default/files/2021-12/Mapping-of-Environmental-issues-along-the-Albanian-coastline.pdf.

confined to the formal invitation of the relevant actors in the decision-making process. To ensure a real and meaningful contribution, relevant actors should be involved from the early stages of the consultation process. The public and NGOs should be provided with detailed and reasoned decisions explaining how their representations have been taken into account.

- Strengthen the environmental public administration, at central and local government, through continuous trainings on environmental law and policy. Most importantly, eliminate institutional incompatibility by re-establishing the Ministry of Environment, separated from the Ministry of Tourism.
- Bolster inspections and enforcement capacity, so that environmental crime is fought more effectively.
- Increase public financing for the protection of the environment.
- Increase public financing for environmental NGOs.
- Strengthen the fight against environmental crime and law enforcement efforts for nature and biodiversity protection, by:
    - -improving the curricula on environmental crime prevention and investigation in the Police Academy
    - improving the curricula and strengthening the capacities of the School of Magistrates for the continuous training of the judges and prosecutors in the environmental protection legislation
    - establishing environmental crime units in the General Directorate of Police and in the Prosecution Offices
    - establishing liaison judicial police officers on environmental crimes for the improvement of the cooperation between the police and prosecution, in order to increase the efficiency in investigation and prosecution
    - training the officials of the public administration at a central and local level on the importance of the protection of the environment, separate from tourism considerations
- Amendment of Law 107/2014 and DCM 519/2017 on the composition of the National Council of Territory - the majority should be held by independent environmental experts
- The Supreme Court must unify the inconsistent judicial practice regarding the *locus standi* of environmental NGOs. There is a need for a unifying judgment that should be binding on lower courts
- Prioritise access to justice in activities planned in protected areas through a speedier procedure, distinguished from the activities in other areas
- Strengthened support for media outlets that focus their attention on environmental problems, alongside concerted action to increase the low level of environmental awareness among the population. This must begin with the entire education system, including primary schools and universities, the public administration of local and central government institutions, NGOs, the Ombudsperson, and all the relevant actors, including strong justice institutions that guarantee the judicial protection of the environment
- Legal amendment to strengthen mediation, by obliging the notaries public to include mediation, alongside adjudication, as an alternative dispute resolution method in the contracts that they draft.
- The Ministry of Tourism and Environment must coordinate efforts with the media for

the production of special programmes to be regularly broadcast, in order to raise the awareness among the population on the importance of environmental protection.

6. Annex

Annex I

[Decisions of the Council of Ministers on Protected Areas]

DCM No. 59, dated 26 January 2022, "On the approval of the change of status and surface area of natural ecosystems, national park (category II) of protected environmental areas": https://akzm.gov.al/wp-content/uploads/2020/07/VKM-59_compressed.pdf. The Ornithological Association of Albania has filed a lawsuit against this DCM, administrative case No. 97 (31155-00284-86-2023), dated 2 January 2023 at the Administrative Court of Appeal registry.

DCM No. 60, dated 26 January 2022, "On the proclamation of natural ecosystems, managed natural reserves/natural parks (Category IV), as well as the approval of the change in the status of existing surface areas of environmentally protected areas, belonging to this category": https://akzm.gov.al/wp-content/uploads/2020/07/e-plote-tex-tabela-VKM-Nr.60-date-26.1.2022.doc.-1_compressed.pdf . The Ornithological Association of Albania has filed a lawsuit against this DCM, administrative case No. 90 (31155-00323-86-2023), dated 8 February 2023 at the Administrative Court of Appeal registry.

DCM No. 694, dated 26 October 2022, "On changing the status and the surface area of the Natural/Wetland Ecosystem "Pishë-Poro - Nartë" from "Managed Natural Reserves", into "Protected landscape", and the removal of the status of "Protected Area" of the reduced surface area. https://akzm.gov.al/wp-content/uploads/2020/07/vendim-2022-10-26-694-1.pdf . The Ornithological Association of Albania has filed a lawsuit against this DCM, administrative case No. 188 (31155-03563-86-2022), dated 20 December 2022 at the Administrative Court of Appeal registry.

Annex II

[Judgment of the Constitutional Court of Albania, No. 3, dated 30 January 2024]

In the case of a planned Hydro Power Plant (HPP) adjudicated by the Constitutional Court, the applicants (environmental and human rights NGOs), claimed an infringement of the right to be informed about the state of the environment, provided for by Article 56 of the Constitution, the Aarhus Convention, as well as the laws on notification and public consultation and environmental protection, because the disputed acts were adopted without transparency, without information or public consultation regarding the usefulness of the investment, the possible limitations of rights and the influence of the law on them, the advantages, disadvantages and consequences it brings to the economy, the health of the population etc., and without public involvement in the decision-making.

Likewise, the acts were approved without preparing the EIA report of the project for the construction of the Skavica HPP, which was supposed to be ready for public opinions and comments in the third quarter of 2022. They also claimed the infringement of the right to a healthy and ecologically appropriate environment, provided for by article 59 of the Constitution, since the realisation of the project would create a microclimate of the region characterised by high moisture content in the air, increased fog, a negative impact of radiation and other meteorological indicators, an increase in the level of carbon in the air as a result of the flooding of the forests, which would make the lives of the inhabitants of the basin less healthy. The Court found that in view of the obligations that Article 56 of the Constitution and the Aarhus Convention impose on state authorities before undertaking activities or projects that have an

impact on the environment and other fundamental rights related to it, the Court considered that the petitioners' claims for violation of the right for public information, must be upheld. This, because international standards require public consultation in the early stages of undertaking activities or activities with an impact on the environment, which did not happen in this case. Therefore, the procedure of approval of Law No. 38/2021 was made in violation of the right to information about the state of the environment and its protection.

Also, the Court found that the procedure for approving Law No. 38/2021 was carried out without public consultations, without hearing the opinion of the community of the area, with the status of the affected public, as well as without assessing the impact of the project on the environment and other related rights. However, considering that the project is still in the initial phase of implementation, the Court through its interpretation of the Aarhus Convention decided that in accordance with the obligations of Article 56 of the Constitution and the Aarhus Convention, the violations found during the phase before the adoption of Law No. 38/2021 can still be repaired through the involvement of the public in activities following different phases of project development and implementation, as well as in decision-making.

In the end, the Court assessed that the petitioners' claim for the violation of the right to be informed about the state of the environment and its protection were well-founded. However, taking into account that the violation is repairable, the Court considered that there is no place for the repeal of Law No.38/2021.

This judgment of the Constitutional Court means that the construction of the HPP may go ahead, making it an ineffective remedy, as far the rights of the plaintiffs are concerned.

Annex III

[Judgment of the Supreme Court No. 00 – 2021 – 1177, dated 21 July 2021]

The plaintiffs were a community of 27 residents of Margegaj village in the north of Albania and the "Land" association, an NGO in the field of promotion and protection of the environment. The plaintiffs sued, among others, the Ministry of Energy, the Ministry of Environment, the National Environmental Agency and the companies that had obtained the permits, claiming that the construction and operation of hydropower plants in the area of the Valbona Valley may seriously damage the environment of Valbona National Park.

Regarding the *locus standi* of the plaintiffs, the Supreme Court ruled that the risk of serious irreversible damage to the environment provided reasonable grounds for granting interim measures, giving the plaintiffs' *locus standi*. Interpreting the standards set out in the Aarhus Convention and in the Albanian legislation, the Court ruled that the right to access to justice on environmental issues differs from other cases, where the parties' sought to access justice to reclaim a violated right.

Environmental issues are polycentric in nature, far from the formal adversarial aspect of a normal civil/administrative trial. According to the concession contract, the "HPP Dragobia" project is located within the territory of the Valbona Valley, which in 1996 was proclaimed a "National Park", a Category II Protected Area. Protected areas are created to ensure the preservation and renewal of natural habitats, species, reserves and natural landscapes. As such, the court ruled that the damage that would be caused by the continuation of the construction of the dam would be severe, irreversible and immediate, since it could damage the environment, precisely in an area with a high environmental, social and economic sensitivity.

In addition, the court ruled that *"…it values the caselaw of the ECtHR), which has dealt with environmental issues related to the application of Article 8 of the ECHR , emphasizing that in environmental issues, states have a wide margin of appreciation and that in these cases the substantial merit of the public authority's decision-making must be analysed first, and the decision-making process must be examined second, in order to ensure that individual interests are given due weight.*

The ECtHR has assessed that the decision-making process related to complex environmental and economic issues must first of all include appropriate investigations and studies for the preliminary effects they may have on environmental damage, and infringement of individual rights, so that a fair balance can be struck between conflicting rights. The ECtHR has assessed that interested individuals should be able to judicially appeal decisions, actions/ inactions when they assess that their interests or comments have not been given due weight in the decision-making process. (See Giacomelli v. Italy, 2006, para. 83).” [Paragraph 51 of the Judgment No. 00 – 2021 – 1177, dated 21 July 2021, of the Supreme Court of Albania]. However, most importantly, the Supreme Court overruled the judgment of the two lower courts that had given priority to another public interest, energy production, by declaring that “the courts should have analysed the prevalence of a greater public interest, that of protecting the environment, nature and biodiversity. Environment is an extra-territorial concept, which goes beyond the borders of a country. The protection of the environment is a fundamental condition for ensuring the development of society and is a national priority, which aims to pass an undamaged environment between generations.” [Paragraph 52].

Annex IV

[Judgment of the Administrative Court of First Instance of Tirana no. 80-2022-3301, dated 2 December 2022]

NGOs were denied *locus standi*. The judge ruled that *“…the plaintiffs, in their capacity as NGOs, are not contesting a normative act…because we’re not in the case of an expressed willpower of the public authority, in the exercise of its public duty, that regulates certain relations defined by law, by stipulating general rules of behaviour, and which does not exhaust its implementation. Moreover, the parties cannot file an administrative lawsuit…because this right has not been provided for in law 107/2014 “On territorial planning”, based on which Decision no.4, dated 24 November 2021 of National Territorial Council has been promulgated.”* [para. 17 of the judgment]. The judge went on to state that *“Also, the plaintiffs do not possess locus standi because none of their legitimate and actual interests have been harmed by the administrative activity of the defendants. This conclusion is also based on the Aarhus Convention, which is an international agreement ratified by Law No. 8672, dated 26 October 2000, and, consequently, is binding and directly applicable*.” [para. 18 of the judgment]. “*The Aarhus Convention grants to the plaintiffs’ access to the court only for: 1. Issues that are related to access to information; 2. Participation in the decision making for certain activities that are listed in Annex 1. In the Annex 1 of the Aarhus Convention is not listed the construction of Hydro Power Plants*.” [para. 24 of the judgment].

This judgment was quashed by the Administrative Court of Appeal, but not for the interpretation of *locus standi*, but because the judgment of the court of first instance was taken by a single judge, whereas it should have been taken by a panel of three judges. [Judgment of the Administrative Court of Appeal No. 484, dated 22.06. 2023].

The plaintiffs filed a lawsuit with the Administrative Court of Appeal, requesting interim measures, the suspension of work for the construction of the Vlora Airport, because of the irreparable damage to the Protected Area. The Administrative Court of Appeal in its Judgment No. 49, dated 22 June 2023, declared its lack of competence for the interim measures and sent the case to be adjudicated by the Administrative Court of First Instance of Tirana. The Administrative Court of First Instance of Tirana sent the case to the Supreme Court, which decided in its judgment No. 00-2023-3466, dated 31 June 2023 that the competent court for the interim measures is the Administrative Court of Appeal. Following the judgment of the Supreme Court, the Administrative Court of Appeal in its judgment No. 3, dated 16 January 2024 refused to order interim measures (at the present time approximately 30% of the construction work had been completed at Vlora Airport).

On the special appeal of the State Advocate, the case was sent to the Supreme Court

on 23 October 2023.

It took the Supreme Court five months after the registration of the case and nine months after the Administrative Court of Appeal judgment, to decide through Judgment No. 31003-00443-00-2023, dated 11 March 2024, to: *"Annul decision no. 484 (86-2023-691), dated 22 June 2023, of the Administrative Court of Appeal and to send the case back to be adjudicated by the same panel"*.

Until the submission of this report, the March 2024 judgment of the Supreme Court has not yet been transcribed. Therefore, the case file has not yet been sent to the Administrative Court of Appeal, for the continuation of the trial, while the construction of the airport approaches its completion.

Annex V

[Judgment of the Administrative Court of Appeal no. 20, dated 05 March 2024]

The plaintiff, "Ayen-Alb", was the concession company that entered into a concession contract with the Ministry of Energy for the construction of the Kalivaç hydropower plant on the Vjosa River. The concessionaire was required to obtain the necessary permits and licenses, including the Environmental Statement, the administrative act issued by the Ministry of Environment which sets out the environmental impact of the intended project. The Ministry of Environment, based on the proposal of the National Environment Agency had issued a negative Environmental Statement for the construction of the hydropower plant. The project was also strongly opposed by civil society, national and international organisations, demanding the shelving of the project. The plaintiff filed an administrative appeal, and later a lawsuit on the annulment of the environmental statement arguing that it was illegal. The plaintiff claimed that the impact on the environment would not be negative and asked to continue with the project, as the winner of the concession contract. NGOs "Eco Albania", "EuroNatur" and "Riverwatch", as well as 39 residents of the Kalivac intervened in the court.

The Administrative Court ruled in their favour, arguing that they are interested parties in the environmental decision-making process. Referring to the Albanian legislation and the Aarhus Convention, they are entitled to be parties in the court proceedings, having the right to be heard and to present their claims. As per the merits of the case, the First Instance Administrative Court of Tirana rejected the claim, deciding that the Environmental Statement was issued in accordance with the law. The court emphasised that this administrative act provides all the arguments that have led the competent authority to issue a negative environmental statement and there is no reason for this act to be declared invalid. It was also noted that at the time of the trial the Vjosa River was declared a managed national park/natural reserve of a significant importance.

Bosnia and Herzegovina: Baseline study of legislation, policy and practice on human rights and environment

1. Introduction

Signing the Dayton Peace Accords marked a crucial turning point for Bosnia and Herzegovina (BiH), bringing an end to a violent chapter in its modern history. Annex IV of these accords established BiH's constitution. This constitution created a decentralized governmental structure where, administratively, BiH is comprised of two entities: the Federation of BiH (FBiH) and Republika Srpska (RS), the Brčko District of BiH (BDBiH), and 10 cantons within the FBiH. Every governmental level has its own constitution, government, parliamentary assembly, and judiciary, operating with significant autonomy. Overall, BiH has 14 constitutions, 4 legal systems and more than 150 ministries.[140]

Given the complexity of the BiH governmental structure, each level of government has its own legislative and executive authorities. This includes legislation regulating environmental protection. Similarly, the judicial authority is established as a separate authority at different levels.

BiH's accession to the Council of Europe in 2002 and the signing of the Stabilisation and Association Agreement (SAA) with the European Union (EU) in 2008 marked significant milestones in its aspiration to become an EU member state. As a recognised candidate country since 2016, BiH's efforts to align its legislation with the EU *acqui*s have been one of the main driving forces behind environmental and human rights protection reforms. However, BiH's complex and fragmented governance system has hindered effective implementation of these reforms and slowed its progress toward EU accession.

2. Substantive law and practice

2.1. Laws relating to environmental human rights

2.1.1. Environmental/human rights protections in the national constitution

The constitutional provisions in BiH have not given excessive attention to regulating ecological rights, that is, the right to a healthy environment and its inclusion in the corpus of fundamental constitutional rights. Only the Constitution of the Republika Srpska provides a concrete definition of the right to a healthy environment,[141] while in other constitutional texts this has not been done, and environmental issues are mentioned within the scope of jurisdiction.[142]

Article II of the BiH Constitution secures fundamental rights and freedoms, including the right to private and family life, indirectly impacting environmental matters by relating to a

140 UNDP, Bosnia and Herzegovina and the United Nations Sustainable Development Cooperation Framework 2021- 2025, A Partnership for Sustainable Development. Available at: https://is.gd/zRLktq.

141 The Constitution of Republika Srpska explicitly states that "a person has the right to a healthy environment" and that everyone has the duty, in accordance with the law and within their capabilities, to protect and improve the environment.

142 The Constitution of the Federation of Bosnia and Herzegovina ("Official Journal of FBiH", No. 1/94, 13/97, 16/02, 22/02, 52/02, 60/02, 18/03, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05 and 88/08), does not explicitly mention the right to the environment or related rights. However, it states within the Constitution that the guarantee and implementation of human rights and the protection of the human environment fall under the shared jurisdiction of the FBiH and the cantons (II/A/article 2, III/ article 2/a, c.). For example, the Constitution of the Sarajevo Canton states that within the framework of shared jurisdiction with the FBIH, the Sarajevo Canton independently or in coordination with federal authorities guarantees and implements human rights and the protection of the human environment. This is similarly prescribed in the constitutions of the Una-Sana Canton, Tuzla Canton, Zenica-Doboj Canton, Herzegovina-Neretva Canton, Central Bosnia Canton, and Bosnian-Podrinje Canton Goražde. The constitutions of the Posavina Canton, Canton 10, and West Herzegovina Canton do not explicitly mention the right to a healthy environment.

healthy living environment.[143] The right to a healthy environment falls under the concept of the right to life and it is an integral part of that right, as a fundamental human right guaranteed by the Constitution to all citizens. Accordingly, the protection of the right to a healthy environment as a human right is possible through various legal means in the fields of administrative law, criminal law, minor offense law and civil law.

Human rights in BiH must be protected by domestic authorities under public control, including all entities within the entities and the Brčko District, as well as the cantons, municipalities, and the state itself.[144] Protection can be sought before domestic courts, but citizens also have the right to present violations of their fundamental rights to bodies in administrative, civil, and criminal proceedings. Individuals have the right to file a complaint with the Constitutional Court after exhausting all other legal remedies. The ECHR is directly applicable, superseding domestic laws and ensuring individuals can assert their rights before domestic courts and the Constitutional Court. Additionally, there is the institution of the Ombudsman for Human Rights, which deals with the protection of human rights of both natural and legal persons in accordance with the guarantees given by the Constitution of BiH and international agreements annexed to the Constitution.

2.1.2. Specific pieces of legislation

The legal framework for environmental protection in BiH is structured across different levels of government, reflecting the country's complex administrative setup. According to its constitutional competencies, environmental protection in BiH is fragmented across multiple legal systems and administrative levels, with no unified state-level environmental law. The constitutional competencies of the state in this area are limited;[145] therefore, the legislation predominantly includes entity,[146] cantonal, and Brčko District laws.[147]

Both entities and BDBiH have a comprehensive set of laws addressing various aspects of environmental protection, including laws on nature protection, waste, and water management. These laws provide a framework for regulating environmental activities and ensuring sustainable development. Each entity focuses on improving environmental standards and aligning with EU legislation to enhance environmental management and services.

One part of the legislation is directly aimed at environmental protection and addresses issues related to the human environment, while many other laws partially touch upon environmental issues and their protection.

All laws on environmental protection[148] in BiH establish the framework for safeguarding the environment. These laws require every individual and organisation to adhere to environmental standards and hold them accountable for any environmental damage. They include provisions for environmental impact assessments (EIAs), which must consider potential human rights

143 Constitution of the Bosnia and Herzegovina, Available at: https://www.ustavnisud.ba/.

144 The Ministry for Human Rights and Refugees of BiH oversees human rights at the national level, while entities, districts, and cantons maintain their own ministries and departments dedicated to human rights protection, bolstered by various agencies tasked with monitoring and enforcing human rights standards. Across all levels of government in BiH, parliamentary commissions and committees actively address human rights issues, underscoring BiH's commitment to safeguarding freedoms and upholding international human rights standards amidst its complex governance structure and ongoing EU integration efforts.

145 The Ministry of Foreign Trade and Economic Relations of BiH oversees coordination of environmental protection at the state level, working with various entities institutions and international bodies.

146 The Federation of Bosnia and Herzegovina, Republika Srpska, and Brčko District BiH have established their own institutions for environmental management. In the Federation, environmental responsibilities are managed by the Ministry of Environment and Tourism, while in Republika Srpska, they fall under the Ministry of Physical Planning, Civil Engineering, and Ecology.

147 The Brčko District's environmental tasks are handled by the Sub-Department for Issuing Site Permits and Environmental Protection within Department for Physical Planning and Property Affair.

148 Law on the Protection of the Environment ("Official Gazette of the FBiH", No. 15/21); Law on the Protection of the Environment ("Official Gazette of the Republika Srpska", No. 71/12, 79/15 and 70/20); Law on the Protection of the Environment ("Official Gazette of the Brčko District of BiH", No. 24/04, 1/05, 19/07 and 9/09).

impacts. Companies must conduct EIAs for projects that may affect the environment, and public participation in the EIA process is mandatory,[149] ensuring that communities potentially affected by corporate activities have a say. Penalties for non-compliance include fines and mandatory remediation of environmental damage.[150] To be awarded damages or obtain legal protection, every interested party has the right to seek protection in administrative and judicial proceedings. Every individual also has the right to equal access to environmental information, regardless of gender, age, religious and racial background. Also, laws on nature protection include provisions that restrict activities which can damage protected areas and require restoration and compensation in cases of environmental harm caused by corporate actions.[151]

However, progress in aligning the environmental legislation with EU directives on EIA, SEA, environmental liability, and environmental crime remains limited, hindering the effective implementation of environmental protection standards countrywide.[152]

2.1.3. Ratification of international treaties

BiH has signed and ratified most of the key international treaties relevant to human rights and environmental protection, reflecting its commitment to international standards,[153] including the Aarhus Convention and the Tromsø Convention.[154] Adopting a monist approach, BiH allows international treaties to be directly applied within its national legal system without the need for additional legislation.[155]

2.2. How law on human rights and the environment is applied in practice

As previously stated BiH's constitutional provisions do not explicitly address the right to a healthy environment. However, the constitution does provide a framework for human rights, from which environmental rights can be inferred. This broader human rights protection can be used to address environmental issues through judicial interpretation and application of existing laws.

BiH's Constitutional Court has developed a strong jurisprudence in the domain of human rights, applying the standards developed by the ECtHR becoming an arbiter of the main constitutional issues developing a jurisprudence well-suited to the matter. The ECtHR has significantly influenced judicial decisions in BiH, particularly in establishing standards for a fair trial and the right to a healthy environment within the framework of human rights protections.

149 Articles 35., 36., and 59. of the Law on environmental protection of BDBiH, Available at: https://faolex.fao.org/docs/pdf/bih131214.pdf; Article 40. of the Federal Law on the Protection of the Environment, Available at: https://rb.gy/phpjdx. Article 39. of the Law on environmental protection of Republika Srpska, Available at: https://rb.gy/3nmoop.

150 Articles 99.-107. of the Law on environmental protection of BDBiH; Article 142. of the Federal Law on the Protection of the Environment; Article 132. of the Republika Srpska Law on the Protection of the Environment.

151 Law on nature protection of the Federation of BiH ("Official Gazette of the FBiH", No. 66/13) Available at: https://is.gd/Qh3jnG; Law on nature protection of the Republika Srpska ("Official Gazette of the RS", No. 49/04), Available at: https://is.gd/2Jh0bM; Law on nature protection of the Brčko District of BiH ("Official Gazette of the BD BiH", No. 24/04, 1/05, 19/07 i 9/09), Available at: https://rb.gy/e9b9v8.

152 European Commission, Bosnia and Herzegovina 2024 Report, p. 84 Available at: https://tinyurl.com/4nnmk5dy.

153 Ministry of Foreign Trade and Economic Relations of BiH, A list of signed conventions and agreements in environmental protection, Available at: https://is.gd/69O3wc.

154 Overview of other ratified conventions and protocols related to environmental protection, Bilateral agreements and mechanisms established for the purpose of implementing ratified international agreements/treaties/conventions is available here: https://is.gd/R0ssPs. p. 9-12.

155 Vehabović, F. 2006. Odnos Ustava Bosne i Hercegovine i Evropske konvencije za zastitu ljudskih prava i osnovnih Sloboda, p. 50. Available at: https://rb.gy/z8z59f.

According to its appellate jurisdiction as defined by the Constitution,[156] the Court has addressed cases related to the application of environmental laws. However, such cases are relatively few due to the limited development of environmental case law in BiH. Nevertheless, the Court's decisions collectively form a foundational framework for interpreting and applying environmental protection laws in BiH, aligning them with international human rights standards.[157] However, the effectiveness of some decisions is often undermined by inadequate enforcement mechanisms. Although the Constitutional Court's decisions are binding,[158] political interference further complicates consistent application,[159] leading to inconsistent implementation of the Constitutional Court's rulings. Reports indicate that many public authorities fail to comply with the Court's decisions, highlighting the need for stronger enforcement measures.[160]

2.2.2. Judicial practice and decisions

The BiH Constitutional Court decisions emphasise the need for timely judicial decisions, the enforcement of environmental regulations,[161] and the protection of individuals' rights in the

156 Article VI/3. b) of the Constitution of Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina holds appellate jurisdiction over constitutional matters arising from any court judgment within the country. Appeals are only considered if all effective legal remedies have been exhausted and filed within 60 days of the final decision. Exceptionally, the Court can review appeals without a prior court decision if they allege serious violations of constitutional rights or relevant international documents. The Court serves as the final authority for protecting constitutional rights and freedoms, with the power to annul judgments and order retrials. Additionally, it can assess the compatibility of laws with the Constitution, the ECHR, or international public law, as referred by any court in Bosnia and Herzegovina.

157 Interview with a representative of the judiciary.

158 The non-implementation of Constitutional Court decisions is sanctioned under the Article 239. of the Criminal Code of Bosnia and Herzegovina ("Official Gazette of the BiH", No. 3/2003, 32/2003 - ispr., 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018, 46/2021, 31/2023 i 47/2023) Available at: https://is.gd/MFpTEs.

159 The Constitutional Court of Bosnia and Herzegovina has issued several rulings to protect the environment and regulate natural resource management, but these decisions are often ignored or inadequately implemented by entity and local authorities. Political interference and conflicts of interest, particularly in granting concessions for hydropower plants, mines, and forests, frequently undermine these rulings. Concessions have been granted in protected areas despite court orders to stop, leading to environmental degradation and harm to local communities. The problem is exacerbated by a lack of transparency, with multiple laws (14 different laws) governing concessions but little public access to information, increasing the risk of corruption and limiting citizens' ability to participate in decision-making. See: Decisions of the BiH Constitutional Court related to the issue of state property in Bosnia and Herzegovina, Available at: https://is.gd/sdjMrV; Transparency International BIH, 14 Levels of Non-Transparency: Information about concessions is hidden from the public, the consequences are corruption and environmental destruction, Available at: https://is.gd/JXxwZI.

160 Summary Report on the enforcement of decisions of the Constitutional Court of Bosnia and Herzegovina, Available at: https://is.gd/QuESvh. Although non-compliance with decisions of the Constitutional Court of BiH is a criminal offense, the enforcement mechanisms are not functioning effectively. Specifically, the report highlights that the Prosecutor's Office of BiH has often failed to act on cases of non-enforcement. In many instances, investigations were either not conducted or were suspended without sufficient justification. This indicates that, despite the legal framework in place, there is a substantial gap in the actual enforcement, largely due to the inaction or inefficiency of prosecutorial authorities. This lack of enforcement is compounded by political interference, where political entities may influence or pressure judicial processes, leading to a situation where decisions that should be legally binding are not implemented. The problem isn't just with the existence of laws and enforcement mechanisms, but with their application, which is frequently hindered by political and institutional factors.

161 Decision No. AP-1170/14 of 15 February 2017. The appeal by JP "EP BiH" was dismissed, with the court affirming the obligation to pay fees for air pollution as per the Tuzla Canton Environmental Protection Law. The case involved disputes over the applicability of older laws following new environmental legislation in 2003. The court affirmed the enforcement of existing environmental regulations, such as the obligation to pay fees for air pollution, even amidst legislative changes. This decision underscored the continuity and applicability of environmental laws, ensuring that polluters remain accountable for their environmental impacts. See: https://is.gd/R0ssPs.

context of environmental harm.[162] For example in case AP-2941/22,[163] the Court recognised the importance of timely judicial decisions, especially in environmental matters that affect human health. It emphasised that delays infringe on the right to effective access to justice, highlighting the interconnectedness of judicial efficiency and the protection of human rights. Moreover, the Constitutional Court often links environmental protection to fundamental human rights in its rulings. For instance, in cases concerning environmental permits and their implications for public health and property rights, the Court has upheld rights guaranteed under both the BiH Constitution and the ECHR. This demonstrates a recognition of the necessity to integrate environmental considerations into the broader framework of human rights protection.

The Court also frequently references the case law of the ECtHR when interpreting rights. In case AP-3016/17,[164] for example, the Constitutional Court evaluated noise pollution against established legal thresholds. This indicates a commitment to aligning domestic judicial practices with international human rights standards, ensuring that domestic interpretations of rights reflect established European jurisprudence.

Despite the relatively low number of cases specifically addressing environmental law, the decisions that do exist provide significant insights into judicial approaches to balancing environmental concerns with human rights. These insights demonstrate that the courts recognise and apply international agreements such as the Aarhus Convention, that uphold the right to access environmental information, encourage public participation in decision-making, and ensure access to justice.[165] Environmental protection NGOs and other civic organisations play a vital role in enhancing the quality of case presentations before the courts. Their involvement, along with consultations with relevant professionals, ensures effective use of available remedies and significantly improves the quality of court decisions related to environmental rights.[166] Furthermore, domestic laws related to environmental protection

162 Decision No. AP-3016/17 of 17 July 2019. The appeal regarding excessive noise and waste from a playground was dismissed. The court found no violation of the right to a fair trial or property, noting that no official measurements confirmed excessive levels of noise and waste beyond legal limits. The court required concrete evidence to support claims of environmental harm. This approach ensures decisions are grounded in verifiable data, reflecting ECHR standards for fair trial and property protection. See: https://is.gd/R0ssPs.

163 In Decision No. AP-2941/22 of 18 October 2022, the court found a violation of the right to a fair trial under Article II/3. e of the Constitution of BiH and Article 6(1) of the ECHR. The Cantonal Court in Sarajevo's failure to resolve a complaint concerning the annulment of an environmental permit decision within ten months was ruled as a breach of the right to trial within a reasonable time, especially given the case's importance to human health and the environment. The court underscored the need for prompt resolution of environmental disputes involving public interest. See: Mrdović, F., Sarajevo, 2023, Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment, Available at: https://is.gd/R0ssPs.

164 In Decision AP3016/17 (17 July 2019), the Constitutional Court dismissed an appeal against the Supreme Court of FBiH and the Cantonal Court in Goražde, finding no violations of the right to a fair trial, property, or home. The courts ruled that noise and waste from a playground did not exceed legal limits and were acceptable given the urban context, referencing ECtHR standards on harmful emissions, including Fadeyeva v. Russia. See: Mrdović, F., Sarajevo, 2023, Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment, Available at: https://is.gd/R0ssPs.

165 Interview with a representative of the judiciary; See: Mrdović, F. Sarajevo, 2023, Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment, Available at: https://is.gd/R0ssPs;Judicial Practice Portal of Bosnia and Herzegovina (Portal sudske prakse u Bosni i Hercegovini) Available at: https://sudskapraksa.pravosudje.ba/

166 Judgment of the Supreme Court of the Federation of Bosnia and Herzegovina, Case number: 09 0 U 027991 20 Uvp of 9 December 2021. This case involved the NGO "EKOTIM" from Sarajevo, where the court affirmed the NGO's right to participate in the legal process regarding environmental permits. The NGO provided crucial technical information and detailed environmental assessments that challenged the adequacy of the environmental permit for the Tuzla Thermal Power Plant. The court explicitly acknowledged the NGO's contribution to providing important environmental data and technical information, which was crucial in assessing the adequacy of the environmental permit. Also, Judgment of the Supreme Court of Republika Srpska: Case number: 15 0 U 004076 19 Uvp of 3 March 2021. This case involved the granting of a permit for the construction of a mini hydroelectric power plant, where the court recognised the NGO's interest and rights in the administrative proceedings. The NGO's understanding of environmental law enabled them to successfully challenge the permit on legal grounds that might have been overlooked by less knowledgeable parties.

are interpreted and enforced in line with the standards set by the ECHR and the ECtHR . In BiH, the judicial protection of the right to a healthy environment is primarily grounded in principles such as legality, access to justice, and judicial review. The Constitutional Court has shown a willingness to ensure that the legal framework for environmental protection is applied consistently with international norms, demonstrating a proactive stance. [167]

Overall, the analysis of the available case law from BiH courts shows that they generally interpret existing laws to uphold environmental standards, align with international obligations, and emphasise the importance of environmental protection as a legal imperative. The BiH courts have taken their environmental preservation duties seriously, applying laws in accordance with international conventions like the Aarhus Convention and the ECHR. They have highlighted the significance of public participation and the protection of health and the environment. However, there are also challenges, particularly regarding the consistency and application of judicial practices in environmental protection. Some cases have been undermined by procedural errors or insufficient evidence,[168] where claims for damages were dismissed despite the recognition of environmental violations. These cases illustrate the ongoing challenges related to procedural consistency and the burden of proof in environmental litigation, even when courts acknowledge breaches of environmental standards.

3. Environmental Procedural Law and Practice

3.1. Environmental rights of information and participation

3.1.1. Access to environmental information:

Access to information in BiH, including environmental information, is supported through the Laws on Freedom of Access to Information.[169] These laws require that public authorities must provide access to information upon request and proactively publish information of public

167 In Decision AP-2941/22 (October 2022), the Constitutional Court found a violation of the right to a fair trial due to a delay in handling an environmental permit case, stressing the need for urgency in such matters, particularly those affecting human health and the environment, underscoring its commitment to upholding the ECHR, particularly Article 6, which guarantees access to justice. Similarly, in Decision AP 1170/14, the Court upheld the enforcement of a financial obligation related to environmental pollution, aligning with both domestic and international standards like the Aarhus Convention. Courts in BiH increasingly apply international standards, such as Articles 2 and 8 of the ECHR, especially in cases involving hazardous activities. Notable rulings include the Cantonal Court in Sarajevo annulling a permit for the Rama Hydroelectric Power Plant due to inadequate public participation (Judgment of the Cantonal Court in Sarajevo, number: 09 0 U 005987 10 of 11 March 2014.), and the Tuzla courts holding a public utility accountable for air pollution from thermal power plants(Judgment of the Supreme Court of the Federation, number: 32 0 Ps 132251 12 Rev, of 26 December 2013.). These cases highlight the judiciary's commitment to enforcing environmental laws and protecting public health.

168 Judgment of the Municipal Court in Zenica, number: 43 0 P 137327 16 P, of 25 March 2022. The case involved plaintiffs H.E. and H.R. against the steel production company "AM" d.o.o. Zenica. The plaintiffs sought compensation for material and non-material damage caused by the company's steelmaking activities, which led to significant pollution. The court found that the plaintiffs had proven a causal link between the damage they suffered and the defendant's failure to implement the environmental protection measures required by an integrated environmental permit. Specifically, of the 195 measures required, only 152 were implemented, and even then, they only reduced emissions by 5–10%. Despite the plaintiffs proving the legal basis for compensation, the claim was ultimately dismissed due to a lack of evidence for the exact amount of damage, particularly in relation to non-material damage linked to mental health effects caused by the pollution. Another case involved the Mostar quarry project (Decision AP-2941/22 of 18 October 2022), where the Constitutional Court acknowledged procedural violations but did not assess the merits of the environmental concerns. Here, the lack of public involvement and proper procedural handling led to the annulment of an environmental permit without a direct consideration of the substantive environmental impact.

169 Except at the cantonal level, every level of government in BiH has adopted its own Law on Freedom of Access to Information ("Official Gazette of RS" No. 20/01, "Official Gazette of FBiH", No. 32/01, 48/11, "Official Gazette of BiH", No. 61/23).

interest. Additionally, every person has the right to access information held by a public body.[170] The Laws on the Protection of the Environment,[171] reinforce this right, particularly concerning environmental information. Public authorities are obliged, on their own initiative, to release certain environmental information and to deliver information in response to submitted requests for access to information. The limitations[172] on the right to access information are defined by both laws.[173]

However, in practice the implementation of the above-mentioned laws is facing challenges. Reports[174] indicate that many public bodies either do not respond to information requests in a timely manner or do not respond at all.[175] Public authorities often fail to regularly publish essential environmental information. In many cases, the information is only available upon request, or it is released in formats that are difficult to understand. Additionally, official statistical data is frequently not collected.[176] Further, the Human Rights Ombudsperson in BiH highlights that the number of complaints regarding freedom of access to information is constantly increasing, as is the number of recommendations issued by the Ombudsman. However, the number of cases in which authorities comply with the Ombudsman's recommendations is very low, only 30% of the total.[177]

3.1.2. Rights of participation

Pillar II of the Aarhus Convention is integrated into BiH's environmental protection laws, granting the public the right to participate in environmental decision-making. In practice, this means that competent authorities are required to ensure public participation in all procedures related to environmental decision-making.[178] Public participation in environmental decision-making is implemented by authorities according to the Laws on Environmental Protection in the entities and BDBiH, and public participation is envisaged in the early stages of EIAs and in the processes of approving EIAs, issuing environmental permits, and in all other decisions

170 As for the procedure, laws on Freedom of Access to Information provide the following: when a request for information is submitted, an administrative procedure is initiated to provide information according to deadlines depending on specific provisions. The deadlines allow the requester to access their right to justice if the request is denied or the response is unsatisfactory. The procedures for administrative disputes are covered in Administrative Dispute Laws for both entities and the Brčko District.

171 Law on Environmental Protection, Articles 64 and 80 ("Official Gazette of RS", No. 71/12, 79/15); Article 36 ("Official Gazette of FBiH" No. 15/21); ("Official Gazette of BDBiH", No. 24/04, 1/05, 19/07, and 9/09).

172 One of the restrictions that state-level law allows is restriction of access to information if it is reasonable to expect that allowing access to certain information would cause serious harm to the environment. However, civil society organisations perceiving this restriction as the lack of application of the principle of transparency in matters concerning BiH and its nature and as allowing the creation of a favorable ground for further devastation by harmful projects without the knowledge and information of the public. See: Shadow Report for period 2022.-2023., Chapter 27: Progress Assessment of Environmental Protection in Bosnia and Herzegovina, p. 20, Available at: https://is.gd/u6FFnx.

173 Certain exceptions differ between the Laws on Freedom of Access to Information and the Laws on the Protection of the Environment. In addition to general exceptions like those for public authority functions, commercial confidentiality, and privacy, the latter includes exceptions for trade, industry confidentiality, and emissions-related information, especially where economic interests and intellectual property are concerned. Public authorities must perform a public interest test when considering these exceptions.

174 The implementation of the Aarhus Convention in BiH is regularly monitored by the relevant ministries through public implementation reports, as well as by the non-governmental sector through shadow reports.

175 Shadow Report for period 2022.-2023., Chapter 27: Progress Assessment of Environmental Protection in Bosnia and Herzegovina, p. 23, Available at: https://is.gd/u6FFnx.

176 Ibid. p. 48.

177 Balkan Investigative Network of Bosnia and Herzegovina (BIRN BiH), https://is.gd/S3mE6N.

178 This includes public inspection and public hearings during the process of environmental impact assessments and the issuance of environmental permits. Public inspection allows the public concerned to submit remarks, information, analyses, or opinions relevant to the approval of a certain activity. Public hearings provide a forum for all interested parties to verbally present their opinions and discuss issues important for decision-making.

regarding proposed activities that may have a significant impact on the environment.[179]

However, interviews with stakeholders and various reports indicate that the existence of laws does not necessarily indicate effective implementation in practice, as legislative gaps and insufficiently trained staff at all levels hinder the process.[180] Civil society organisations in BiH face significant challenges in participating and engaging in environmental decision-making processes.[181] Many perceive that public consultations are often conducted merely as a formality.[182]

There are additional challenges related to implementation, including lack of capacity of state entities in information-sharing procedures, inadequate advertisement of public auditing processes, protracted judicial and administrative proceedings, and poor coordination between different authority levels.[183] Addressing legislative gaps and improving procedural frameworks, particularly by aligning them with EU directives on Environmental Impact Assessment and Strategic Environmental Assessment, remains a critical step toward effective implementation.[184]

Recent amendments to the Law on Geological Research in Republika Srpska [185] excluding the need for environmental impact assessment and community participation in geological surveys of mineral resources hinder environmental activists and breach international conventions. This violates the Aarhus Convention and the European Charter on Local Self Government.[186]

Civic space for environmental engagement in BiH must be observed under the umbrella of the general environment for civic space engagement in BiH. Numerous reports indicate that civic space in BiH is under pressure due to restrictive laws and increased harassment of civic actors. While there are positive examples of successful civic actions, increasing harassment and restrictive measures are concerning trends. The legal framework supports public participation, but practical enforcement and protection of these rights is critical to ensuring a healthy civic space.[187] Recent legislative trends in the country indicate a movement towards greater restriction and control, further narrowing the space for CSOs.[188]

The legal framework within which human rights defenders operate is fragmented, leading to unequal rights and access to resources. These frameworks do not explicitly mention environmental human rights defenders, they offer a general layer of protection. Activists often rely on these broader human rights provisions to safeguard their activities and seek legal remedies against threats or harassment.[189]

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179 Article 39. of the Law on Environmental Protection of Republika Srpska; Article 40 of the Law on Environmental Protection of FBiH; Article 35 of the Law on Environmental Protection of Brcko District.

180 Shadow Report for period 2022.-2023., Chapter 27: Progress Assessment of Environmental Protection in Bosnia and Herzegovina, p. 22 and 23, Available at: https://is.gd/u6FFnx.

181 European Commission, Bosnia and Herzegovina 2024 Report, p. 25, Available at: https://tinyurl.com/4nnmk5dy.

182 Interview with NGO representative: Public consultations are occasionally scheduled at inconvenient times and locations, and civil society organisations often struggle to access specific documents.

183 Pilipović, R. (2021). Environmental democracy in Bosnia and Herzegovina: Aarhus Convention shadow implementation report 2021. Available at: https://is.gd/ler2lH.

184 European Commission, Bosnia and Herzegovina 2024 Report, p. 84, Available at: https://tinyurl.com/4nnmk5dy.

185 Law on geological research in Republika Srpska ("Official Journal of Republika Srpska" No. 64/2022 and 63/2024) Available at: https://is.gd/fyXP2F. The amendments to the Law specify that the authority to grant approval will rest solely with the competent ministry in RS. Local communities will have the right to submit their opinions within seven days, rather than providing formal approval.

186 Sarajevo Open Centre, 2024. Joint Submission of the BiH Civil Society Initiative for UPR for the 4th Universal Periodic Review on the State of Human Rights Situation in Bosnia and Herzegovina, Available at: https://is.gd/rBbPJ9.

187 The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in the recent visit to BiH in April 2024 has stated that the deterioration of civic participation, among other things, is influenced by the lack of opportunities to positively influence the future of their country. See more https://is.gd/b9E8dh.

188 Recent legislation, including amendments to Republika Srpska Criminal Code that reintroduce the offense of defamation, poses severe threats to the activities of civil society. See: https://is.gd/CSENYl.

189 See the report "Human Rights Defenders in B&H – Rights, Position, and Obstacles". Human Rights House Banja Luka (2023). Available at: https://shorturl.at/dqxHL

Activists in BiH are facing significant legal battles. The country has seen a worrying rise in SLAPP lawsuits against activists and human rights defenders,[190] placing BiH among the top ten countries in 2023 for the highest number of recorded cases per 100,000 people.[191] In response to the rise in SLAPP lawsuits against activists and human rights defenders in BiH, the House of Representatives of the FBiH Parliament adopted the Draft Law on Citizens' Initiative and Protection of Citizens and Activists in June 2024. This law provides mechanisms to protect citizens and activists from legal actions aimed at suppressing public participation, particularly in the context of environmental protection. It allows for the early dismissal of SLAPP cases, so that public participation is not hindered by abusive lawsuits.[192]

3.1.3. Rights of Assembly and Protest

Due to the multi-layered and complex system of governance, the right to freedom of peaceful assembly is regulated by 12 laws.[193] This multitude of laws has resulted in a lack of harmonisation and consistency in the legislation. This issue is highlighted by various reports emphasising the need for countrywide harmonisation of assembly regulations with European and international standards, particularly concerning restrictions and organiser responsibilities.[194]

The criticism focuses on assembly restrictions in the Republic of Srpska but also on the need for the adoption of a unified law in the Federation of BiH that would harmonise the various and often contradictory regulations between entity and cantons to overcome the current discrimination faced by the citizens of BiH.[195] Cantonal laws are not fully harmonised with each other or with international standards.[196] Actions by the authorities, particularly in the Republic of Srpska, as well as restrictive legislative proposals, continue to pose a threat to basic human rights and freedoms in BiH. The laws on freedom of peaceful assembly and association in many parts of the country are only partially aligned with prevailing international human rights standards, and there is a discriminatory approach by authorities in applying such regulations. The laws are generally described as restrictive and administrative obstacles can hinder the right to protest.[197] Also, incidents of police violence and harassment against

190 For example, opposition to the construction of mini-hydropower plants on the Kasindolska River led to numerous legal challenges and public protests. Two young environmental activists, Sunčica Kovačević and Sara Tuševljak, faced defamation lawsuits from BUK, a BiH company owned by the Belgian firm Green Invest. They publicly criticized the environmental impacts of the company's hydropower projects on the Kasindolska River, specifically highlighting issues such as deforestation and soil erosion.

191 The Coalition Against SLAPPs in Europe, A 2023. Report, Available at: https://is.gd/uJBDbe.

192 See Annex II for further details.

193 Law on Public Assembly of Republika Srpska governing the right to assembly, including regulations on how protests should be conducted and managed. Each canton within the FBiH has its own specific regulations. These laws typically include provisions for notification, location restrictions, and responsibilities of organisers. Also, Article II/2 and II/3 of the Constitution of the Bosnia and Herzegovina; Article 30 of the Constitution of Republika Srpska; Article 2 of the Constitution of the Federation of the Bosnia and Herzegovina.

194 Venice Commission, OSCE/ODIHR, 2019, Bosnia and Herzegovina Draft Joint Opinion on the legal framework governing the freedom of peaceful assembly in Bosnia and Herzegovina, in its two entities and in Brčko District, Available at: https://is.gd/FelfsQ; European Commission, Bosnia and Herzegovina 2024 Report, Available at: https://tinyurl.com/4nnmk5dy.

195 UN Special Rapporteur on the rights to freedom of peaceful assembly and association, See: https://is.gd/Ughdg5. Seven cantonal laws and RS laws have been assessed as very restrictive.

196 Only the Laws on Peaceful Assembly of Zenica-Doboj Canton, Una-Sana Canton, and Canton 10 are assessed as harmonised with EU standards and regulate public assembly only, while public performance will be regulated with specific laws. Such laws allow organisers to electronically notify the relevant authorities about planned gatherings, do not automatically exclude certain locations, and do not impose obligations on organisers to arrange and pay for security and emergency services. See Nyaletsossi Voule, Clément. Preliminary Remarks of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. Sarajevo, 2024, p. 7, para. 38. Available at : https://is.gd/b9E8dh.

197 Sarajevo Open Centre, 2024. Joint Submission of the BiH Civil Society Initiative for UPR for the 4th Universal Periodic Review on the State of Human Rights Situation in Bosnia and Herzegovina, Available at: https://is.gd/rBbPJ9.

protesters have been reported, undermining the effective exercise of these rights.[198]

The practice in Brčko is considered the most positive in BiH. The European Commission Progress Report on BiH highlights that the Brčko District law,[199] being aligned with European standards, should serve as a model for other levels of government. According to this law, peaceful assemblies can be held at any location that does not endanger the rights of others, public morality, safety and health of people, or security of property. Citizens of Brčko District and organisers of peaceful assemblies are required to notify the police about holding a peaceful assembly, whereas citizens in most cantons must formally report their assemblies. Although there are no officially published reports on the implementation of the law, observations indicate that it has been adequately enforced in practice.[200] Several monitored assemblies have shown no recorded violations of the law, and its implementation has been considered appropriate.

3.2. Rights of Access to Justice, Remedies, and their effectiveness

3.2.1. Access to Justice

BiH has established a legal framework that allows individuals and civil society groups whose rights have been violated, or who have a legal interest in challenging certain decisions, to bring environmental claims to the courts. This also includes the ability to submit appeals against decisions, actions, or omissions of public bodies. The legal structure in place, including the Laws on Obligations (LoO)[201] and previously mentioned environmental protection laws, [202] aims to ensure that those affected by environmental harm can seek redress.

Therefore, the civil protection of the environment in BiH serves both a preventive and restorative function. Preventive measures are achieved through various legal actions, such as complaints about harmful emissions,[203] trespassing, and environmental complaints, all designed to prevent environmental damage. The restorative function involves regulating liability for environmental damage, which is pursued through claims for compensation for pollution-related damage.[204]

Even in cases where the source of danger or disturbance arises from carrying out a public benefit activity for which a permit has been obtained from the competent authority, it is

198 BIRN BiH reported on the targeting of activists in Banja Luka for allegedly violating the Public Assembly Law, which the courts later refused to confirm. Spontaneous assemblies are more often hindered in smaller communities within the Federation, where people at gatherings do not have access to the media and institutions. Participants and organisers of such assemblies face fines, misdemeanour charges, intimidation, and even violence, as was the case with the protests in Kruščica. Such pressures are most often exerted on people protesting to protect the environment, but also on smaller labour protests, such as those of the Fortuna workers from Gračanica. See: https://is.gd/8ChYFS.

199 European Commission, Bosnia and Herzegovina 2023 Report, p.42, Available at: https://is.gd/4aSCpf; In 2020, the Brčko District Assembly adopted the Law on Peaceful Assembly. Available at: https://is.gd/IfidWF.

200 Interview with a representative from an intergovernmental organization whose mandate covers areas such as the promotion of human rights, freedom of the press, and the conduct of free and fair elections.

201 Laws on Obligations RS ("Official Journal SFRJ" No. 29/78, 39/85, 45/1989 and 57/89, "Official Journal RS", No. 17/93, 3/96, 37/01, 39/03 and 74/04; Laws on Obligations FBiH ("Official Journal SFRJ" No. 29/78, 39/85, 45/1989 and 57/89, "Official Journal of Republic of the BiH', No. 2/92, 13/93 and 13/94 and "Official Journal of FBiH", No. 29/03 and 42/11. See Annex I. for further details.

202 The FBiH Law, particularly Article 43., ensures that "representatives of the public" have the right to initiate legal proceedings to protect their rights and participate in permitting processes and environmental impact assessments. This includes the right to appeal decisions from administrative proceedings and initiate administrative disputes when necessary. Similarly, the RS Law (Article 42.) and the BDBiH Law (Article 37.) guarantee the right to legal protection and appeals for those whose rights to information or participation in decision-making processes are infringed.

203 *See*: Mrdović, F. Sarajevo, 2023, Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment, Available at: https://is.gd/R0ssPs. Protection against harmful emissions under property law is enforced through an *actio negatoria*, allowing property owners or authorized persons to sue the owner or possessor of the property from which emissions originate. This real action is not subject to time limitations. The Law on Property Rights (Article 76, para. 1) prohibits using property in a way that causes excessive indirect emissions (e.g., smoke, odors, noise) that affect others. Property owners affected by such emissions can seek removal of the sources, compensation, and preventive measures.

204 Ibid.

possible to request the implementation of socially justified measures to prevent or reduce the damage, as well as compensation for so-called excessive damage.[205]

An Environmental lawsuit is primarily a preventive instrument as its purpose is to prevent the occurrence of damage that affects the environment.[206] It is conceived as an *actio popularis*, using the formulation that damage threatens an unspecified number of people. Cases can be brought by both physical and legal persons who do not have to be directly threatened by this danger if the lawsuit is aimed at protection from damage that threatens an unspecified number of people. Therefore, associations and organisations dealing with environmental protection can appear as plaintiffs in lawsuits seeking the removal of a source of danger or restraint from activities that pose significant damage to an unspecified number of people. When it comes to the defendant, they can be, for example, the owner of a facility or material that threatens the environment, or whose activity leads to the risk of widespread damage. The plaintiff in an environmental lawsuit should prove that the threatened damage is significant, as the LoO does not protect against all damage, but only that which is *significant*. However, what is exactly meant by the legal standard of *significant damage* is left to the courts to assess on a case-by-case basis, making this poorly defined standard an additional burden for the plaintiff in proving their case.

In the case law of BiH, such lawsuits are not often found, even in cases where there is evidence that could establish the existence of a source of danger as well as the damage itself. One reason might be that proceedings related to the impacts of industrial or other hazardous activities on the environment are expensive and lengthy, as they require complex and extensive expert evaluations.[207] Moreover, in environmental lawsuits, it is not enough to simply request the removal of the source of danger from which damage threatens; specific measures to prevent damage or disturbance must also be proposed, which makes the proceedings even more complicated.

These legal frameworks are sometimes also undermined by procedural hurdles, insufficiently severe penalties for environmental offenses,[208] and a lack of detailed regulations for certain environmental impacts.[209]

Courts also often struggle to assess the full extent of environmental damage, especially when it involves complex, long-term impacts. In cases where multiple entities contribute to environmental damage, joint liability is established, but the process of determining

205 The concepts of public benefit activities, social justification of measures, and excessive damage are not clearly defined and are assessed on a case-by-case basis. For instance, the Supreme Court of the Federation of BiH considers factors such as permissible noise levels, the purpose of the space, timing, and intensity when determining whether noise exceeds acceptable limits. *See p. 55*: Mrdović, F. Sarajevo, 2023, Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment, Available at: https://is.gd/R0ssPs.

206 Article 156. of the LoO allows for an environmental lawsuit if harassment or damage cannot be prevented by other "appropriate measures." The Law requires that potential plaintiffs first attempt to address the issue by requesting the responsible party to remove the source of danger or cease the harmful activity. If these preventive measures are not taken, the court may order them at the expense of the responsible party. Therefore, before initiating legal proceedings, the law requires that potential plaintiffs seek to prevent harm through appropriate actions, emphasising a preference for resolving issues outside of court when possible. However, the provision does not specify whether these measures are legal or factual, which may create practical difficulties."

207 Interview with a representative of the judiciary.

208 Shadow Report for period 2022-2023, Chapter 27: Progress Assessment of Environmental Protection in Bosnia and Herzegovina, Available at: https://is.gd/yEJIAs. Istraživački izvještaj, Analiza rada i transparentnosti okolišnih inspekcija u Bosni i Hercegovini, 2023., Available at: https://is.gd/pUqzif.

209 A concrete case highlighting procedural hurdles and insufficiently severe penalties for environmental offenses is the Decision of the Cantonal Court in Široki Brijeg, No. 63 0 Pr 037620 21 Pžp, dated 11 November 2022**.** In this case, the public electric power company JP "EP HZHB" and a responsible person within the company were charged with minor offenses under the FBiH Environmental Protection Law. The initial penalties imposed by the first-instance court were suspended sentences, meaning that the fines would not be enforced if no new offenses were committed within eight months. The Federation Inspection Authority appealed, arguing that these penalties were too lenient, especially considering that the company was a repeat offender. However, even though the second-instance court imposed stricter fines, the penalties remained minimal, illustrating the weak deterrent effect of such sanctions. Another example involves the Judgment of the Municipal Court in Kiseljak, No. 49 0 K 055363 21 K of 17 May 2021**,** where the accused was fined only 1,000 BAM for environmental endangerment caused by improper disposal of meat products, despite the significant environmental risk posed by the actions.

responsibility among polluters can be complex and delay remediation and compensation.[210] If damage cannot be remedied through direct action, polluters must compensate for the full value of the destroyed environmental goods. Furthermore, environmental protection funds have been established to finance remediation efforts, but these funds are underutilized or face management challenges.[211]

Environmental protection is also achieved through **criminal law**, with environmental crimes prescribed in the entity criminal codes and the Criminal Code of the Brčko District of BiH. However, these laws are not harmonised with each other and are only partially aligned with Directive 2008/99/EC on the protection of the environment through criminal law, as they do not prescribe all criminal offenses from the Directive. At the state level, there are no criminal law provisions that specifically address environmental crimes in the way that entity laws do. Additionally, they are not yet fully implemented in practice. The main reasons for this situation lie in the infrequent reporting of perpetrators of such criminal acts, the fact that capacities are insufficient, and the entities' authorities are inexperienced in investigating and prosecuting these criminal acts, as well as in raising indictments.[212]

Regarding criminal proceedings for environmental protection, they are prescribed by the Criminal Procedure Codes of RS, FBiH, BDBiH, and the BiH. The number of finalised legal proceedings conducted based on indictments for environmental crimes is negligible, with court decisions primarily addressing minor forms of criminal offenses or resulting from plea agreements.[213]

One such case where the judgment resulted from a plea agreement involves corporate criminal responsibility.[214] This case stands out as the first judgment in BiH for environmental pollution, where the court found a legal entity guilty based on extensive evidence. However, the court imposed a relatively mild punishment although evidence gathered in the case revealed severe breaches of environmental standards by the legal entity.[215] The decision, influenced by a plea agreement, did not include any compensation for the environmental damage inflicted, highlighting a weak punitive response to the serious ecological and public health impacts. The ruling underscores the need for improved criminal prosecution and more rigorous damage compensation in such cases, given the severe consequences of environmental offenses. However, no individual lawsuits for damages have been filed in connection with this criminal verdict.[216] The reasons can be attributed to socio-economic factors, as it is a small community where most of the population is employed by this factory.[217]

Inspection bodies play a significant role in environmental protection. According to the

210 Mrdović, F. Sarajevo, 2023, Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment.

211 Shadow Report for period 2022-2023, Chapter 27: Progress Assessment of Environmental Protection in Bosnia and Herzegovina, Available at: https://is.gd/yEJIAs. Istraživački izvještaj, Analiza rada i transparentnosti okolišnih inspekcija u Bosni i Hercegovini, 2023., Available at: https://is.gd/pUqzif.

212 Shadow Report for period 2022.-2023., Chapter 27: Progress Assessment of Environmental Protection in Bosnia and Herzegovina.

213 See footnote 181, p. 40.

214 The case involves the Cantonal Prosecutor's Office of Tuzla Canton issuing an indictment against the legal entity "G" and its responsible person, D.G., for the criminal offense of Environmental Pollution under the FBiH Criminal Code. D.G., as the director general of "G," was accused of failing to implement necessary protective measures required by the FBiH Law on the Protection of the Environment, which led to severe environmental damage between 2012 and 2017. The factory under D.G.'s management did not invest in necessary environmental safeguards, leading to the continuous release of hazardous substances into water, air, and soil, severely affecting the ecosystem and human health. Despite the indictment, D.G. fled abroad, and the case against him is still pending. The legal entity "G" accepted a plea deal, resulting in a fine and the obligation to cover criminal proceedings costs. *See* p. 44: Mrdović, F. Sarajevo, 2023, Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment, Available at: https://is.gd/R0ssPs.

215 The pollution resulted from "G's" failure to comply with its 2012 environmental permit, which required investments in technology to reduce emissions. "G" neglected these obligations, leading to severe environmental degradation. Chemical analyses showed contamination levels up to 155,480 times the legal limits, with significant health impacts on the local population. Despite this, the court, influenced by a plea agreement, imposed only a BAM 100,000 fine, with no compensation for the environmental damage, underscoring the inadequacy of punitive measures in this case.

216 Interview with a representative of the judiciary.

217 Ibid.

laws on inspections,[218] they are authorised to conduct inspections, ascertain facts, review documents, question parties, issue orders, seize items, impose prohibitions, close facilities, and take necessary actions to eliminate legal violations and environmental harm.[219] However, several challenges reduce the effectiveness and transparency of the work of inspection bodies in the field of environmental protection.[220] Environmental inspections are often limited due to a lack of resources, equipment, and personnel. As a result, many violations go unaddressed or sanctions imposed are minimal, which weakens the deterrent effect of the law.[221] Moreover, their efficiency and transparency are further diminished by outdated regulations and technical limitations, including a shortage of accredited laboratories.[222]

In **administrative disputes**, courts determine the legality of acts issued by administrative bodies and services and other legal entities with public authority, which decide on the rights and obligations of individuals and legal entities in specific administrative matters.[223]

The proportionality standard in judicial review is a significant legal principle used in BiH. It may not be explicitly mentioned, but its application is apparent from the analysis of judgments. The standard of 'proportionality' is particularly crucial in basic and municipal courts, where most cases are initially adjudicated. However, its application is often inconsistent across different courts and judicial levels due to various factors.[224]

Administrative bodies and courts most commonly handle cases related to inspection supervision, environmental impact assessments, and access to information.[225] Environmental organisations play a crucial role in legal battles, significantly contributing to environmental protection across the country.

Access to justice in environmental cases faces numerous barriers, including procedural and financial challenges. Key obstacles include complex and lengthy legal processes,[226] a shortage of legal professionals specialising in environmental law, high litigation costs, and a lack of public awareness about environmental rights. Stakeholders have noted that the limited number of environmental lawyers exacerbates these challenges. This poses a significant barrier to achieving environmental justice. Legal aid is available but not uniformly distributed across the country. The system of free legal aid in BiH is fragmented with some areas having

218 The Law on Inspections of the Republic of Srpska ("Official Gazette of RS" No. 18/2020) and the Law on Inspections of the Federation of BiH ("Official Gazette of FBiH" No. 73/2014 and 19/2017).

219 Measures against the inspected entity can be either financial or non-financial and may include specific actions that the entity must perform, refrain from, or endure. If the inspector believes that the entity's actions constitute a criminal offense, they must report it to the competent prosecutor's office, cooperate with other relevant institutions, and take all possible measures to preserve evidence.

220 Interview with a representative of the judiciary; Istraživački izvještaj, Analiza rada i transparentnosti okolišnih inspekcija u Bosni i Hercegovini, 2023. Available at: https://is.gd/pUqzif.

221 Shadow Report for period 2022.-2023., Chapter 27: Progress Assessment of Environmental Protection in Bosnia and Herzegovina, Available at: https://is.gd/yEJIAs. Istraživački izvještaj, Analiza rada i transparentnosti okolišnih inspekcija u Bosni i Hercegovini, 2023. Available at: https://is.gd/pUqzif.

222 Ibid.

223 In these disputes, courts adjudicate lawsuits against final administrative acts, and their decisions are binding. When reviewing the legality of administrative decisions, courts have the authority to examine compliance with both procedural and substantive laws. The legality of the contested administrative act is assessed within the scope of the claims in the lawsuit, and the court is bound by the reasons stated in the lawsuit. The dispute is resolved by a judgment that can either uphold or dismiss the lawsuit as unfounded. If upheld, the judgment annuls the administrative act and resolves the administrative matter, with the judgment fully replacing the annulled act.

224 Findings from the interview with a representative of the judiciary: The inconsistent application of the principle of proportionality across different courts and levels in BiH can be attributed to several factors. Judges have considerable discretion in interpreting and applying proportionality, leading to different outcomes in similar cases based on personal interpretation. The level of training and resources available to judges also varies significantly, with some lower courts lacking access to the latest legal resources or training in the nuances of proportionality. Discrepancies in how lower courts follow precedents set by higher courts or interpret the legal framework governing proportionality can result in divergent rulings across jurisdictions. Additionally, external factors such as political pressure, public opinion, and socio-economic conditions can influence judicial decisions, contributing to inconsistency in applying proportionality. Examples of this inconsistency include sentencing disparities, where similar offenses receive different sentences, and varied decisions on preventive measures.

225 Mrdović, F. Sarajevo, 2023, Overview of the Case Law in Bosnia and Herzegovina in the Field of the Protection of the Environment, Available at: https://is.gd/R0ssPs.

226 European Commission, Bosnia and Herzegovina 2024 Report, p. 31, Available at: https://tinyurl.com/4nnmk5dy.

established free legal aid institutions and others relying on NGOs. Also, the enforcement of judgments and court decisions varies significantly, primarily due to weaknesses in the legal framework and insufficient institutional coordination. The lack of a unified state-level legal framework and fragmented responsibilities between entities results in uneven application of the law and hinders the enforcement of court decisions.[227] Institutional coordination between the various authorities responsible for law enforcement is problematic, with a lack of clear communication and coordination across different government levels leading to inefficiencies in enforcing court decisions. Furthermore, the underdeveloped system of legal accountability for environmental protection exacerbates the issue, as there is no robust punitive policy to ensure compliance with court rulings.

4. Key environmental concerns in the national context

BiH faces several pressing environmental concerns that have significant impacts on both the environment and marginalized groups, including air and water pollution,[228] limited waste management capacities,[229] deforestation[230] industrial pollution and mining[231] and rapid infrastructure and construction development.[232]

Women, people living in poverty, persons with disabilities, ethnic and religious minorities, and other socially, economically, and politically marginalized groups of people in BiH are more likely to suffer from immediate and long-term impacts caused by environmental degradation and have limited resources to cope and recover.[233] The use of firewood for heating is relatively common in poor households and in rural areas in BiH, and since women take on primary responsibility for household tasks, they are more exposed to indoor air pollution from these sources.[234] Hydropower plants are often planned or built in vulnerable communities, many in rural areas, and construction can have significant impact on nature, resource access, and livelihoods.[235] Rural communities, environmental groups, and activists have led opposition

227 Ibid.

228 Air pollution in BiH is a severe problem, particularly affecting marginalised groups such as the elderly, persons with disabilities, the unemployed, and single-headed households (especially those headed by women). These groups are more likely to experience energy poverty, relying on cheap and highly polluting fuels for heating and cooking, and using older, more polluting vehicles. This situation not only exacerbates air pollution but also increases their vulnerability to its harmful effects. See https://is.gd/ykLrZO.

229 Many areas, especially informal settlements, and rural regions, lack proper waste disposal infrastructure, leading to illegal dumping and open burning of waste. See: https://is.gd/M7xKpR.

Projects like the Zero Waste Municipalities initiative have been successful in certain regions, introducing practices like waste separation and community engagement to reduce illegal dumping, but overall, the country has a long way to go in improving its waste management systems. See: https://is.gd/BeuE2U.

230 Illegal logging and deforestation are significant concerns in BiH. Forests are often cut down without proper reforestation plans, leading to soil erosion and loss of biodiversity. This not only affects the environment but also impacts local communities who depend on forests for their livelihoods. BiH does not have a state law on forests, nor does it have one at the FBiH level that would regulate the issue of sustainable forest management. In the meantime, the cantons have adopted their own legal regulations in this area, except for the Herzegovina-Neretva Canton.

231 International mining companies are heavily investing in BiH, particularly in regions rich in minerals. These activities are often conducted with minimal environmental oversight, leading to significant pollution of waterways and degradation of land. The mining operations near Vareš, for example, have led to water contamination, impacting downstream communities like Kakanj. This pollution disproportionately affects marginalized and vulnerable groups who rely on these natural resources for their daily needs.

232 Rapid infrastructure development in BiH, driven by foreign investment and EU integration efforts, has led to significant environmental and social challenges, including deforestation, habitat destruction, and pollution. Marginalised communities face displacement, health risks, and livelihood loss, compounded by weak environmental regulations and limited public participation.

233 Lehtmets, J. 2021. A vicious circle: air pollution, energy poverty and inequality in Bosnia and Herzegovina. SEI. Available at: https://is.gd/uGobkM; World Bank. (2021). Climate risk profile: Bosnia and Herzegovina. Available at: https://is.gd/Lg8Ypi.

234 Eskić-Šihljak, A. and Knežević, G. (2022). Report on Mapping the Gender Component in Data and Legislation in the area of Climate Change, Environment and Biodiversity. Sarajevo: UNDP. Available at: https://is.gd/jukSs4.

235 Citizens and civil society groups are concerned about the environmental impacts of small hydropower plants, especially in water-dependent ecosystems, and disagree with prioritising economic benefits over the natural resources and environmental health in communities, as well as diverting water access from agricultural sector in these communities. Centre for Environment 2022. Small hydropower plants: An environmental hazard. Centre for Environment. Available at: https://is.gd/udDSO1.

efforts to small hydropower plants all over BiH and achieved a significant milestone in 2022 when the FBiH lower House of Parliament voted to change the Law on Electricity to ban the construction of any more small hydropower plants due to concerns.[236]

Over the past decade, BiH has experienced several significant environmental incidents and ongoing pollution concerns. The country struggles with air pollution, particularly in urban areas like Sarajevo, Tuzla, and Zenica, which rank among the worst in the world during the winter months.[237] The primary sources include industrial activities like coal-fired power plants, household heating using low-quality coal and wood, and vehicular emissions.[238]

BiH has experienced extreme climate events, including severe droughts that have caused significant agricultural losses and forest fires, as well as catastrophic floods like those in 2014, which resulted in over 20 fatalities, the displacement of 90,000 people, and damages estimated at around 2 billion euros.[239]

5. Concluding summary and recommendations

While the legal framework provides a foundation for protecting these rights, effective implementation remains a significant challenge. The decentralised governance structure leads to fragmented environmental regulations, complicating public participation and advocacy efforts. The absence of a unified state-level environmental law exacerbates this fragmentation, further hindering consistent enforcement. Access to justice is often hindered by legal complexities and financial barriers, deterring individuals from pursuing claims related to environmental harm. Additionally, the lack of transparency and insufficient access to information obstruct public engagement in environmental decision-making processes.

Judicial interpretations by higher courts in BiH indicate a growing recognition of the link between environmental health and human rights. However, the scarcity of cases suggests a need for greater judicial engagement with environmental issues. This underutilisation may be due to various factors, including a lack of awareness or capacity among legal professionals, as well as the lengthy and costly nature of legal proceedings.

Moreover, the rise of SLAPP lawsuits against activists presents a troubling trend that threatens civic space and discourages public discourse on environmental matters. Civil society organisations and NGOs play a crucial role in advocating for environmental protection, despite facing significant challenges and restrictive measures. Protecting and empowering these actors is essential for a healthy civic space and effective environmental advocacy.

Inconsistent law enforcement and political interference further undermine efforts to protect the environment, highlighting the need for stronger and more independent institutions. Additionally, environmental degradation disproportionately affects marginalised communities, exacerbating social and economic inequalities. Addressing these impacts should be a key focus of future reforms.

To ensure that the right to a healthy environment is not just a theoretical guarantee but a lived reality, BiH must prioritise legal reforms that enhance accessibility, increase public participation, and empower lower courts to address environmental cases more robustly. Strengthening mechanisms for access to information will enable citizens to better understand environmental issues and advocate for their rights. Ultimately, for BiH to realize its potential in promoting a sustainable and equitable environment, it must focus on legal reforms, strengthen

236 Kurtić, A. (2022). Bosnia's Federation to Ban Small Hydropower Plants. Balkan Insight. Available at: https://is.gd/ooxBYn.

237 Human Rights Watch, Available at: https://is.gd/o00KOG. High levels of particulate matter (PM2.5) and other pollutants have led to serious health problems, including respiratory and cardiovascular diseases, with approximately 3,300 premature deaths occurring annually due to air pollution.

238 Stockholm Environment Institute -SEI, (2021.) A vicious circle: air pollution, energy poverty and inequality in Bosnia and Herzegovina, https://is.gd/uGobkM

239 Strambo, C., Jahović, B., and Segnestam, L. (2021b). Climate change and natural hazards in Bosnia and Herzegovina: a gender equality, social equity, and poverty reduction lens. SEI BiH ESAP 2030+. Available at: https://www.sei.org/publications/climate-change-and-natural-hazards-in-bih-a-gesep-lens/.

institutional capacities, and foster active public participation. The path forward requires a commitment to bridging the gaps between laws on paper and their implementation in practice, ensuring that the rights to a healthy environment are upheld for all citizens.

Given the challenges and identified shortcomings in the legal and institutional frameworks for environmental and human rights protection, the following recommendations propose to strengthen comprehensive legal support, enhance institutional capacities, and ensure more effective protection of both the environment and human rights in BiH.

Recommendations

1. **Strengthening the Legal Framework and enhancing the EU acquis alignment process**

- Recommendation 1.1. Develop a comprehensive, state-level environmental law that ensures coherence in environmental governance across all levels of government and explicitly recognises the right to a healthy environment, aligning with BiH's international obligations, particularly those related to EU integration process. In developing this legal framework, BiH could draw on best practices from countries with similar decentralised governance structures, such as Spain, Belgium, Germany and Switzerland.
- Recommendation 1.2 Legally regulate the environmental sector to grant greater autonomy in prioritising urgent cases before the relevant courts and establish clear timeframes for resolving environmental cases. This would involve designating environmental cases as priority matters when necessary and defining specific deadlines for the resolution of these cases to ensure timely and efficient legal protection of the environment.
- Recommendation 1.3. Adopt a comprehensive law to protect human rights defenders, including environmental activists, in line with Directive (EU) 2024/1069. This law should provide legal protections against harassment, intimidation, and violence, ensuring that defenders can operate freely without fear of reprisals. This should include mechanisms for rapid response to threats and legal protection against unwarranted legal action.
- Recommendation 1.4. Improve the legislative framework by regulating the work of environmental inspectors in BiH to ensure greater authority and adequate resources for effective law enforcement. It is necessary to update and harmonise regulations with contemporary environmental challenges, enabling inspectors to conduct more efficient oversight and control.
- Recommendation 1.5. Harmonise BiH's criminal legislation with Directive (EU) 2024/1203 by adding or amending environmental offenses to align with the severity of these offenses. In this process it is important to ensure all laws are consistent with each other and with the EU acquis.
- Recommendation 1.6. To strengthen enforcement mechanisms, amend criminal codes to explicitly include provisions for cumulative penalties in cases of repeated environmental offenses. Introducing cumulative penalties would strengthen accountability and serve as a stronger deterrent against repeated violations, ensuring a more robust legal framework for environmental protection.
- Recommendation 1.7. Amend the Law on Freedom of Access to Information at the BiH institutional level to align with Directive 2003/4/EC, removing restrictions that limit access to environmental information and reinforcing transparency principles.
- Recommendation 1.8. Amend the Law on Geological Research in Republika Srpska to include a mandatory environmental impact assessment requirement and public participation, ensuring alignment with Directive 2003/35/EC and the Aarhus Convention.

- Recommendation 1.9. Amend environmental legislation at all levels of government to align with Directive 2011/92/EU on Environmental Impact Assessments (EIA), Directive 2001/42/EC on Strategic Environmental Assessments (SEA), and Directive 2007/2/EC on Infrastructure for Spatial Information (INSPIRE), ensuring meaningful engagement of citizens and civil society organisations in decision-making processes related to environmental impacts and strategic planning, as well as introducing mandatory provisions for strategic environmental assessments at all stages of planning for large infrastructure and development projects, in line with EU standards.

2. **Strengthen Enforcement Mechanisms:**

- Recommendation 2.1. Enhance the capacity of environmental agencies by providing adequate resources and training for inspectors. Develop clear standard operating procedures (SOPs) for responding to environmental incidents.
- Recommendation 2.2. Increase budgetary allocations for environmental inspections to hire additional inspectors and acquire necessary equipment. This would address the significant gaps in staffing and resources that currently limit the effectiveness of inspections.

3. **Enhancing Access to Environmental Justice**

- Recommendation 3.1: Reduce legal costs and offer court fee exemptions for environmental cases involving public interest, especially for marginalised and low-income communities impacted by environmental harm. Establish a specialised legal aid fund focused on supporting environmental litigation to enable broader public participation in environmental justice.
- Recommendation 3.2: Develop a roster of accredited environmental experts who can provide pro bono or financially supported access to experts in environmental cases, addressing the financial burden of obtaining expert evidence for impacted communities and NGOs.

4. **Capacity-Building and Training:**

- Recommendation 4.1: Implement comprehensive capacity-building programmes for government officials, legal professionals, judiciary, and civil society organisations to strengthen their understanding and enforcement of environmental and human rights laws. These programmes should emphasise practical applications, enhancing education, and promoting a consistent and effective application of both environmental and human rights laws, particularly in alignment with the Aarhus Convention's second and third pillars.
- Recommendation 4.2: Ensure ongoing training for officials at all levels on the application of freedom of information provisions, emphasising the consistent application of the public interest principle to enhance transparency and accountability.
- Recommendation 4.3: Provide specialised training modules for prosecutors and judges (civil and criminal) as part of their initial and continuous training in environmental and human rights law, with the focus on the ECtHR case law. This training should also enable judges to deepen their ability to assess the substantive merits of environmental cases.
- Recommendation 4.4: Offer specialised training modules for inspectors in environmental and human rights law, focusing on preventive measures to protect the environment effectively within their mandates.
- Recommendation 4.5: Develop comprehensive training programmes for environmental inspectors in BiH covering the latest inspection techniques, legal requirements, and ethical standards to ensure they perform their duties independently and effectively. Regular updates through seminars and training sessions will further enable inspectors

to address contemporary environmental protection challenges.

- Recommendation 4.6: Conduct cross-sectoral training sessions that bring together stakeholders from government, judiciary, and civil society to foster collaboration and a shared understanding of environmental challenges, promoting a cohesive approach to environmental governance.

5. **Environmental Law in Legal Education:**

- Recommendation 5.1. Introduce environmental law and human rights courses in law faculties, including elective courses, summer schools, and legal clinics to equip future legal professionals with knowledge to protect environmental rights. This initiative will enhance the capacity of new graduates to address environmental challenges effectively.

6. **Improve Public Participation and Access to Information:**

- Recommendation 6.1. Ensure timely and accessible environmental information (such as data on pollution levels, land use changes, and regulatory decisions) through proactive data sharing, easy to navigate platforms such as online portals, public notices, or community meetings.
- Recommendation 6.2. Guarantee meaningful public participation in environmental decision-making processes, particularly in EIAs and SEAs. This includes providing clear and accessible information about the decision-making process, ensuring that public input is taken seriously and can influence final decisions, and improving existing platforms for feedback to make them more effective and responsive.

7. **Improving Institutional Coordination and Cooperation**

- Recommendation 7.1. Develop a centralised electronic database for court rulings and decisions on environmental protection in BiH. This database should be accessible to legal professionals, judges, and the public, including civil society and academic institutions. It should also support the monitoring of court decision implementation across all levels of government and enhance communication between various institutions.
- Recommendation 7.2. Organise regular intergovernmental environmental conferences where representatives from all levels of government meet to discuss and develop a coherent approach to meet international obligations and address environmental challenges.
- Recommendation 7.3. Establish inter-agency task forces to coordinate the enforcement of environmental court decisions across all judicial levels, with periodic assessments to track compliance.
- Recommendation 7.4. Develop formal protocols for inter-institutional communication, ensuring a cohesive response to non-compliance with environmental rulings, particularly in cases where enforcement responsibilities overlap among multiple authorities.
- Recommendation 7.5. Introduce a reporting mechanism within the Ministry of Justice for tracking enforcement of lower-court decisions on environmental issues. This should include quarterly public reports on enforcement rates and compliance.

8. **Support Civil Society Engagement:**

- Recommendation 8.1. Establish a legal assistance fund to support human rights defenders facing legal challenges or harassment.
- Recommendation 8.2. Launch public awareness campaigns to educate citizens about their environmental rights, the legal options available for seeking justice, and the significance of active participation in environmental governance. These campaigns should specifically target marginalised communities and provide information on accessing legal aid and support.

6. Annex

Annex I

According to the entity Laws on Obligations (LoO), individuals may request the removal of a dangerous source that threatens significant harm to themselves or others, as well as the cessation of activities causing disturbances or risks of damage if such risks cannot be mitigated by reasonable measures. These provisions form the legal foundation for environmental complaints, in conjunction with specific environmental protection laws. The LoO sets the general framework for compensation (Article 154(1)), holding a party responsible for damages unless they can prove it was not their fault. However, for activities that pose an increased risk to the environment, liability is objective, meaning the responsible party is liable regardless of fault (Article 154(3)). Specific environmental laws, such as those governing liability for pollution, polluters' obligations, and remediation, complement the LoO, ensuring comprehensive legal protection and enabling courts to effectively resolve environmental disputes.

For example, Article 156 of the LoO allows individuals to request the removal of a hazard and, if damage occurs during a permitted beneficial activity, to seek compensation only if the damage exceeds normal limits. This is especially relevant for environmental hazards. The LoO has been successfully applied in environmental cases, including preventive measures before damage occurs. Notably, in Decision AP-1170/14, the Constitutional Court of BiH addressed environmental protection obligations under the LoO. Similarly, the Federation's Supreme Court has ruled on environmental pollution claims, establishing precedents under the LoO framework, including Article 156.

Despite these provisions, proving the causal link between harmful activities and environmental damage remains challenging, particularly in cases of ongoing or gradual harm. In the Zenica Municipal Court case (43 0 P 137327 16 P), plaintiffs sought compensation for damages caused by steel production by 'AM' d.o.o. Zenica. While a link was established between the pollution and the harm, the court dismissed the case due to insufficient evidence of specific property value reduction and non-material damages. Although the "Polluter Pays" principle is recognized, complex scientific assessments and costly legal processes often deter claims.

Furthermore, Article 200. of the LoO limits compensation for non-material damages, such as mental anguish, unless a direct and measurable impact on health or life can be proven. In the Zenica case, while the plaintiffs experienced discomfort from pollution, the court ruled that the evidence did not meet the threshold for compensating non-material damages under Article 200. This illustrates the challenges in obtaining remedies for non-material damages in environmental cases.

Annex II

In BiH, the issue of SLAPP often arises when environmental activists or local communities oppose the interests of large corporations, especially in sectors like hydropower plant construction, resource exploitation, and waste disposal. For example, activists fighting against the construction of small hydropower plants on the Kasindolska River have faced defamation lawsuits aimed at exhausting their resources and forcing them to abandon their advocacy. These lawsuits have been described as baseless, designed to silence dissent, and prevent public participation in environmental decision-making.

Human rights defenders, including environmental activists, face various forms of harassment in BiH, including physical threats, intimidation, and SLAPP lawsuits aimed at silencing their advocacy.

The legislative framework in BiH remains insufficient to protect human rights defenders and environmental activists from SLAPP lawsuits. There are currently no specific legal protections against these types of lawsuits, nor are there mechanisms for the early dismissal of

obviously unfounded claims. This legal gap allows corporations and individuals with significant resources to misuse the legal system to intimidate critics.

In June 2024, the House of Representatives of the FBiH Parliament adopted the Draft Law on Citizens' Initiative and Protection of Citizens and Activists in response to the increasing prevalence of SLAPP lawsuits against activists and human rights defenders, particularly environmental activists. This pioneering legislation, the first of its kind in the region, was developed through collaboration with six environmental organisations, supported by over 2000 petition signatories and key political figures. Following an extensive consultative process, the draft law was adopted six months after submission. However, the law has yet to receive final approval from both chambers of the FBiH Parliament, as the House of Representatives must still forward the draft to the House of Peoples for consideration.

A notable aspect of the law is its provision of protective measures for citizens and activists involved in public matters, including environmental issues. It aims to shield activists from physical, psychological, or legal harassment or accountability for their participation in public initiatives. The law also introduces provisions for the early dismissal of SLAPP lawsuits, ensuring that cases with no valid legal basis, intended to intimidate or suppress public participation, are quickly dismissed.

For the past 13 years, Republika Srpska has had legislation regulating citizens' initiatives, while the Federation of BiH and its cantons have not. This new law represents the first effort to regulate these matters at the Federation level. Previously, citizens' initiatives in the Federation were primarily governed by municipalities, leading to inconsistent regulations and a lack of standardized protections. Neither the Federation nor Republika Srpska currently provides sufficient safeguards for activists. While Republika Srpska passed a new Law on Referendum and Citizens' Initiatives in July 2024, it does not address SLAPP lawsuits or provide protections against physical threats, psychological harassment, or legal manipulation, highlighting the need for a comprehensive legal framework to protect public participation and activism across both entities.

In summary, while BiH has made progress with the introduction of new legislation aimed at protecting activists from SLAPP lawsuits, challenges remain. The legal framework is still incomplete, and further steps are necessary to ensure robust protections for public participation and environmental advocacy across the country. This draft law is a positive start, but broader reforms will be crucial to safeguard activists and foster an environment where they can freely advocate for the public good.

Kosovo*: Baseline study of legislation, policy and practice on human rights and environment

1. Introduction

Kosovo* faces significant challenges related to human rights and the environment, shaped by weak environmental governance and a lack of technical expertise to deal with these complex matters. Kosovo* has adopted a comprehensive legal framework inspired by European standards, yet enforcement remains weak due to limited institutional capacity within the responsible governmental bodies and the judiciary. The civic space for environmental engagement is slowly growing thanks to several legal victories which have encouraged more involvement among environmental activists and civil society organisations.

2. Substantive Law and Practice

2.1. Laws Relating to Environmental Human Rights

2.1.1. Environmental/human rights protections in the national constitution

The legislative framework related to environmental human rights has its basis in Article 7 of the Constitution which includes the *"protection of the environment"* as a specific constitutional value of the domestic legal order.[240] In more detail, Article 52 of the Constitution entitled "Responsibility for the Environment" provides that: *"nature and biodiversity, environment (…) are everyone's responsibility"* and that the *"impact on the environment shall be considered by public institutions in their decision making processes"*.[241] Furthermore, this provision ensures that everyone in Kosovo* is guaranteed *"an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment where they live*".[242]

The key constitutional provision related to the environment is framed as a "responsibility" rather than a classic "right" to a healthy environment. Up until now, there is no specific domestic case-law discussing or interpreting the difference between a "right" and the "responsibility to protect" in terms of the environment. Nevertheless, the existing judicial practice of the domestic courts, albeit limited, shows an inclination of the judiciary to interpret this constitutional provision broadly as a norm which also entails a right to a healthy environment.[243]

2.1.2. Specific pieces of legislation

There are several basic laws where a correlation between human rights and the environment exists. For example, the new Law on Environmental Impact Assessment (EIA) introduced a renewed obligatory EIA procedure for all public or private projects which may have significant effects on the environment due to their nature, size or location.[244] Construction permits for such projects cannot be issued and the execution cannot commence without first obtaining an EIA.[245]

240 See Article 7 of the Constitution of Kosovo* (2008), accessible at: https://gzk.rksgov.net/ActDetail.aspx?ActID=3702 (original draft and its amendments).
241 Article 52.1 and 52.3 of the Constitution of Kosovo*.
242 Article 52.2 of the Constitution of Kosovo*.
243 See Section 2.2.2. where the Judicial practice and decisions are discussed more broadly.
244 See Article 7 of the Law on Environmental Impact Assessment (2023), accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=68708.
245 Ibid., Article 7.4. See also Articles 4-23 in relation to the procedure before the competent authority.

New legislation on protection from Air Pollution has been in force since 2022.[246] Its main aim is to detail the competencies of the public institutions in ensuring the right of the citizens *"to live in an environment with clean air"* as well as protect the health, fauna, flora and natural/cultural values of the environment from air pollution.[247] The Law on Waters of Kosovo* entered into force in 2013 (amending the then existing legal framework).[248] As will be discussed later in this Report, this particular law and the licences for hydropower plants issued based on it have produced the most significant domestic case-law.[249] In 2024, the first Law on Climate Change entered into force in Kosovo*, with the purpose of defining the duties and responsibilities of state authorities in taking measures aimed at mitigating the effects of climate change.[250]

Last but not least, the Law on Environmental Protection adopted in 2009 is a vital law where several basic principles on environmental protection are regarded as directly applicable in Kosovo*, namely: the principle of sustainable development; precautionary and prevention principles; "polluter pays" and "user pays" principles; principle of responsible subsidiary; etc.[251] However, according to the Government's legislative plan for 2024, this Law needs to be revised, jointly with the Law on Nature Protection, while new laws on environmental inspection and water management are expected to be enacted.[252]

2.1.3. Ratification of international treaties

Considering its statehood related question, Kosovo* is not in a position to ratify international treaties. Therefore, Kosovo* is not an official party to the Aarhus Convention, Tromsø Convention or any other international or Council of Europe environment-related instruments. However, the Constitution of Kosovo* has ensured the direct applicability of the ECHR in Kosovo*'s legal order by circumventing a formal ratification process.[253] The Constitution also obliges the domestic courts to interpret human rights provisions in accordance with the case-law of the ECtHR, including cases related to human rights and the environment.[254]

2.2. How Law on Human Rights and the Environment is Applied in Practice

2.2.1. An analysis of the effectiveness of constitutional provisions

The effectiveness of the constitutional provisions and the domestic legislation is not at the desired level. As it will be seen by the judicial practice below, despite some good examples, the key challenge in Kosovo* is a lack of practical enforcement of the existing legal framework. For instance, despite the existence of specific emission ceilings against air pollution, Kosovo* does not comply with its own "emission ceilings" described in the emission reduction plan

246 See, Law on Air Pollution Kosovo* (2022), accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2669&langid=2.
247 Ibid., Article 1.1.
248 Law on Waters of Kosovo* (2013), accessible at https://gzk.rks-gov.net/ActDetail.aspx?ActID=8659&langid=2.
249 See, Government's Legislative Agenda for 2024 where it is planned to adopt another Law on the Financing of the Water Resources Management and another Law on Water management, accessible at: https://kryeministri.rks-gov.net/wp-content/uploads/2024/02/Programi-Legjislativ-per-vitin-2024-.pdf.
250 Article 1 of Law on Climate Change (2024), accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=85112. See also, Climate Change Strategy 2019-2029 accessible at: https://konsultimet.rks-gov.net/Storage/Consultations/14-13-59-04102018/Climate Change Strategy and Action Plan_sep_2018.pdf.
251 For a list of all applicable principles, see Article 6 of the Law on Environmental Protection (2009) accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2631&langid=2.
252 See, Government's Legislative Agenda for 2024, cited above.
253 Article 22 of the Constitution. According to an official of the MESPI interviewed on 25 July 2025, Kosovo* has struggled to mitigate its incapacity to ratify international treaties by directly/voluntarily transposing into domestic law some of the key principles deriving from key international treaties on the environment.
254 Article 53 of the Constitution.

aiming to curb air pollution.[255] Similar examples of a lack of implementation of the existing legal framework and strategic action plans are documented in the area of waste management, water management, nature protection, industrial pollution etc.[256] Another important area in which "legislation is not applied consistently" concerns environmental impact legislation.[257]

2.2.2. Judicial practice and decisions

An analysis of the judicial practice of the domestic courts in Kosovo* discloses an absence of sufficient litigation in the area of human rights and the environment. The most interesting cases have to do with the opposition of hydropower plants that were built in Kosovo*, following the country's commitment to generate more than 25% of its energy from renewable resources.[258]

Soon after companies started to build hydropower plants in different regions of Kosovo*, individuals and civil society organisations started to express their concerns over the legality of the licencing procedures; lack of consultation with the local community and the general public; utilisation of the licences beyond what was initially allowed; significant destruction of the environment and absence of rehabilitation endeavours prescribed by the law.[259] The Ombudsperson[260] considered that the licencing process and the operation of hydropower plants in Kosovo* was characterised by *"constant shortcomings in respect of (…) access to information, public participation in decision-making and access to justice."*[261]

While several cases regarding different hydropower plants are still pending before the regular courts in Kosovo*,[262] a long-brewing strategic litigation case reached the doors of the Constitutional Court in July 2024.[263] The applicants in this case, namely three citizens from Deçan, the NGO "Pishtarët" and the Centre for Strategic Litigation, jointly argue that the

255 European Commission Progress Report on Kosovo* 2024, page 83, accessible at https://neighbourhood-enlargement.ec.europa.eu/kosovo-report-2024_en.

256 Ibid., p. 82-84.

257 Ibid., p. 82.

258 See Article 15 of the Law on Energy (2016), accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=12689&langid=2.

259 Interview with Ms Shpresa Loshaj, environmental activist and founder of the NGO "Pishtarët", held on 27 July 2024; Interview with Ms Egzona Shala Kadiu, Executive Director of EcoZ, held on 23 July 2024; Interview with Linda Çavdarbasha, member of the Kosova* Environmental Education and Research Centre, held on 24 July 2024.

260 According to Article 132 of the Constitution, the Ombudsperson "*monitors, defends and protects the rights and freedoms of individuals (including environmental rights) from unlawful or improper acts or failures to act of public authorities."* The Ombudsperson is entitled to issue*, inter alia*, recommendations to public institutions and the latter are obliged to respond to its requests and submit all requested documentation and information. They are also obliged to inform the Ombudsperson within thirty (30) days at the latest about the actions undertaken to address the recommendations specified by the Ombudsperson. In its yearly reports, the Ombudsperson highlights which of its recommendations have been implemented by public authorities and which not. See for example, its yearly reports available at: https://oik-rks.org/en/reports/annual-reports/. An in-depth analysis of these reports shows that not all of the recommendations of the Ombudsperson are duly implemented by the public authorities in Kosovo*.

261 Ombudsperson of Kosovo*, *Ex-Officio* Report no. 365/2018 of 3 February 2021, accessible at: https://oik-rks.org/en/2021/02/03/report-with-recommendations-ex-officio-3652018-against-ministry-of-economy-and-environment-regarding-the-issue-of-lawfulness-of-the-procedures-concerning-the-hydropower-plants-in-the-country-as-we/.

262 See for example cases being pursued by the Centre for Strategic Litigation regarding against different hydropower plants: the Soponica hydropower plant strategic case, details accessible at https://cslkosovo.org/2024/03/14/rasti-i-hidrocentralit-soponica/; Lepenci 3 case, details accessible at: https://cslkosovo.org/2024/03/01/leja-mjedisore-dhe-leja-ujore-per-hidrocentralin-lepenci-3/; Brezovica cases (HC Shterpca, HC Sharri and HC Vica) details accessible at: https://cslkosovo.org/2024/03/01/rasti-i-hidrocentralit-brezovica/.

263 See, Centre for Strategic Litigation, accessible at: https://cslkosovo.org/2024/07/17/dorezohet-kerkesa-per-vleresimin-e-kushtetutshmerise-se-aktgjykimit-te-gjykates-supreme-te-kosoves-per-hidrocentralet-e-decanit/.

issuance of licences for the operation of the so-called "Deçan hydropower plants" is contrary to Article 52 of the Constitution and other provisions related to a fair trial and effective legal remedies.[264]

This might turn out to be an important landmark case considering that the jurisprudence of the Constitutional Court related to human rights and the environment is quite limited.[265] So far, there is only one case where a violation of Article 52 of the Constitution was found in 2009.[266] The case concerned a significant change of an existing urban plan which legalised the building of high tower blocks in a green zone. The Constitutional Court quashed that decision reasoning that the affected inhabitants *"did not have an opportunity to be heard (…) and have their opinions considered on issues that impact the environment in which they live."*[267] However, it took state authorities 13+ years to implement this decision of the Constitutional Court.[268]

In its reasoning, the Constitutional Court referred to Articles 2 and 8 of the ECHR, Principle 10 of the Rio Declaration, Aarhus Convention, Recommendation 1614(2003) of the Parliamentary Assembly of the Council of Europe as well as ECtHR case-law, namely, *Hatton and others v. the United Kingdom*, *Guerra and others v. Italy* and *McGinley and Egan v. the United Kingdom*.[269] There are a few other cases decided by the Constitutional Court in the meantime where the original subject matter is related to the environment but the legal questions posed before the Constitutional Court were of a procedural nature (Article 6 ECHR issues).[270]

An in-depth screening of the case-law of domestic courts in Kosovo* reveals that there is almost no utilisation of the ECHR or the case-law of the ECtHR,[271] save for minor references of the Constitutional Court of Kosovo* in its 2009 case. In comparison to regular courts, the Ombudsperson tends to refer more often to these standards.[272] In this regard, there is an urgent need to increase the capacities of the judiciary, lawyers and civil society organisations in using international standards related to human rights and the environment and the jurisprudence of the ECtHR. For this to happen in practice, there is a need to offer targeted needs-based training opportunities to members of the judicial community (lawyers, judges, prosecutors and legal clerks/advisors) as well as training to NGO-s that specialise on environmental matters.

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264 Ibid.

265 Interview with an official from the Constitutional Court of Kosovo* (26 July 2024), who confirmed that the number of cases that are related to human rights and the environment is low in comparison to other constitutional rights.

266 See Constitutional Court of Kosovo*, case no. KI56/09, Judgment of 22 December 2010, accessible at: https://gjk-ks.org/en/decisions/?prej&deri&numri_i_rastit=56/09.

267 Ibid., para. 67.

268 See, Constitutional Court of Kosovo*, Decision on Non-Execution of the Judgment KI56/09, issued in 2021, namely 11 years after the violation found in 2010. According to an official from the Constitutional Court interviewed for this Report on 26 July 2024, this Judgment was executed in 2024.

269 Ibid., paras. 62-65.

270 See for example the following cases of the Constitutional Court of Kosovo*: case no. KI202/21, KI21/23, KI143/21, KI75/21, KI36/22, KI253/23, accessible at: https://gjk-ks.org/vendimet/.

271 In an interview for this Report held on 24 July 2024, Afrim Shala, Judge of the Supreme Court confirmed that there is lack of sufficient utilisation of these standards in the judicial practice of the domestic courts in Kosovo*.

272 Ombudsperson of Kosovo*, *Ex-Officio* Report no. 365/2018 of 3 February 2021, cited above, which lists recommendations for the (then existing) Ministry of the Economy and Environment in relation to legality of the procedures on hydropower plants and access to documents in relation to them. In this Report, the Ombudsperson refers to Arhus Convention; Rio Declaration, ECHR, judicial practice of the ECtHR (*Guerra and Others v. Italy; Taşkin and Others v. Turkey; Steel and Morris v. the United Kingdom; Vides Aizsardzības Klubs v. Latvia; Hatton and Others v. the United Kingdom; Assanidze v. Georgia*). See also other important reports issued by the Ombudsperson, namely Ex-Officio Report no. 631/2019 of 9 June 2020 regarding Graçanka river; and Ex-Officio Report no. 479/2017 of 11 April 2019 regarding inappropriate waste management.

2.2.3. Alternative Dispute Resolution Mechanisms

The Law on Mediation provides the legal framework for resolving disputes through mediation as an alternative to court proceedings.[273] However, even if the legal system in Kosovo* encourages the use of mediation for resolving disputes, there are no known cases where this ADR mechanism has been successfully used for environmental disputes.

3. Environmental Procedural Law and Practice

3.1. Environmental Rights of Information and Participation

3.1.1. Access to Environmental Information

The Constitution guarantees the right of access to public documents to every person,[274] which includes the right of access to environmental information. The Law on Access to Public Documents enumerates the reasons for which access to certain public documents may be rejected; however, such legal basis does not apply to public documents which relate to "*environment, waste, hazardous substances or information of environmental safety reports".*[275]

Furthermore, the Law on Environmental Protection recognises the *"Principle of public access to information"*, according to which all natural or legal persons have the right to be informed of the state of the environment and have access to registers or evidence which contain any information or recordings related to the environment.[276] The public is also to be informed in advance about expected decision-making procedures so that it can take part in the process by submitting opinions, comments and suggestions.[277]

While there is a strong legal basis that guarantees the right of access to environmental information, the effectiveness of such legislation in practice is not satisfactory. For instance, while some governmental authorities, such as the Kosovo* Agency for Environmental Protection, publish their reports and other substantial information online,[278] other governmental authorities do not publish relevant environmental information as obliged by law.[279] The websites where the public seeks to find first-hand information are neither updated nor provided with relevant data regarding proposed environmental plans, policies and regional level projects. Secondary legislation (administrative instructions/regulations) are rarely accessible and there is no sufficient marking confirming which by-laws are currently in force. Important decisions with high environmental impact such as: licences, environmental impact assessments etc. (which are supposed to be published in accordance with the law) – are rarely published and difficult to find without a formal request for access to public documents.[280]

Environmental activists claim to face difficulties in obtaining information and documents that they seek to have access to. According to some activists interviewed for this Report, there

273 See Law on Mediation (2018) accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=17769&langid=1.
274 Article 41 of the Constitution.
275 Article 17.3.3 of the Law on Access to Public Documents (2019) accessible at https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505.
276 Article 6.12 and Article 50 of the Law on Environmental Protection (2009) accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2631&langid=2.
277 Ibid.
278 See the official website of the Kosovo* Agency for Environmental Protection, accessible at: https://www.ammk-rks.net/en/per-ne.
279 See the official website of MESPI (Ministry of Environment Spatial Planning and Infrastructure), accessible at: https://www.mit-ks.net, where there is no information related to the environment. MESPI is the key governmental body responsible to develop policies, laws, regulations and strategies related to environmental protection.
280 Ibid., where it can be seen that no information (in any language) is published regarding such documents.

are cases when responsible public authorities completely ignore their requests for information, do not respond within the deadline prescribed by law, or only provide partial information.[281] For instance, there was a case when an environmental activist sent a list with several documents that she sought regarding the licencing process of hydropower plants in Kosovo*, but the responsible Ministry (MESPI) only provided some selected documents.[282]

In relation to this issue, in 2021, the Ombudsperson issued an *ex-officio* recommendation calling on the responsible Ministry to make public all the documents related to hydropower plants in Kosovo*.[283] According to a written response received by the Ombudsperson, *"up to date* (September 2024), *no response has been received by the institutions responsible to address this recommendation*",[284] despite the fact that the responsible Ministry (MESPI) should have responded to the Ombudsperson within thirty (30) days *"regarding actions undertaken"* in view of implementing this specific recommendation.[285] This leads to the conclusion that this particular remedy has not been effective in the circumstances of this case.

In instances when a public institution refuses to provide access to environmental information (or provides partial information), either through explicit refusal or silence i.e. by failing to respond within the deadline prescribed by law, the interested parties have two remedies at their disposal. First, they can complain to the Information and Privacy Agency which may approve their complaint and modify the decision of the public institution regarding access to the requested environmental information.[286] If the Agency does not approve their complaint or otherwise they are not content with the access provided, they can contest this decision in administrative proceedings before the regular courts.[287] Second, interested parties are also entitled to file a complaint with the Ombudsperson, which has the prerogative to assist Kosovo* citizens in securing their right of access to information – including those pertaining to the environment.[288]

As far as availability of environmental information in other languages is concerned, it needs to be first noted that Albanian and Serbian are both official languages in Kosovo* and have the same status – meaning that all published information by the governmental bodies must be equally available in both languages.[289] Turkish, Bosnian and Roma languages have the status of official languages at the municipal level,[290] but there is hardly any information available in these languages. The main reports which are generated by the Kosovo* Agency for Environmental Protection are published in Albanian and Serbian;[291] while there is content in its website and that of MESPI which is not translated into Serbian nor available in the languages of other communities.

281 Interview with Ms Egzona Shala Kadiu, Executive Director of EcoZ, held on 23 July 2024.
282 Interview with Ms Shpresa Loshaj, environmental activist and founder of the NGO "Pishtarët", held on 27 July 2024.
283 Ombudsperson of Kosovo*, *Ex-Officio* Report no. 365/2018 of 3 February 2021, cited above.
284 Ombudsperson of Kosovo*, written response received on 2 September 2024 answering the question as to whether the recommendation contained in its Report has been addressed and implemented in practice.
285 Article 28 of the Law on Ombudsperson (2015), cited above.
286 Article 20 of the Law on Access to Public Documents (2019), cited above. For more information on the role and work of the Information and Privacy Agency, see their website at: < https://aip.rks-gov.net/en/aip-english/>.
287 Ibid., Article 20.10 and Article 22. For more information in respect of the number of requests made to the Information and Privacy Agency by individuals and NGO-s and the number decisions issued on a six-month basis, see their latest Report for the period of January-August 2024 available at: https://aip.rks-gov.net/download/eng-raporti-gjashtemujor-aip-2024/.
288 Article 21 of the Law on Access to Public Documents (2019), cited above.
289 Article 5.1 of the Constitution.
290 Article 5.2 of the Constitution.
291 See for example the Serbian version of the website of the Kosovo* Agency for Environmental Protection, accessible at https://www.ammk-rks.net/sr/publikime/25/arkivi.

3.1.2. Rights of Participation

According to Article 52 of the Constitution, everyone is guaranteed the right *"to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live."*[292] The Law on Environmental Protection provides that decision making bodies must ensure the participation and active role of the public in decision making processes related to: (i) environmental impact assessments; (iii) procedures for issuance of water permits and licences; and (iv) drafting of laws.[293]

In addition, the recent Law on Environmental Impact Assessment guarantees that the public and all interested parties (individuals, civil society organisations etc.) have the possibility to: (i) participate in all stages of an EIA process; (ii) submit written comments; and (iii) participate in the public debate at the municipality where the project is expected to be constructed.[294] In addition, this Law specifically guarantees that the public and interested parties will be informed electronically about all stages of an EIA process.[295] In practice, MESPI claims that all interested parties are provided with an opportunity to be heard in respect of the projects that are to be constructed; but the representatives of the NGO's interviewed for this Report claim that the consultation procedures are not respected and that platforms for meaningful consultation are yet to be envisaged and implemented.[296]

The Law on Climate Change also guarantees the participation of the public, local institutions, private sector and other interested parties when the Government prepares or updates climate change legislation and strategies.[297]

According to a MESPI official, the opportunity of the public to be heard regarding the enactment of laws, policies and other decisions that impact the environment is offered but there is a low number of interested parties who wish to comment or take part in these processes.[298] On the other hand, environmental activists and civil society members interviewed for this Report claim that public participation and meaningful consultation is not encouraged by the public institutions and that they have difficulties to become involved in decision making processes.[299] Such difficulties involve instances of NGO-s and interested parties not being invited to attend consultation meetings; the MESPI not publishing the EIA documents in the consultation platforms as requested by the law; meetings organised as a means of "checking-the-box" that consultation has happened, while in practice the views of the interested parties are not being taken into consideration for the decision-making process, etc. In view of these shortcomings, the Ombudsperson has recommended in one of its *Ex-Officio* Reports that the participation of the public in environmental decision-making processes *"must be taken seriously by the responsible institutions"*.[300]

The civic space for environmental engagement is slowly growing, thanks to some legal victories that were achieved *through* environmental activism. This is apparent from the increasing number of protests, activities and litigation efforts on environmental matters. In relation to this, in an interview for this Report, Ms Egzona Shala Kadiu, Director of EcoZ, stated that small procedural/legal victories are very important to maintain the interest and

292 Article 52.2 of the Constitution.
293 Article 57.1 of the Law on Environmental Protection (2009).
294 Article 16 of the Law on Environmental Impact Assessment (2023).
295 Ibid.
296 Interview with officials of MESPI, held on 24 July 2024; interview with Ms Egzona Shala Kadiu, Executive Director of EcoZ, held on 23 July 2024; and interview with Ms Shpresa Loshaj, environmental activist and founder of the NGO "Pishtarët", held on 27 July 2024.
297 Article 34 of the Law on Climate Change (2024).
298 Interview with an official of MESPI, held on 24 July 2024.
299 Interview with Ms Egzona Shala Kadiu, Executive Director of EcoZ, held on 23 July 2024; interview with Ms Shpresa Loshaj, environmental activist and founder of the NGO "Pishtarët", held on 27 July 2024.
300 Ombudsperson of Kosovo*, *Ex-Officio* Report no. 365/2018 of 3 February 2021, cited above, para. 98. The need for the authorities to take environmental matters more seriously was also expressed in the interview held for the purposes of this Report with Ms Anita Çavdarbasha, Deputy Ombudsperson of Kosovo*, on 23 July 2024.

motivation to pursue long legal battles against powerful companies, but lack of funds and lack of legal aid to litigate these cases lessens the prospect of holding polluters accountable.[301]

3.1.3. Rights of Assembly and Protest

Article 43 of the Constitution guarantees freedom of peaceful gathering, the right to organise protests and demonstrations as well as the right to participate in them.[302] This particular right may be exercised for environmental purposes as well. Article 44 of the Constitution guarantees freedom of association which includes the right of everyone to establish an (environmental) organisation without obtaining any permission and to participate in the activities of an (environmental) organisation.[303] There are several examples of these rights being freely exercised in practice,[304] without any noted obstruction from authorities.

In addition to the regular use of the right of assembly in organisations, an interesting way in which civic space is organised and kept up to date in Kosovo* is through a very active Facebook group titled: "Group for the protection of waters and the environment".[305] This platform is used by activists, citizens, civil society organisations and human rights lawyers to post information, organise protests, show videos of environmental destruction/harm, alert others about various environmental damages, organise events for cleaning activities and other volunteering events.

3.2. Right of Access to Justice, Remedies and their Effectiveness

3.2.1. Access to Justice

The rights of access to justice and to effective legal remedies are guaranteed by the Constitution.[306] Every natural or legal person (including civil society organisations) has the right to pursue legal remedies against administrative and judicial decisions which infringe their rights guaranteed by the Constitution and the law.[307] In terms of standing, this means that individuals, legal persons, communities, organisations, environmental activists and other civil society groups have the right to bring environmental claims to courts and seek *"judicial protection"* of their rights.[308] If an environmental right guaranteed by the Constitution, the ECHR or by law has been violated, the affected party is entitled to an effective legal remedy.[309]

According to Article 31.6 of the Constitution, *"free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice."*[310] The Law on Free Legal Aid confirms that legal assistance may be sought for environmental rights;[311] but the Agency for Free Legal Aid in Kosovo* confirmed through a written response that they have no cases related to human rights and the environment.[312]

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301 Interview with Ms Egzona Shala Kadiu, Executive Director of EcoZ, held on 23 July 2024.
302 Article 43 of the Constitution.
303 Article 44 of the Constitution.
304 See for example the latest protest titled "Sharr National Park – No Dams" organised by EcoZ and reported by Riverwatch, accessible at: https://riverwatch.eu/en/balkanrivers/news/kosovo-sharr-national-park-no-dams.
305 See Facebook group titled "Grupi për mbrojtjen e ujërave dhe mjedisit" (Group for protection of waters and the environment).
306 See Articles 31, 32 and 54 of the Constitution.
307 Article 32 of the Constitution.
308 Article 32 and 54 of the Constitution.
309 Article 54 of the Constitution.
310 Article 31.6 of the Constitution.
311 Article 4 of the Law on Free Legal Aid (2012) accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2803. See also, Article 6-10 for conditions on how such legal aid may be obtained.
312 Written response received by the Agency on Free Legal Aid on 5 August 2024, responding to the question if interested parties that fulfil the conditions of the Law on Free Legal Aid may seek free legal aid also for cases related to human right and the environment. The answer to the question was positive.

Individuals and communities in Kosovo* are entitled to take industrial and corporate actors to court for environmental harm. The Law on Protection of the Environment has a special Chapter which mentions liabilities and responsibilities for environmental pollution and the procedure to obtain compensation for damages.[313] In accordance with the *"polluter pays principle",* this Law provides that the polluter causing environmental harm "*shall be responsible for the damage"* and *"shall be responsible for evaluation and elimination of the damage"*.[314] These provisions however cannot be regarded as sufficiently effective considering the low number of cases where corporate actors were successfully sued for environmental harm.[315] According to a Report published by Balkan Insight, in the period 2017-2020, over a hundred companies *"have been sent to court over environmental pollution"* and only "*twenty-four were fined."*[316]

3.2.2. Access to Remedies and Their Effectiveness in Practice

In administrative procedure, in addition to natural or legal persons, associations or civil society organisations which *"protect public interests"* are also authorised to initiate an administrative proceedings for the protection of environmental rights.[317] The domestic case-law (despite some initial inconsistencies) confirms that civil society organisations have *locus standi* before domestic courts when raising environmental claims.[318] Decisions of public bodies can be annulled in administrative procedure and injunctions can also be granted .

In civil procedure, affected individuals or communities can seek financial compensation for personal injury, property damage or other loss resulting from environmental harm. The Law on Environmental Protection distinguishes a special principle, referred to as the *"Principle of Protection of the Right to Court"* - according to which any individual, legal person or the public has the right to file a claim or request the domestic courts or public authorities to appropriately enforce the provisions of this Law or the sub-legal acts deriving from it.[319] Courts are entitled to hear cases on civil procedure; to grant injunctions to stop activities causing ongoing or imminent environmental harm; and to order responsible polluters to take specific restorative actions.[320] In addition to material damages, individuals may also seek compensation for non-material damages, such as health impacts or the loss of clean and safe environment.

In criminal procedure, there is a separate chapter in the Criminal Code which enumerates criminal offences against the environment, animals and plants.[321] This Code criminalises polluting, degrading or destroying the environment; handling of unlawful hazardous substances and waste; unlawful construction or unlawful operation of plants and installations that pollute the environment; damaging objects and installations for protection of the environment; etc.[322] The maximum imprisonment for an environmental crime is eight (8) years with fines also being

313 See Chapter VIII (Articles 65-72) of the Law on Environmental Protection (2009). In addition, see also the Law on Environmental Impact Assessment (2023) and the Law on Nature Protection (2010) also provide a legal basis for holding corporate actors accountable for environmental harm.
314 Article 66 of the Law on Environmental Protection (2009).
315 See for example, Balkan Insight, 'Muddy Waters: The Pollution Killing Kosovo*'s Lakes and Rivers' (2020), where cases of corporations being fined are reported, accessible at: https://balkaninsight.com/2020/07/20/muddy-waters-the-pollution-killing-kosovos-lakes-and-rivers/. See, a case where New Co Ferronikel, a corporation involved in nickel production, was fined with 40.000 EUR for polluting the environment. It also is interesting to note that a major potato crisp brand in Kosovo* "Vipa Chips" was fined only 500 EUR after a resident filmed their truck dumping potato waste into the Sitnica river which is located near to their factory.
316 Ibid., Balkan Insight article of 2020.
317 See Article 10.2 of the Law on Administrative Conflicts (2010), accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2707.
318 See for example cases of CSL cases which confirmed the states of CSL and others
319 Article 6.11 of the Law on Environmental Protection (2009).
320 Law on Environmental Protection (2009).
321 See Chapter XXVII of the Criminal Code of Kosovo* (2019), accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
322 Ibid., Articles 338-341.

part of the criminal penalties .[323] In addition to environmental crimes, several laws in Kosovo* provide for specific misdemeanour offences related to environmental pollution/harm with fines up to 40,000 EUR.[324]

In terms of corporate criminal responsibility, there is a specific law in Kosovo* which regulates the liability of legal persons for criminal offences,[325] but there is limited case-law in this area. There are at least two possible reasons (not excluding other reasons) for the lack of cases in this area, namely the lack of : (i) legal/procedural knowledge among the general public and affected parties with respect to the availability of legal remedies to hold corporate actors/polluters accountable for environmental harm; (ii) strategic litigation by environmental organisations directed to corporate actors/polluters that cause environmental harm (considering that it is difficult for individuals alone to fight legal battles against big companies).

While solid remedies are available under Kosovo*'s legal framework, there are considerable challenges related to enforcement, judicial capacity to rule on environmental claims and capacity of lawyers to represent environmental claims, length of proceedings due to overburdening of the judicial system, frequent remittals of cases, judicial inconsistency related to reasoning and interpretation of the existing environmental constitutional provisions and laws, and legal costs related to complicated and lengthy judicial procedures.

In practice, the effectiveness of constitutional provisions may be noted for example in: (i) the "Gërmia Adventure park" case where civil society activists have managed to successfully stop the construction of a park in a green protected zone by convincing the domestic courts to grant injunctions and latter on to confirm the illegality of such construction in a merits decision;[326] and (ii) "Badovc case" where pressure from civil society groups contributed to annul the planned construction of villas in the vicinity of a protected lake in Kosovo*.[327]

However, there are also instances showing lack of effectiveness of constitutional provisions, as for example: (i) the non-execution of a judgment of the Constitutional Court of Kosovo* for more than thirteen (13) years – a case which found the first ever violation of Article 52 (Responsibility for the Environment) of the Constitution (commented above); (ii) lack of execution of injunction granted by the regular courts in Kosovo* regarding hydropower plants in the Deçan region;[328] (iii) lack of implementation of recommendations issued by the Ombudsperson in relation to environmental matters; (iv) insufficient investigations and insufficient number of corporate actors being found guilty of environmental harm, etc.

With respect to practical barriers to exercising procedural rights, two leading environmental activists faced a Strategic Lawsuit Against Public Participation (SLAPP) following their legal battle against Kelkos Energy, a subsidiary of the Austria-based energy provider Kelag International.[329] One of the activists, Ms Loshaj recollected that this groundless lawsuit motivated her even more to continue her legal battle against hydropower plants in

323 For an overview of the domestic jurisprudence in criminal matters related to environmental harm/cases, see the publication titled: 'Protection of the Environment through Criminal Law' (2023) authored by Afrim Shala, current serving Judge at the Supreme Court of Kosovo*, accessible at: http://jus.igjk.rks-gov.net/844/1/Mbrojtja%20e%20mjedisit%20përmes%20të%20drejtës%20penale%20-%20Afrim%20Shala-.pdf.

324 Law on Environmental Protection (2009); Law on Nature Protection (2010); Law on Protection from Air Pollution (2022), etc.

325 Law on Liability of Legal Persons for Criminal Offences (2011), accessible at: https://gzk.rks-gov.net/ActDetail.aspx?ActID=2766.

326 See Basic Court in Prishtina, Department for Administrative Matters, case no. A. nr. 317/2021 of 16 April 2024. For more detailed information, see also details about this case published by the Centre for Strategic Litigation, accessible at: https://cslkosovo.org/2024/03/01/leja-mjedisore-per-projektin-parku-i-aventurave-ne-germi/.

327 See news reporting regarding the annulment of the plan to construct villas in the Badovc lake, accessible at https://lajmi.net/ndertimet-ne-badovc-pezullohet-plani-zhvillimor-komunal/.

328 Civil society activists interviewed for this Report claim that these decisions were not effective considering that the businesses continued their work in spite of the injunctions. They only temporarily stopped their operations.

329 Shpresa Loshaj and Adriatik Gacaferri were two environmental activists that were sued by Kelkos Energy for allegedly damaging the reputation of the company.

her birthplace Deçan.[330] After continuing her activism and protests, she (jointly with another activist) was sued for 100,000 EUR, a classic SLAPP which was regarded as a baseless lawsuit by Amnesty International.[331] The SLAPP strategy backfired on Kelkos Energy considering that the case became notoriously famous and sparked strong reactions among domestic and international human rights organisations, which resulted in Kelkos Energy eventually withdrawing the lawsuit.

This activism story relates to the strategic litigation case against Kelkos Energy which is now pending before the Constitutional Court. In an interview for this Report, Ms Shpresa Loshaj stated that: *"the case before the Constitutional Court has the potential to be a landmark case for human rights and the environment, thus motivating others to hold polluters accountable by seeking appropriate enforcement of domestic laws and environmental principles"*.[332]

4. Key Environmental Concerns in the National Context

4.1. Key national concerns

The primary national concern in Kosovo* is air pollution,[333] which continues to be a major health threat.[334] According to a World Bank Report, air pollution in the capital city of Pristina *"rivals that of big cities like Beijing, Mumbai, and New Delhi."*[335] The reliance on lignite coal for electricity generation is a major contributor to harmful emissions, combined with burning of solid fuels during the winter season for heating purposes. Kosovo* does not comply with the emission ceilings and does not properly enforce its legislation in this area, making it not sufficiently effective in practice.[336] Owing to enormous pollution of air, land and water, the municipality of Obiliq and its surrounding zones, where the outdated "Kosova A and B" powerplants are located, was declared as an "*environmentally endangered zone"*.[337]

Another major national concern in Kosovo* is water pollution and the scarcity of water, which threatens human health and biodiversity.[338] Untreated sewage, industrial/household discharge and the lack of wastewater treatment facilities are the primary sources of water pollution.[339] Other national concerns in Kosovo* relate to deforestation and land degradation

330 Kosovo* 2.0., 'Shpresa Loshaj: Now it's the time for me to speak up more' (2021), accessible at: https://kosovotwopointzero.com/en/shpresa-loshaj-now-is-the-time-for-me-to-speak-up-more/.

331 Amnesty International, 'Kosovo*: Baseless lawsuit against environmental activists dropped in victory for freedom of expression' (2021), accessible at: < https://www.amnesty.org/en/latest/news/2021/10/kosovo-baseless-lawsuits-against-environmental-activists-dropped-in-victory-for-freedom-of-expression/>.

332 Interview with Ms Shpresa Loshaj, environmental activist and founder of the NGO "Pishtarët", held on 27 July 2024.

333 See, European Environment Agency, 'Kosovo* – air pollution country fact sheet' (2023), accessible at: https://www.eea.europa.eu/themes/air/country-fact-sheets/2023-country-fact-sheets/kosovo-air-pollution-country. See also, Kosovo* Agency for Environmental Protection, 'Annual Report on the State of the Air 2023', accessible at: https://www.ammk-rks.net/assets/cms/uploads/files/Raporti%20%20vjetor%20per%20cilesi%20te%20ajrti%202023%20-eng.pdf.

334 European Commission Progress Report on Kosovo* 2023, page 115, accessible at https://neighbourhood-enlargement.ec.europa.eu/kosovo-report-2023_en.

335 World Bank, 'Air Pollution Management in Kosovo*' (2019), accessible at: https://documents1.worldbank.org/curated/en/214511576520047805/pdf/Air-Pollution-Management-in-Kosovo*.pdf?_gl=1*816utj*_gcl_au*MTE0NzM5OTM2OS4xNzI0MzYzMzY3.

336 European Commission Progress Report on Kosovo* (2023), cited above, page 115.

337 See Law on the Environmentally Endangered Zone of Obiliq and its surroundings (2016), accessible at https://gzk.rks-gov.net/ActDetail.aspx?ActID=13214&langid=2.

338 See, Kosovo* Agency for Environmental Protection, 'Status report of water in Kosovo* 2020' accessible at: https://www.ammk-rks.net/assets/cms/uploads/files/ANGLISHT_WEB_uji(1).pdf.

339 European Commission Progress Report on Kosovo* (2023), cited above, page 116.

through illegal logging and unsustainable land use practices[340] and poor waste management.[341]

4.2. Major environmental incidents or accidents

The Law on Environmental Protection defines what constitutes an "environmental accident" while also regulating the procedure, responsibility for damages, sanctions and rehabilitation measures to be applied if such accidents happen.[342] In 2015, a massive number of dead fish appeared in the Morava River. According to Hydrometeorological Institute of Kosovo*, this happened due to *"discharge of wastewaters from households and industries".*[343]

Other similar environmental incidents happened in 2019 in Lepenc and Lumbardh rivers which led to the mysterious loss of more than 12 tons of fish and raised concerns over water safety for residents and animals.[344] Municipal inspectors concluded that the death of fish in Lepenc river came *"as a result of the discharge of polluting materials with toxic content at two locations by a private entrepreneur."*[345] There is no public data over any investigation regarding the death of fish in Lumbardh river. Even though these incidents have led to a public outcry, no one seems to have been held accountable for and there is no clear information on whether specific legal investigations are currently active against the identified private entrepreneur or others that might have caused these grave environmental incidents.

5. Concluding Summary and Recommendations

Kosovo* has established a comprehensive constitutional and legal framework related to human rights and the environment. At the constitutional level, there seem to be no gaps, with the responsibility to protect the environment figuring in a special constitutional provision (Article 52). At the level of basic laws, Kosovo* has: (i) enacted its first ever Law on Climate Change in 2024; (ii) amended its legislation on environmental impact assessment by introducing a new law in 2023; and (iii) introduced new legislation on protection from air pollution in 2022. There is a need to amend some specific pieces of legislation which are considered outdated and not fully in line with international standards on the environment, such as the laws governing the protection of the environment, nature and waters of Kosovo*.

Owing to its status related question, Kosovo* is unable to ratify international treaties such as the Aarhus Convention, Tromsø Convention or any other international or Council of Europe environment-related instruments. The only relevant Council of Europe treaty which is directly applicable in Kosovo* is the ECHR. Its application, jointly with the *res interpretata* effects of the judicial practice of the ECtHR, is ensured through voluntary inclusions in the Constitution (Articles 22 and 53). The evident shortcoming of not being able to ratify international treaties is addressed by an effort to transpose international principles into domestic law without formally ratifying the relevant international treaties.

The effectiveness of constitutional and legal framework in Kosovo* reflects both progress and persistent challenges. While Kosovo* has adopted a range of laws and policies aimed at protecting environmental rights and aligning its legislation with EU standards as part of its integration process, the implementation of these laws remains weak, thus, undermining

340 See, Kosovo* Agency for Environmental Protection, 'Annual Report on the State of the Environment in Kosovo* (2022)', accessible at: < https://www.ammk-rks.net/assets/cms/uploads/files/ANNUAL%20REPORT%20on%20the%20State%20of%20the%20Environment%202022%20ENG%20-%20Final.pdf>.

341 See Kosovo* Agency for Environmental Protection, 'Report of Municipal Waste Management in Kosovo*' (2021), accessible at: https://www.ammk-rks.net/assets/cms/uploads/files/Raporti%20i%20mbeturinave%20komunale%20për%20vitin%202021_%20eng(1).pdf. See also, European Commission Progress Report on Kosovo* (2023), cited above, page 116.

342 See Articles 4, 16, 34, 39, 47, 49, 71 and 93 of the Law on Environmental Protection (2009).

343 See Kosovo* Democratic Institute, "Black Rivers" (2020) accessible at: https://kdi-kosova.org/wp-content/uploads/2020/03/22-Lumenjt-e-zi-te-Kosoves-Raport-04.pdf.

344 Ibid., page 20.

345 Ibid.

their intended impact. The ineffectiveness of domestic legislation is due to a combination of the following factors:

(i) insufficient institutional capacity at the level of governmental bodies which are responsible to oversee the enforcement of the legislative framework

(ii) lack of financial resources to conduct the necessary analysis and perform the needed inspections and supervision

(iii) weak coordination between the central and local authorities

(iv) impunity for perpetrators considering that despite clear legal prohibitions polluters continue to cause environmental harm without being punished in accordance with the existing rules

In theory, Kosovo*'s legal framework supports public participation in environmental decision-making, the right of the public to be informed about the state of the environment and the right to assemble and protest on these issues. The renewed Law on Environmental Impact Assessment requires public consultations for major projects that may have an impact on communities and the environment; yet there are no sufficient examples to show that meaningful public consultations take place. The right to freedom of assembly and the right to organise protests and demonstrations is guaranteed, with positive examples where citizens and civil society organisations have freely exercised these rights.

As far as the right to information is concerned, civil society actors complain that access to public documents is not always provided and that they need to make repeated requests to access documents which should have been made public by the governmental bodies. The latter publish relevant reports that monitor the state of the environment, air pollution, water, land, waste management etc., albeit not always within the deadline prescribed by law.[346] The environmental information which should be accessible in the website of the governmental bodies is not always available and updated. While some reports and information are published in both official languages (Albanian and Serbian), there is information which is missing in the Serbian language. Information on languages of other communities in Kosovo* is inexistent.

The judicial practice of the regular courts is fairly limited in terms of human rights and the environment. There are a few cases which show a growing interest of environmental activists and civil society organisations to pursue cumbersome legal avenues in holding operators of hydropower plants accountable for the environmental harm caused. The analysis reveals a lack of utilisation of the ECHR, Council of Europe and international standards, and the case-law of the ECtHR in the process of adjudication. However, the Ombudsperson should be commended for its greater inclination towards broader utilisation of these standards in its reports concerning protection of rivers, waste management and hydropower plants in Kosovo*.

More concretely, the existing state of judicial practice in Kosovo* shows that:

(i) there is a lack of sufficient know-how, expertise and experience in dealing with environmental questions.

(ii) there are discrepancies in how different regular courts and even the Court of Appeals and the Supreme Court decide similar environmental claims related to human rights.

(iii) although the domestic laws provide sufficient legal remedies to address these issues, the difficulties lie with the practical utilisation of these remedies and the knowledge of the domestic authorities to correctly enforce them.

(iv) although there is a growing interest among individuals and civil society organisations to pursue legal avenues in contesting projects that are considered to be harmful for the communities and the environment, there is still a need to encourage and

346 For instance, in August 2024 the available yearly report on the state of the environment in Kosovo* is of 2022, with the report for 2023 yet to be published following an approval by the Parliament.

finance the civil society sector in pursuing strategic litigation endeavours

Access to justice and domestic legal remedies to address environmental concerns are guaranteed by the Constitution and the applicable legislation. Individuals, legal persons, communities, civil society organisations and environmental activists are entitled to bring environmental claims to court and seek judicial protection of these rights, including by suing industrial and corporate actors for damages (material and non-material). Free legal aid may be provided that the applicants meet the criteria set by law. There are different remedies available in administrative, civil and criminal procedures. Their effectiveness has not been adequately tested due to lack of sufficient litigation; but there are good examples showing the interest of some domestic courts to rule in favour of these claims, as well as examples showing the ineffectiveness of these remedies with non-execution of injunctions granted by the courts.

SLAPP strategies have been used by businesses operating hydropower plants in Kosovo*, in an attempt to silence environmental activists. However, such strategies have backfired by making the topic of hydropower plants a theme of public discussion among many domestic and international organisations, including Riverwatch, Amnesty International etc. This has motivated civil society groups to continue the legal battle against various hydropower plants in Kosovo* which led to cases being won and a potentially landmark case being submitted to the Constitutional Court for review. All these endeavours are helping to generate domestic case-law and to put pressure on the decision-making bodies to take the implementation of the legislative framework on the environment and human rights more seriously.

Key national environmental concerns in the national context include: (i) air pollution (exceeding level of pollutants above acceptable standards due to high reliance on lignite coal and burning of solid fuels for heating); (ii) water pollution (untreated sewage, industrial discharge, lack of wastewater treatment facilities), and (iii) deforestation and land degradation (illegal logging and unsustainable use of land resources).

The civic space in Kosovo* is slowly growing. There is an increased number of civil society organisations which focus on environmental causes and an increasing number of environmental activists who organise protests and become involved in judicial contestation of practices that harm the environment. While there are organisations which are involved in long-term strategic litigation on human rights and environment, there is a huge gap to be covered considering the number of environmental issues which remain unchallenged and the large number of industrial and corporate polluters which benefit from the existing climate of impunity.

Recommendations:

(1) **Improve the enforcement of the existing legislation** (such as the Law on Environmental Impact Assessment and the Law on Protection from Air Pollution) and amend the legislation on the protection of the environment, waters and nature - which is considered outdated and not fully in line with international standards

(2) **Strengthen the enforcement of injunctions** by increasing transparency, engaging public oversight, and robustly implementing legal penalties for non-compliance with court injunctions

(3) **Enhance the institutional capacity** of MESPI, Kosovo* Agency for Environmental Protection and the Inspectorate on the Environment at the central and local level, to effectively monitor, enforce and implement environmental laws and regulations, by: (i) fulfilling the number of positions that are planned with internal organograms but are not currently occupied by the required experts; (ii) providing tailored training on applicable laws and regulations; (iii) ensuring better coordination between the central and local institutions which are to ensure environmental inspection/ protection

(4) **Ensure meaningful public participation and transparency** in lawmaking and the decision-making processes related to projects that have a major impact on the environment, by (i) publishing relevant EIA documents in accordance with the law regarding any planned projects, thus enabling quick and easy access to environmental data/plans/projects; (ii) developing online and direct consultation platforms that ensure a smooth and transparent manner of submitting comments; (iii) ensuring that meaningful consultation of all relevant parties has taken place before any decision is taken, by robust implementation of the applicable legislation on public participation and transparency

(5) **Strengthen the capacities of the judiciary and lawyers** in view of improving access to justice by offering tailored trainings on key environmental principles and their application in practice (training on the application of domestic environmental legislation, international treaties/principles on the environment, and the case-law of the ECtHR on environmental matters)

(6) **Strengthen the capacity of the prosecutors** to investigate and indict suspected perpetrators of environmental crimes by providing them with specific case-based training as well as training on key environmental principles and their application in practice

(7) **Promote and support judicial consistency** in the decisions of the judiciary by offering law clerks and judges of all levels specific training on the existing domestic case law regarding environmental human rights cases decided by different basic courts in Kosovo*, including the Court of Appeal and the Supreme Court

(8) **Raise awareness about legal aid** and encourage affected individuals and communities (particularly minorities and vulnerable groups) to seek legal aid in instances when they face environmental harm by informing them of these rights in a proactive manner, by running state-led and NGO led campaigns (social media and in-person) that aim to inform citizens about these rights

(9) **Enact a new anti-SLAPP law or introduce any other anti-SLAPP features in the existing legislation/regulations** as a means of protecting environmental activists from baseless lawsuits that aim to halt their environmental activism and silence them

(10) **Raise the awareness of citizens and the general public** regarding the availability of legal remedies to hold corporate actors/polluters accountable for air, water and land pollution which cause environmental harm and impact the living conditions of humans and animals alike

(11) **Improve the enforcement of recommendations issued by the Ombudsperson** in respect of access to information and other recommendations related to environmental matters dealt by the Ombudsperson

(12) **Improve compliance with environmental laws** by (i) increasing monitoring and surveillance of industrial and other polluters; (ii) empowering regulatory bodies with sufficient authority, budget and resources to conduct inspections and enforce the existing laws; (iii) enforcing penalties for violations and ensuring consistency in enforcement to deter non-compliance and fight impunity

(13) **Support civil society and environmental activists** by providing legal and financial support, enabling them to pursue strategic litigation against big corporations/ polluters, advocacy and independent monitoring of the state of the environment

(14) **Promote environmental and human rights education** in schools and universities

(15) **Organise public awareness campaigns** to inform citizens and businesses about environmental laws, the importance of participating in consultations, the importance of compliance with legal requirements, and the consequences of environmental violations

Montenegro: Baseline study of legislation, policy and practice on human rights and environment

1. Introduction

Montenegro became an independent state after the referendum held on 21 May 2006. In Luxembourg, Montenegro signed the Stabilisation and Association Agreement, which entered into force on 1 May 2010 after ratification by the EU Member States. Following the positive opinion of the European Commission, Montenegro applied for EU membership on 15 December 2008, while negotiations with the EU officially began on 29 June 2012. On 26 June 2024, at the Intergovernmental Conference held in Brussels, Montenegro received a positive report on the fulfilment of the interim benchmarks in the area of the rule of law (IBAR).

In the 2023 Country Report on Montenegro, the European Commission stated that Montenegro had achieved a limited progress in the area in Chapter 27 (Environment and Climate Change). Limited progress was also achieved in further harmonising national legislation with the EU acquis on water, nature protection and climate change. Significant efforts are still needed when it comes to implementation and enforcement, especially in the field of waste management, water and air quality, nature protection and climate change. Montenegro needs to significantly strengthen and speed up its ambitions regarding the green transition. In the coming year, Montenegro should especially: intensify work on implementation and enforcement in order to achieve the final benchmarks in Chapter 27, especially in the areas of water, nature protection, air quality, industrial pollution and climate change; adopt and start implementing the Law on Waste Management and the National Waste Management Plan and Air Quality Management Strategy for the period 2021-2029; finalise, adopt and start implementation of the national energy and climate plan in a transparent manner, in accordance with the EU goal of net zero emissions by 2050 and the Green Agenda for the Western Balkans.[347] The European Commission Progress Report on Montenegro for 2024 contains similar conclusions.[348]

2. Substantive law and practice

2.1. Laws relating to the environmental human rights

The right to a healthy environment is a special branch of law that is characterised by a specific concept of legal regulation, non-standard protection procedures and unique legal entities.[349] In Montenegro, it has a complex internal structure and includes substantive and procedural legal norms regulating its protection.

2.1.1. Environmental/human rights protection in the national constitution

According to the Constitution[350], Montenegro is an ecological state, based on the rule of law.[351] This principle was also contained in the 1992 Constitution of the Republic of Montenegro (Official Gazette of the Republic of Montenegro No. 48/92). The Declaration of Ecological

347 European Commission Progress Report on Montenegro for the year 2023, 8 November 2023, SWD (2023) 694..

348 European Commission Progress Report on Montenegro for the year 2024, 20 October 2024, SWD (2024) 694.

349 Proso, M. (2015), Građanskopravna odgovornost u području zaštite okoliša, Zbornik radova Pravnog fakulteta u Splitu (Civil liability in the area of environmental protection, Proceedings of the Faculty of Law in Split), 52(3), p. 705-712

350 Article 1 of the Constitution of Montenegro (Official Gazette of Montenegro No. 1/2007 and 38/2013).

351 Ibid.

State[352] introduced the term "dignity of nature", demonstrating that the constitutional legislator incorporated the fundamental values proclaimed in the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) into the Constitution of Montenegro, long before Montenegro ratified it. The Constitution of Montenegro guarantees everyone the right to a healthy environment, to timely and complete information about the state of the environment, to the possibility of influencing decision-making on matters relevant for the environment, and to legal protection of these rights. Everyone, especially the State, is required to protect and improve the environment.[353]

2.1.2. Specific pieces of legislation:

Bearing in mind the international legislation and instruments in the area of environmental protection, and in particular the requirements of the Aarhus Convention, Montenegro has adopted a comprehensive legislative framework in this area. The Law on the Environment (LE)[354], as a "*lex specialis*" in the area of environmental protection, regulates the principles, instruments and measures of its protection as well as other matters of significance for the environment.[355] In addition to this law, the protection of certain segments of the environment is regulated by separate laws.[356]

2.1.3. Ratification of international treaties

Montenegro is bound by all universal international treaties on human rights that were binding on the State Union of Serbia and Montenegro, the Federal Republic of Yugoslavia, and the Socialist Federal Republic of Yugoslavia[357], among which are the Convention on Biological Diversity, and its accompanying Cartagena Protocol on Biosafety) as well as the United Nations Convention on the Law of the Sea (UNCLOS). In the area of environmental protection, Montenegro ratified, on 15 July 2009, the Aarhus Convention. In addition, Montenegro was among the first countries to sign the Council of Europe Convention on Access to Official Documents (Tromsø Convention) of 18 June 2009. Other international treaties that have been ratified are the United Nations Framework Convention on Climate Change (2006), Kyoto Protocol to the United Nations Framework Convention on Climate Change (Official Gazette of the Republic of Montenegro No. 17/2007).[358]

By proclaiming the constitutional principle according to which international treaties and generally accepted rules of international law are an integral part of the internal legal order, have primacy over domestic legislation and are directly applied when they regulate relations differently from internal legislation[359], Montenegro adopted the monist legal system. Guaranteeing the right to a healthy environment as one of the human rights for "everyone", the requirements of the Aarhus Convention were transposed into Montenegrin constitutional

352 The Declaration of the Ecological State of Montenegro is a landmark political and environmental document that proclaimed Montenegro an ecological state, adopted and signed by the Parliament of Republic of Montenegro on 20 September 1991.
353 Article 23 of the Constitution of Montenegro.
354 Official Gazette of Montenegro No. 73/19.
355 Article 1 of the LE
356 Article 6 of the LE. For other laws that were adopted depending on the segments of environmental protection, in accordance with this Article, see Annex (2.1.2.)
357 After the declaration of independence, Montenegro sent a statement on the succession of the international treaties to the United Nations. The SFRY had already ratified all the most important universal international treaties on human rights including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights.
358 For the other international agreements on environmental protection that have been ratified by Montenegro, see Annex (2.1.3.)
359 Article 9 of the Constitution of Montenegro.

system and Montenegro guaranteed more rights than guaranteed by the ECHR.[360]

2.2. How the law on human rights and the environment is applied in practice

2.2.1. An analysis of the effectiveness of constitutional provisions

For the protection of the environment in its substantive aspect, various types of proceedings may be initiated before the competent state authorities in Montenegro – administrative, civil, criminal, misdemeanour, commercial proceedings, and finally proceedings before the Constitutional Court. Each of them has its own rules regarding *locus standi* which are not regulated in the same way. The environmental protection procedure is not prescribed as a specific and homogeneous procedure in the Montenegrin regulations. Namely, the Law on environment (LE) prescribes the right to initiate proceedings procedure for reviewing decisions made in the field of environmental protection, and the right to file a lawsuit with the competent court in accordance with "*special regulations*", though these regulations and laws are not explicitly specified and depend on the specific right to be protected.[361]

Since the Constitution guarantees the right to a healthy environment, it is possible to distinguish between several legal protection instruments based on whether the protection of this right is sought directly, or if the violation of another right protected by the Constitution and the ECHR, threatened by environmental disturbance, is being addressed. The challenge lies in choosing a priority instrument for prevention before there is a need for remediation and reintegration and, consequently, compensation for the resulting damage, bearing in mind in particular the unclear concept of *"locus standi*" of the holders of the right to file a lawsuit with the competent court.

Unlike the previous LE, which prescribed the legal rules for protecting the substantive aspect of the right to a healthy environment both in the case of violation of the right as such, and in the case when a natural or legal person suffered damage due to environmental degradation, the new law and Law on Liability for Environmental Damage do not contain these provisions. Omitting these norms in the new law created legal uncertainty, ambiguity, and unpredictability regarding the interpretation of available legal remedies for citizens seeking environmental protection, and whether such protection is even guaranteed. This is especially true considering that the Law on Liability for Environmental Damage explicitly states that natural and legal persons cannot, in accordance with the provisions of this law, exercise the right to compensation due to environmental damage or imminent threat of such damage. In addition, this law does not contain a provision that refers to the application of any other law that could be used to protect the substantive aspect of the right to the environment.

An analysis of the normative framework, and the lack of case law regarding the substantive aspect of environmental protection, has raised several important questions. Primarily, whether the right to a healthy environment, which is guaranteed as such by the Constitution of Montenegro, has been established in the Montenegrin legislative system and has taken root in practice; who the holder of that right is; what are the proceedings to protect it, and whether compensation for damages resulting from the violation of the right to a healthy environment can be considered as separate grounds ("*pure ecological damage*") in relation to compensation for damage arising from the violation of another right threatened by the environmental disturbances. These questions are addressed in the following sections, with a recommendation to consider adopting guidance to address gaps in this area.

360 Montenegro ratified the ECHR on 26 December 2003, which entered into force in respect of Montenegro on 4 March 2004. ECHR does not guarantee the right to the environment as such but examines potential violations of other rights which it guarantees, which may be directly violated or threatened by various factors related to the environment.

361 Article 73 of the LE.

2.2.2. Judicial practice and decisions

Courts do not keep special records of proceedings related to environmental protection. Cases in which the courts decided on lawsuits for damages against the State, state-owned enterprises and legal entities were almost always about the occurrence of ordinary damage or loss of profit from property as a result of environmental pollution caused by action or omission. The courts do not refer to the relevant decisions of the ECtHR, the international standards established regarding this matter, nor to the Aarhus Convention.[362]

According to information from the Protector of Property Legal Interests of Montenegro, there is currently only one proceeding before the court in which the plaintiff filed a lawsuit against the State for violation of the right to a healthy environment itself, as well as the right to family and private life which is violated due to unbearable air pollution, especially between October and April, during the household heating season. The plaintiff cited air pollution from suspended particles as the main reason for his civil claim. It is the first proceedings that has been initiated explicitly for the violation of the right to a healthy environment (violation of the positive obligation of the State to ensure this right) and for another right protected by the Constitution and the ECHR.

In another case the Supreme Court of Montenegro upheld lower-level judgments which rejected the plaintiffs' claim for material damage, due to the reduced market price of the land they owned, as a result of pollution from the "KAP red sludge basin"[363], deeming it ill-founded.[364] Although the plaintiff referred to continuous polluting activity that is still ongoing, and recognised as an "environmental black spot", the courts rejected the claim for damages against the polluter, considering that it had become time-barred. In respect of the State, as the second defendant, the Supreme Court rejected the plaintiff's claim very briefly as unfounded, stating that the State was undertaking adequate measures and activities through its authorities to ensure environmental protection. The Supreme Court did not refer to the relevant provisions of the Constitution, international conventions, international standards on human rights, in particular those concerning the right to property and the right to private and family life (although they were raised by the plaintiffs), or the practice of international institutions that supervise their implementation, and the specific provisions of the LE that was in force at the time.[365] The KAP red sludge basin is still an environmental black spot.[366]

The practice of protecting this vital right has not been fully established. In that respect, the trainings for representatives of the judiciary and the Constitutional court should be considered, focusing on adequate and timely identification of issues and disputes concerning the protection of all segments of the environment, as well as environmental human rights and application of international standards at the national level. Particular focus should be given to recognition of the positive and negative obligations of the State in accordance with the principle of subsidiarity in relation to international conventions, as well as implementation of their standards.

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362 As an illustrative example, the judgment of the High Court in Podgorica, Gž.br.3871/21-15 of 13 June 2023. For more detail, see Annex (2.2.2.), since the decision was not published at sudovi.me

363 KAP was an aluminium factory. Red sludge is a highly alkaline colloidal suspension, remaining after the processing of bauxite into alumina according to the Bayer process. It is a by-product that occurs during the processing of bauxite to obtain aluminum. It can contain various toxic elements, so its disposal is problematic. Also, due to the way bauxite is processed, the residual red sludge usually contains large amounts of particles smaller than one micrometer (information available on https://www.irb.hr/Novosti/Nove-spoznaje-o-ekotoksicnosti-crvenog-mulja)

364 The decision is available at https://sudovi.me/vrhs/odluka/341870.

365 The explanation of court decisions is mainly reduced to the interpretation and application of classic obligation law with regard to rules on compensation for damage, not recognising not only the right to the environment as such, but also other rights that may be threatened by environmental pollution. The Constitutional court, while deciding upon the constitutional claim, upheld such a decision of the Supreme court without explanation whether there was a breach of the right to a healthy environment or right to a private life, which rights were invoked in the constitutional complaint.

366 For more details, see Annex (Section 4).

2.2.3. Alternative Dispute Resolution Mechanism

According to the rules of the Law on Civil Procedure[367], the court is obliged to direct the parties to an initial mediation meeting by a specific order, if one of the parties is the State, the capital, or a municipality.[368] However, mediation is a voluntary process.[369] There is no information that mediation procedures have been implemented in environmental protection disputes.[370]

3. Environmental Procedural Law and Practice

3.1. Environmental rights of information and participation

3.1.1. Access to environmental information

Timely and complete access to information is very often a prerequisite to exercise the substantive right to the environment. That is why the right to access information in the field of the environment cannot be viewed in isolation from the right to subsequently initiate certain proceedings to review decisions before the competent authorities, or court, in order to protect the substantive aspect of this right. Informing the public about the environment, the participation of the public and the right to legal protection are regulated by the LE. Thus, this law clearly prescribes which information about the environment has to be published as well as the way in which that information is published (through electronic databases or through the media). The Environmental Protection Agency is obliged to inform the public, and in particular, to provide information without delay via electronic media or in other appropriate means, about situations of immediate danger to human health and/or the environment. The same obligation exists where the prescribed limit values of emissions in the environment are breached. In addition to the Agency, the polluter also has the obligation to inform the public in such a situation.[371] The Environmental Protection Agency regularly publishes information on its website[372] regarding decisions on certain requests, but not information showing whether appeals have been lodged against these decisions or their outcome. Decisions are only sporadically published when announcements are made regarding matters of public interest.[373]

The LE states that access to information on the environment is provided in accordance with this law and the law regulating free access to information. Access to information in this area is provided on the basis of a request submitted to the state administration authority and the local administration authority. The request does not have to include reasons for requesting information and must be decided upon within 15 days from the date of the submission of the request. An appeal may be lodged with the competent authority against a decision denying a request for access to information about the environment. A request for access to information about the environment may not be denied if that request refers to emissions of polluting substances into the environment.[374]

The Law on Free Access to Information outlines how requests for information should be submitted. The authority holding the requested information is responsible for deciding on

367 Official Gazette of Montenegro No. 047/08 of 7 August 2008, 004/11 of 18 January 2011, 022/17.
368 Article 329 para.4 Law on Civil Procedure.
369 Article 10 of the Law on Alternative Dispute Resolution - parties participate voluntarily in the mediation process.
370 Information obtained from the director of the Agency for Alternative Dispute Resolution.
371 Article 67 and 68 LE.
372 https://epa.org.me/obavjestenje-odgovornost/
373 See website https://epa.org.me/2024/08/06/saopstenje-za-javnost-27/
374 Articles 66, 69 and 70 of the LE.

these requests.[375] If someone submits a request for access to or reuse of information, they, along with other interested parties, have the right to seek judicial protection under the law governing administrative disputes. Legal proceedings related to such requests are treated as urgent.[376] However, the law does not apply to data classified as secret under laws on classified information. In such cases, a court can review whether the authority correctly marked the information as secret, following the rules on data secrecy.[377]

In addition to the above, the Law on Environmental Impact Assessment[378] provides that the competent authority is obliged to provide access to documentation related to the conducted procedure of environmental impact assessment (EIA) upon request, except for documents marked as confidential under the law. As above, the information must be provided within 15 days of receiving the request. Documentation related to emissions of harmful substances, accident risks, monitoring results and inspection control cannot be marked as confidential or restricted.[379] In general , the provisions of the LE and the Law on Free Access to Information, as well as other laws for special areas of the environment, provide appropriate legal and judicial protection for timely access to information, in particular in the case of denial of access to information.

However, based on a detailed analysis and comparison of the provisions of environmental laws, and laws that are complementary to the special and general laws in this area, it can be concluded that certain issues are not fully harmonised, and it is left to practice to define certain terms, such as the determination of the persons affected or expected to be affected by decision-making in environmental proceedings; whether in the case of environmental information, everyone has the right to information[380], or only the interested party[381], and within that, whether only NGOs that are engaged in environmental protection or NGOs engaged in the protection of human rights, are “interested parties”. The available domestic case law indicates that, alongside those who are directly affected by the decisions (that have a strong and direct interest, such as citizens, residents, local communities), NGOs dealing with environmental protection can also lodge appeals as interested parties.

Further, when the competent body states that it does not possess the information requested based on the Law on Free Access to Information, it is unclear what procedure should be followed, especially given the fact that there is no available case-law addressing this issue.[382]

Further, the existing normative framework faces challenges in application and practice, in particular concerning access to information classified with a certain level of secrecy. There are differences in the scope, form and manner in which the competent courts (Administrative and Supreme Courts of Montenegro, and then the Constitutional Court) are authorised to review a decision denying a request for free access to information marked with a certain secrecy level (confidential, top secret, secret and internal). This arises from the drafting of the various laws in this area which are inconsistent and sometimes even contradictory.

It is also notable that the Administrative and Supreme Courts of Montenegro, quite often, do not apply the proportionality test when reviewing the decisions of competent administrative bodies regarding requests for access to information marked with a certain level of secrecy

375 Article 25 of the Law on Free Access to Information.
376 Article 44 of the Law on Free Access to Information.
377 Article 1 para. 2 indent 2 of the Law on Free Access to Information and Article 44 of the Law on Free Access to Information.
378 Official Gazette of Montenegro No. 40/2011 – other laws, 59/2011 and 52/2016.
379 Article 31 of the Law on Environmental Impact Assessment.
380 In accordance with the rules of the Law on Free Access to Information.
381 In accordance with the rules of the LE.
382 The Law on free access to information only in the part of the authority of the Agency for the Protection of Personal Data prescribes that the Council of Agency, in order to resolve complaints and exercise supervision over the legality of administrative acts in response to requests for access to information, has the right to demand that the inspection, which is responsible for controlling office operations, determine whether the authority possesses the requested information (Article 40).

(even though it is, for example, marked with the lowest level of secrecy "INTERNAL"). In particular, the proportionality test is not applied when balancing the secrecy of information against the right to freedom of expression and the public's right to be informed as imposed by numerous ECtHR decisions (see further details below in the section concerning the jurisdiction of the Constitutional Court).

The Constitutional Court has considered the proportionality test in a case concerning interference with NGO access to information for the protection of human rights. This concerned the denial of requests for free access to documents related to Montenegro's largest strategic project – the construction of the Bar-Boljari highway – where the majority of the documentation is marked with the level of secrecy "INTERNAL".[383] The Constitutional court mostly rejected such constitutional complains as unfounded by majority of votes. The above underscores the need for regular trainings of representatives of competent authorities who decide upon requests for free access to information, and representatives of the judiciary as well as the Constitutional Court, especially with regard to the implementation of the standards of the ECHR.

3.1.2. Right of Assembly and Protest

Article 52 of the Constitution of Montenegro protects the right to freedom of assembly And Montenegro has also adopted a law on public gatherings and events.[384] There is no particular law protecting the rights of assembly and protest for environmental human rights defenders. Peaceful gatherings and protests aimed at protecting the environment are recognised as key activities of the NGO sector and civil society in this field. However, there have been cases where individuals were denied their right to freedom of assembly during public protest.

Beyond restrictions on peaceful gatherings, the chilling effect on civil society extends to other environmental activities, hindering broader efforts to safeguard the environment.[385]

3.2. Rights of Access to Justice, Remedies and their effectiveness

3.2.1. Access to justice

The LE authorises the interested public to initiate review proceedings of decisions made by public authorities, as well as to lodge an appeal against decisions of the authority for environmental protection affairs and filing a lawsuit in accordance with special regulations.

Regarding "*locus standi*" or the "*right to appear in the court*", in disputes concerning protection of the substantive aspect of environmental human rights, seeking compensation, the provisions of the Law on Civil Procedure are applied. Any natural person or legal entity that has suffered certain damage as a result of environmental pollution may initiate these types of proceedings.[386]

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383 Among many others, see Decision https://www.ustavnisud.me/ustavnisud/skladiste/blog_8/objava_78/fajlovi/U_III%20br%20391_21.pdf, and the Separate Opinion with the Decision https://www.ustavnisud.me/ustavnisud/skladiste/blog_8/objava_78/fajlovi/U_III%20br%20391_21%20IZDVOJENO%20RAZLI%C4%8CITO%20MI%C5%A0LJENJE%20SUDIJA%20SNE%C5%BDANA%20ARMENKO.pdf. For the contrary, see the Decision of the Constitutional Court of Montenegro, available at https://www.ustavnisud.me/ustavnisud/skladiste/blog_8/objava_78/fajlovi/U_III%20br%202109_19.pdf

384 "Official Gazette of Montenegro", no. 052/16 of 9 August 2016

385 Information available on https://www.vijesti.me/vijesti/drustvo/567148/bajceta-mitrovic-i-pajevic-nisu-pocinili-ni-jedno-krivicno-djelo-tokom-performansa-na-zabljaku. For more information, see Annex (Section 3.1.) which includes selected aspects of the interview conducted for the purposes of this analysis with the Executive Director of NGO Ecological Association Breznica.

386 Article 76 paras. 1, 2 and 3 of the Law on Civil Procedure (Official Gazette of the Republic of Montenegro No. 22/2004, 28/2005 – decision of the CC and 76/2006 and Official Gazette of Montenegro No. 47/2015 – other laws, 48/2015, …, 34/2019, 42/2019 - corr. and 76/2020).

However, the above article of the Law on Civil Procedure also allows a lawsuit to be filed by the "*interested public*", which has the right to initiate proceedings according to the LE as a special regulation (Article 73 of the Law). Ambiguity in the application of "*locus standi*", can arise from the different definition within LE of who has the "*right of access to justice*". This issue has not yet been considered or interpreted by the courts.[387]

There is no information indicating that courts have dealt with the issue of confirming the right to sue for "interested persons" in these proceedings. Additionally, the term "interested public" and the extent to which they are supposed to be affected has not been defined, other than those whose other rights are directly impacted by the possible environmental disturbance and pollution. There are inconsistences relating to the issue *locus standi* in environmental procedural law and practice. The right to free access to information according to the Law on Free Access to Information covers everyone and there is no requirement to state the reasons why the information is needed. On the other hand, the right to initiate proceedings for reviewing decisions, lodging appeals and initiating the procedure under the LE, belongs to an "interested person". This indicates that a restriction is introduced for initiating proceedings and reviewing decisions in the field of environmental protection for those persons who previously received the information under the Law on Free Access to Information.

There is no information and available case law indicating that groups of citizens, local residents or NGOs dealing with environmental protection have filed lawsuits for the protection of the right to a healthy environment before civil courts. As the reason for insufficient activity and proactive action in this matter, certain representatives of NGOs, cite unclear rules and unpredictable interpretations of administrative bodies and courts regarding recognition of the right to sue in civil and administrative proceedings, the possibility of bearing the costs of the proceedings if they lose the dispute[388], the complexity of the evidentiary procedure and thus the unpredictability of the outcome itself, in particular since the information they receive in accordance with free access to information is often scarce, incomplete, and sometimes late. All of this discourages members of the "interested public" from conducting proceedings to protect the substantive aspect of this right.[389]

3.2.2. Access to remedies and their effectiveness in practice

Civil remedies: Environmental rights are protected through civil law in civil proceedings, where individuals or entities can seek redress by applying through civil law in civil proceedings by the Law in Civil Procedure.

Classic form of compensation for damages

According to the general principles of liability, whoever causes damage to another is required to compensate it, unless it is proven that the damage occurred through no fault of his own (known as subjective liability or liability based on fault). In addition to subjective liability, there is also objective liability, where one is responsible for damage caused by things or activities that produce an increased risk of damage to the environment, regardless of fault. Objective liability is more often used as grounds for compensation for damage caused by disturbance or threat to the environment.

The State may also be responsible for damage caused by its authority to a third party in the

387 Thus, one of the principles on which the LE is based is the principle of "*protection of the right to a healthy environment and access to justice"*, defining it as follows: "*citizens or groups of citizens, their associations, professional or other organisations, have the opportunity to influence decision-making on issues of importance for the environment and legal protection with competent authorities and before the court* (Article 5 item 13 of the LE). On the other hand, Article 73 of the same Law recognizes the right to initiate proceedings "only" to the interested public, defining it as "*the public that is affected or expected to be affected by decision-making in environmental matters, including non-governmental organizations engaged in environment protection (*Article 7 item 42 of the LE*).*

388 See Annex (3.2.1. Subsection 1).

389 See Annex (3.2.1. Subsection 2).

exercise or in connection with the exercise of its duties.[390]

Furthermore, according to the rules of the Law on Obligations, *"every interested person has the right to file a lawsuit for nullity of contracts"*, "*if they are contrary to compulsory regulations or society's morals"*, and such right *"is not subject to the statute of limitations"*.[391] Therefore, *"interested person*" in this type of proceedings is a legal standard, the existence of which is examined by the court in each specific case.[392]

The adoption of the Law on Liability for Environmental Damage established the state-operator (polluter) relationship. It regulates the method and procedure for determining liability for damage to the environment, and the application of preventive and remedial measures to prevent and rectify damage to the environment (Article 1). Legal and natural persons who, by carrying out their activities, cause damage or immediate risk of damage to the environment, are liable for the damage and are required to implement measures for prevention and remediation in accordance with this Law (Article 2). The "polluter pays principle" of compensation for damage in the environment was introduced, where the damage is compensated by implementing preventive and remedial measures (which can be primary, complementary and compensatory) (Article 3 and Article 21 of the Law).

Due to the lack of case law or court interpretation, it cannot be concluded whether the adoption of this law precludes the possibility of the State conducting a special civil proceeding for damages against the person who caused environmental damage, or whether the adoption of this law recognised the State as the exclusive holder of the right to protect healthy environment.[393]

Special litigation due to "environmental damage" or "environmentally significant litigation" – or "request to eliminate threat"

Another legal remedy available in the field of environmental protection, incorporated in Article 150 of the Law on Obligations, allows "*everyone"* to demand from another to remove a source of danger that threatens to cause significant damage to him or an unspecified number of persons, and to refrain from an activity that results in disturbance or the risk of damage, should the ensuing disturbance or loss be impossible to prevent by adequate measures. Paragraph 2 of the same article provides that the court will order**,** *"at the request of an interested person"***,** appropriate measures to be taken to prevent the occurrence of damage or disturbance or to remove the source of danger, at the expense of the owner of the source of danger, if he fails to do so himself. Paragraph 3 limits the liability for damage that occurred in the course of an activity of general interest.[394]

It can be concluded that the legislator introduces in this norm the so-called "*actio popularis*" guaranteeing everyone the right to demand the removal of a source of danger that threatens them (thus implying direct interest) and an indefinite number of persons (which indicates *actio popularis*). Although the ECtHR characterised this legal remedy as legal grounds for "environmental damage" due to the violation of the right to property[395], in the national framework, one can rather speak of "*environmental civil public litigation*" or a possible "*collective suit*". However, this concept is very contradictory in terms of predictability

390 Article 166 para. 1 of the Law on Obligations.
391 Articles 107, 101 and 108 of the Law on Obligations.
392 This raises the question whether the court will accept the definition of the term "*interested public*" used by the LE or assess the existence of a specific legal and strong (sufficient) interest for litigation in each specific case.
393 With the adoption of this law, the provisions concerning the right of everyone to claim compensation for damage based on violation of the right to a healthy environment and that it is exercised according to the rules of the Law on Obligations are no longer in effect. If this right is denied to natural and legal persons, it is not clear whether the State has now become the universal and sole successor of the holder of the right to protection of a healthy environment as such.
394 Article 150 of the Law on Obligations.
395 In the case of *Cokarić v. Croatia*, application no. 3321/1, of 19 January 2006, this remedy was accepted as legal grounds for compensation for "environmental damage due to the possible drop in value of property" and it is related to the applicant's direct personal interest and right protected by the Convention.

and clarity. Namely, although in the first paragraph this right is guaranteed to "everyone", the following paragraph stipulates that the court will, at the request of an "interested person" (so not "everyone"), order the removal of the source of danger, which shows the inconsistency of the legal norm itself. Practice has not eliminated this legal contradiction.

In addition, the norm in itself is not clear as to whether the prerequisite for filing a lawsuit is taking of other appropriate measures to prevent the occurrence of disturbance or damage in another procedure, and if so what those measures and actions would be. Since this norm had been part of the Law on Obligations long before the adoption of the Law on Liability for Environmental Damage and is not harmonised with it, it is unclear how courts will interpret it in legal proceedings and whether failure to use the instruments prescribed by that procedure will be a reason for rejecting the claim as premature.[396] Furthermore, paragraph 3 of the same article limits liability for damage that occurred in the course of an activity of general interest, for which a permit was obtained from the competent authority. It is provided that in that case only compensation for damage that exceeds normal limits may be claimed. It is unclear whether it is previously necessary that "*everyone*" who, according to the LE, must be an "interested person" initiates the proceedings to contest those decisions, and, related to that, according to which criteria the assessment of damage "*that exceeds normal limits*" is made. Therefore, in these proceedings, the question may be asked as to the legality of a particular administrative act or administrative activity.[397]

Therefore, the legal definition of "everyone" referred to in paragraph 1 of this article does not correspond to its further content and its application seems unpredictable.

Property rights

One of the means of legal protection in the event of a violation of the right to property due to pollution of nature is the *actio negatoria,* which demands the cessation of unjustified disturbance, or the removal of the resulting nuisance.[398] Another legal means of protection available is the right to file a lawsuit for the protection of the so-called "neighbour's right" (lawsuit for protection against harmful effects of emissions).[399]

In practice this remedy has been employed in the ongoing proceedings before the Court of First Instance in Podgorica where the State of Montenegro sued a private company for interfering with property rights – *actio negatoria*, stating that such an interference had caused environmental degradation. The State did not seek compensation for damages due to the violation of the substantive right to the environment, nor did it refer to any previously undertaken measures under the Law on Liability for Environmental Damage, which is a *lex specialis* for proceedings to determine damages. In the complaint, the State did not refer to the standards and practice of the ECtHR, nor to international conventions. The State's request for interim measures was granted but was then partially overturned by the second-instance decision (see further details in the section concerning the proceedings before the Constitutional Court).

Administrative proceedings: Legal protection of the right of citizens to participate in decision-making is ensured in the administrative procedure, where various decisions of competent

396 Article 332 para. 3 of the Law on Civil Procedure "*If the action that is the subject of the claim has not reached the conclusion of the main hearing, the court shall reject the claim as premature*.".

397 The Law on Civil Procedure recognizes the so-called "preliminary question" (Article 212 para. 1 item in conjunction with Article 14) which may imply the prior conduct of administrative proceedings and administrative disputes. On the other hand, in a situation where an administrative proceeding, or an administrative dispute is initiated, the public law body in the administrative proceeding and the Administrative Court have the authority to refer the party to a civil proceeding for damages (Article 142 of the Law on Administrative Procedure and Article 35 para. 2 of the Law on Administrative Dispute).

398 Article 126 of the Law on Property Legal Relations (Official Gazette of Montenegro No. 19/2009).

399 Article 266 of the Law on Property Legal Relations (it recognises the right to sue of the owners of immovable property exposed to excessive emissions allowing them to demand from the owner of the immovable property from which these originate to eliminate the causes of these emissions and compensate for the damage they caused, and to refrain from the activities on their immovable property in the future that caused the excessive emissions, until all measures for their prevention are undertaken).

authorities can be contested, in accordance with the Law on Administrative Proceedings.[400] Montenegro has adopted many special environmental regulations, determined by subject matter on each of the regulations contains special decision-making rules. In some laws, the provision referring to the corresponding application of the Administrative Procedure Law for matters not regulated by those laws has been removed.[401] One could consider that this cannot preclude the right to initiate a review procedure and appeal against decisions adopted in environmental protection proceedings in accordance with the Article 4 of the Administrative Procedure Law.[402]

The Law on Environmental Impact Assessment provides that an appeal may be lodged with the competent ministry against the decision of the Environmental Protection Agency in all three stages of the procedure (on the need for an impact assessment, determining the scope and content of the study, and giving approval to the studies). In addition, an appeal against the decisions of local government bodies may be brought before a chief administrator.[403] An administrative dispute may be initiated against a second-instance administrative or other act, meaning a decision made during an appeal review, or against a first-instance administrative or other act when appealed is not permitted. The law also provides for the initiation of an administrative dispute in the event of "silence of the administration".

An administrative dispute may be initiated with a lawsuit[404], where the court has the right to assess whether the administrative authority has properly marked requested data as confidential in accordance with the law governing data secrecy.[405]

It is important to point out that the Law on Liability for Environmental Damage prescribes the procedure for determining environmental damage, which is carried out by the Environmental Protection Agency (Article 9 paragraph 1). The procedure is initiated *ex officio* or at the request of the interested public, while any person who becomes aware that there has been damage to the environment or that there is an immediate risk of damage to the environment is required to immediately notify the administrative authority and its competent inspectorate (paragraphs 2 and 3 of the same article). However, since earlier provisions which referred to the corresponding application of the Administrative Procedure Law for matters not specifically regulated by this law (former Article 37 of the Law) have been deleted. It remains unclear whether interested parties have the right to appeal against decisions made e under this law. This is particularly relevant given that the administrative authority is required to notify, *inter alia*, the applicant about the initiation of the procedure or the rejection of the request with an explanation, within five days from the day of initiation of the procedure for determining damages.[406]

Criminal and misdemeanour proceedings*:* Depending on the qualification of the criminal offence in question, criminal prosecution may be undertaken by a private plaintiff or may be initiated *ex officio* for the commission of a criminal offence against the environment and spatial planning[407], for which fines and prison terms are prescribed depending on the legal nature and gravity of the offence. Each of the special laws in the field of the environment prescribes the rules for monitoring the implementation of the law in accordance with the Law on Inspection Control, the powers of inspectors, and punitive (misdemeanour) provisions that

400 Official Gazette of Montenegro No. 56/2014, 20/2015, 40/2016 and 37/2017.

401 Article 26 of the Law on Strategic Environmental Impact Assessment, which referred to the application of the Administrative Procedure Law, was deleted, as was Article 37 of the Law on Liability for Environmental Damage. In these laws, it is now not explicitly prescribed whether the interested public has the right to lodge an appeal against certain decisions made in those proceedings.

402 It prescribes that the provisions of special laws which, due to the specific character of administrative matters in certain administrative areas, prescribe necessary deviations from the rules of administrative procedure, cannot (...) reduce the level of protection of the rights and legal interests of the parties prescribed by this law.

403 Articles 13 and 14 of the Environmental Impact Assessment Law.

404 Article 34 para. 2 of the Law on Free Access to Information.

405 Article 44 of the Law on Free Access to Information.

406 See op.ct. 4 Administrative Procedure Law.

407 Chapter XXV – criminal offenses against the environment and spatial planning (Articles 303-326c).

are either fines and/or protective measures banning the conduct of activities.[408]

According to statistical data in 2023, judicial practice in the area of criminal liability for damage to the environment is still insufficiently developed. The number of reported individuals for crimes against the environment decreased by 2.59%, or 385 reports (395 persons in 2022, 312 persons in 2021, 376 persons in 2020, 303 persons in 2019). Most of the criminal reports are related to the criminal offence of deforestation (96 persons), the criminal offence of illegal fishing (17 persons), the criminal offence of illegal construction of buildings (226 persons). The majority of the criminal charges were dismissed by the State Prosecutor's Office, while through the application of the principle of deferred criminal prosecution, the state prosecutors resolved 20 cases.[409]

Proceedings before the Constitutional Court: In the normative jurisdiction proceedings (assessment of the constitutionality and legality of laws and other general acts), the initiative to initiate the proceedings for the assessment of the conformity of laws with the Constitution and ratified and published international treaties, or other regulations and general acts with the Constitution and the law, may be submitted by any natural or legal person, as well as an organisation, settlement, group of persons and other forms of organisation that do not have the status of a legal entity, that do not need to have a direct legal interest in submitting the initiative.[410] The Constitutional Court, has quashed or annulled acts solely on the basis of procedural non-compliance during the adoption of the law or general act, such as failures related to public discussion, public participation, and similar requirements. However, even in those decisions, the Constitutional Court did not refer to the requirements of international conventions (ECHR and Aarhus Convention) and to the standards established by their application.

The Law of the Constitutional Court stipulates that anyone whose right has been violated by a final or enforceable individual act, adopted on the basis of a law or other regulation or a general act that was found by a decision of the Constitutional Court to be inconsistent with the Constitution, ratified and published international treaties or the law, has the right to ask the competent authority to alter that individual act, if that alteration does not affect the rights of conscientious third parties.[411] In the practice of the Constitutional Court, constitutional complaints appear sporadically due to the violation of certain rights guaranteed by the Constitution and the Convention related to environmental protection, but there are no specific decisions of the Constitutional Court based on either substantive or procedural aspects of the right to environment, i.e. that right was not specifically addressed, and constitutional complaints were mainly examined from the aspect of possible violation of the right to a fair trial referred to in Article 32 of the Constitution and Article 6 of the ECHR.[412] The Constitutional Court did not deal specifically with the "*locus standi*" for filing a constitutional complaint for environmental protection, since only the person *whose right has been violated* can file a constitutional complaint. The Constitutional Court rejected the complaint of the State of Montenegro, represented by the Protector of Property Legal Interests, filed against a lower

408 For example, Articles 38-42 of the Law on Liability for Environmental Damage; Articles 32-37 of the Law on Environmental Impact Assessment; Articles 114-120 of the Law on Nature Protection.

409 There are no information about the reasons for the prosecution's decision, since the same are in the reference source, as such, taken from https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/183/3341-19105-00-72-24-7.pdf. Other data are taken from "Shadow Report for Chapter 27 – Environment and Climate Change", p. 19. Available at https://www.greenhome.co.me/wp-content/uploads/2020/07/ONLINE_Izvjestaj-iz-sjenke-2024-MNE_pages_compressed-1.pdf. For more details, see Annex I).

410 For more detail, see Articles 54, 55, 56 and 67 of the Law on the Constitutional Court (Official Gazette of Montenegro No. 11/05).

411 Article 68 of the Law on the Constitutional Court of Montenegro.

412 The exception is the case described in the Annex (3.2.2., Subsection 2), in which, analysing the violation of the right to a healthy environment guaranteed by Article 23 of the Constitution, the Constitutional Court stated that this constitutional provision is of a "declaratory nature"). See also Decision of the Constitutional Court, U-III no. 1501/19 of 30 June 2023. Available at https://www.ustavnisud.me/ustavnisud/skladiste/blog_8/objava_109/fajlovi/U_III%20br%201501_19.pdf

court decision to partially grant an interim measure to address property protection and prevent environmental harm, considering that it is a procedural act that does not enjoy constitutional court protection.[413]

4. Key environmental concerns in the national context

In the field of environmental protection, Montenegro faces key problems such as space management, air and water pollution and destruction of natural resources through exploitation and unsustainable use. In addition to the above, Montenegro still faces the problem of unremedied ecological black spots. In this regard, it is necessary to emphasise that there is no exact publicly available information about all environmental accidents or key national concerns in Montenegro, including their previous history and current situation. In Montenegro, until recently, there were officially four environmental black spots representing hazardous industrial waste dumps[414]: the Aluminium Plant Podgorica (two red sludge pools and a solid waste landfill), Bijela Adriatic Shipyard (Jadransko brodogradilište Bijela) (grit and contaminated soil), Pljevlja Thermal Power Plant (Maljevac ash and slag landfill), and "Šuplja stijena" mine (Gradac tailings dump).[415] Therefore, it is clear that these do not cover all areas of environmental harm.[416]

5. Concluding summary and recommendations

▸ The legal path for the protection of environmental human rights and the substantive right to a healthy environment is neither clearly defined nor predictable. It remains uncertain whether a breach of the right to a healthy environment alone constitutes grounds for initiating proceedings to obtain compensation for damage, or if an administrative proceeding must first be conducted. Additionally, it is not clear who holds the right to initiate such proceedings and potentially claim compensation A special challenge is the definition of "significant damage" in environmental protection proceedings, which is a legal standard that has not yet been quantified or clarified. The practice has not shaped the rules, standards or benchmarks according to which it is evaluated when this matter comes up before the courts.

▸ International standards are inadequately applied when determining violation, liability, compensation and the amount of damage related to environmental harm. The courts, including the Constitutional Court, do not refer to or analyse the case-law of the ECtHR or the European Court of Justice and the environmental standards that these have established in their decisions (in the proceedings before the Constitutional Court, the application of the proportionality test was not observed).

▸ There is no specific legal regime for proceedings regarding the protection of the environment and the costs rules in these proceedings are not distinct from those in other areas.

▸ NGOs and the interested public face numerous challenges in engaging with environmental issues, including incomplete information, the difficulty in challenging disclosure of data

413 For more details of the explanation, see Annex (3.2.2., Subsection 3).

414 Information of the Ministry of Sustainable Development and Tourism of Montenegro, accessed at https://wapi.gov.me/download-preview/00e4650f-25a0-43c6-a754-de61a1820ab3?version=1.0,

415 In this regard, on 10 October 2014, Montenegro signed a Loan Agreement for the implementation of the "Industrial Waste Management and Cleanup Project" with the International Bank for Reconstruction and Development (IBRD). The value of the loan, under which the funds could be withdrawn until 30 June 2019, was €50 million. The project had 2 objectives: 1) remediation of locations where hazardous industrial waste landfills are located, namely: Aluminium Plant Podgorica (2 red sludge pools and a solid waste landfill), Adriatic Shipyard Bijela (grit and contaminated soil), Pljevlja Thermal Power Plant (Maljevac ash and slag dump) and "Šuplja stijena" mine (Gradac tailings dump), and 2) support for the construction of a system for the management of future hazardous waste at the national level. In this analysis we tried to present every environmental black spot or major environmental incident, with the available data, through a legal prism, in terms of a legal epilogue.

416 See Annex (Section 4).

identified as “secret”, the inability to obtain requested data due to the authorities not having it in their possession, lack of response from the Government and administrative bodies, prolonged proceedings before the Administrative Court, the Supreme Court and the Constitutional Court, as well as the failure of these bodies to apply the proportionality test. This has a “chilling” or deterrent effect on NGOs and interested members of the public.

Recommendations

- A comprehensive review, analysis, revision and harmonisation, either normatively or by interpretation in practice, of all laws that regulate individual aspects of the environment is needed. In this regard, the possibility of codifying of the area of environmental protection should be considered – addressing both substantive and procedural aspects, with clear rules regarding *locus standi*, grounds of liability, instruments of protection, both in the case of prevention, remediation, and in the case of compensation. This could include integrating environmental protection as a separate area within the Civil Code, which is currently under codification).

- Consider amending the Law on civil procedures relating to environmental cases to ensure that each party bears its own costs, or the costs are assessed according to the principle of fairness with clearly defined criteria by which the courts assess what is fair

- Consider the implementation of trainings for the judiciary and the Constitutional court as well as lawyers and members of public (including relevant NGO’s dealing with environmental rights) for adequate and timely identification of issues and disputes concerning the protection of all segments of the environment as well as environmental human rights and application of international standards at the national level.

- Consider the introduction (both normative and in practice) of a definition of “*sufficient interest*”, i.e. *“the public affected or assumed to be affected”* in decision-making in the environmental area, with the aim of providing the interested public with broad legal protection within the scope of the Aarhus Convention (which is also its requirement).

- Consider adopting guidance (such as a handbook) for citizens, the interested public and NGOs involved in environmental protection to address gaps in the protection of environmental human rights. This should explain in a clear and predictable manner the legal avenues and legal instruments of protection (alongside the likely challenges they might face if they decide to bring proceedings).

- Enhance the administrative capacity of central and local authorities by ensuring training for officials in public authorities on *inter alia* applicable laws and regulations, application of freedom of information provisions, emphasizing the consistent application of the public interest principle to enhance transparency and accountability.

6. Annex

Section 2.1.

2.1.2.

In accordance with Article 6 of the LE and depending on the area of environmental protection, numerous laws were adopted:

Law on Environmental Impact Assessment (Official Gazette of Montenegro No. 75/18), Law on Strategic Environmental Impact Assessment (Official Gazette of the Republic of Montenegro No. 80/05, Official Gazette of Montenegro No. 59/11, 52/16), Law on Liability for Environmental Damage (Official Gazette of Montenegro No. 55/16), Law on Industrial Emissions (Official Gazette of Montenegro No. 17/19), Law on Nature Protection (Official Gazette of Montenegro No. 54/16, 18/19), Law on Air Protection (Official Gazette of Montenegro No. 25/10, 43/15, 73/19), Law on Water (Official Gazette of the Republic of Montenegro No. 27/07, Official

Gazette of Montenegro No. 32/11, 47/11, 48/15...84/18), Law on Marine Environment Protection (Official Gazette of Montenegro No. 73/2019), Law on Protection of the Sea from Pollution from Vessels (Official Gazette of Montenegro 20/11, 26/2011, 27/2014), Law on Nature Protection (Official Gazette of Montenegro No. 54/16 and 18/2019), Law on Forests (Official Gazette of Montenegro No. 74/2010, 40/2011), Law on Geological Surveys (Official Gazette of Montenegro No. 28/93, 27/94, 42/94 and 26/07), Law on Chemicals (Official Gazette of Montenegro No. 51/2017), Law on Waste Management (Official Gazette of Montenegro No. 34/2024), Law on Protection from the Negative Effects of Climate Change (Official Gazette of Montenegro No. 73/19), Law on Protection from Ionizing Radiation and Radiation Safety (Official Gazette of Montenegro No. 58/09, 40/2011), Law on Environmental Noise Protection (Official Gazette of Montenegro No. 28/2011, 28/2012, 1/2014, 2/2018), Law on Free Access to Information (Official Gazette of Montenegro No. 44/2012 and 30/2017) and numerous other laws.

2.1.3.

The international agreements that have been ratified in the field of environmental protection are available on the following website: https://www.gov.me/clanak/119719-zakonaska-regulativa-iz-oblasti-zivotne-sredine

Section 2.2.

2.2.2.

In this case related to the judgment of the High Court in Podgorica, Gž.br.3871/21-15 -, after the previous annulment of the decision, where the defendants were the State of Montenegro, the Municipality of Danilovgrad, and Elektroprivreda (Electric Power Company of Montenegro) (the case was ongoing for 8 years), the High Court in Podgorica overturned the first-instance judgment which accepted the plaintiff's request and finally rejected it. The plaintiff was an owner of immovable property who claimed that he suffered material damage, through lost profit caused by the reduced possibility of agricultural production on the land owned by him, for the period from 2012-2018. The request was based on the claim that his land plots, which are located on the Bjelopavlići plain between the Zeta River and the Nikšić-Podgorica road, are exposed to periodic flooding every year, which is caused by the uncontrolled inflow of water from the Zeta River caused by the construction of artificial lakes in Nikšić and the Perućica Hydro Power Plant and the HPP Slap, which changed the water regime, and by not taking any measures to develop the Zeta river bed and protect it from the harmful effects of the water by the defendant managing the waters of importance for Montenegro.

The claim was rejected, according to the provisions of the Law on Water, because it was not found that there was improper and illegal operation and behaviour of the defendant nor a failure to apply the law, other regulation or general act.

Section 3.1.

According to data obtained during an interview with the director of the NGO Ecological Association "Breznica, there are 12,351 NGOs in Montenegro, with around 6,000 active ones. Beneficiaries of environmental protection projects are also certain NGOs that are not exclusively registered as NGOs dealing with environmental protection, but also those engaged in activities related to of "sustainable development[417]

Chilling effect –Over the last 11 years, 109 cases have been initiated against him targeting his environmental activism and aiming to silence his efforts. He has faced consistent persecution. For example, during the celebration of 30 years since the declaration of Montenegro as an ecological state, he was imprisoned, for carrying a banner with the words

417 The interview was conducted with Milorad Mitrović the Executive Director of the NGO Ecological Association "Breznica

"30 years since the declaration and we are only at the beginning".[418]

According to the interviewee, accessing information in the field of environmental; protection is highly challenging. Numerous issues exist, including, unanswered requests and high costs (copying costs, appeal fees, etc.). Authorities often claim that the requested information is not in their possession, or fail to forward it to the competent institution etc.

He also pointed out that even when information is received, citizens will not proceed further with the proceedings, while NGOs dealing with environmental protection have neither the professional nor financial capacity to initiate the proceedings, highlighting the issue of court efficiency. He noted the example of fish poisoning in Ćehotina, which resulted in the impunity of the perpetrators because the competent state prosecutor dropped the case.

Section 3.2.

3.2.1.

Subsection 1 Costs of the environmental protection proceedings

The LE does not prescribe special rules on the costs of the proceedings but indicates that a request for free access to environmental information is to be decided upon in accordance with the Law on Free Access to Information. As for costs in the administrative procedure, in addition to those concerning the right to free access to information, the Law on Administrative Proceedings prescribes the principle of economy and efficiency of the procedure, without delay and with as few costs as possible, as one of the basic principles of the administrative procedure.[419] The administrative proceedings also provides for the possibility of exemption from payment of costs, in the event that the party cannot bear them without harming his necessary livelihood, or the necessary livelihood of his family. A foreigner may be exempted from paying costs when this is provided for by an international agreement, and if there is no such agreement, under the condition of reciprocity.

In administrative disputes, if the court decides at an oral hearing, the rules of the law governing civil procedure are applied in terms of costs, since the Constitutional Court of Montenegro abolished the provision of Article 39 paragraph 1 of the Law on Administrative Dispute, which stipulated that in an administrative dispute each party bears its own costs, if the court decides in a closed session.[420] Thus, in civil proceedings, each party bears the costs of the proceedings that it caused by its own actions[421], but the party that loses the litigation as a whole is required to compensate the opposing party and its intervener for their costs. If a party partially succeeds in the litigation, the court may, taking into account the success achieved, determine that each party bears its own costs or that one party compensates the other and the intervener for a proportionate part of the costs. The court may decide that one party is to compensate all the costs incurred by the opposing party and its intervener, if the opposing party won the majority of its claim, and no special costs were incurred because of the part it lost. When the state prosecutor participates in the proceedings as a party, he has the right to reimbursement of costs in accordance with this law, but not the right to remuneration.[422] The provisions of this law on the costs of the procedure also apply to parties represented by the Protector of Property Legal Interests of Montenegro, i.e. the competent municipal authority. In the case referred to in paragraph 1 of this article, the costs of the procedure include the

418 According to a statement issued by the Basic Prosecutor's office in Pljevlje, the Basic State Prosecutor, found that the activists of the Breznica Ecological Association, , involved in yesterday's performance in Žabljak, did not commit any criminal offense that could be prosecuted *ex officio*. ".

419 Article 10 Law on Administrative Proceedings.

420 Decision of the Constitutional Court of Montenegro, U-I br. 44/20, 11/23 and 31/23. Available at: https://www.ustavnisud.me/ustavnisud/objava/blog/4/objava/204-odluka-ustavnog-suda-crne-gore-o-ukidanju-odredba-clana-39-stav-1-zakona-o-upravnom-sporu-sluzbeni-list-crne-gore-broj-54-16-u-i-br-44-20-11-23-i-31-23

421 Article 150 Law on Civil Proceedings.

422 Article 152a Law on Civil Proceedings.

amount of costs that would be awarded to the party as the attorney's remuneration.[423]

Proceedings before the Constitutional Court are free of charge and the Constitutional Court does not award costs.[424] However, the Law on the Attorney Profession[425] and the Attorneys' Tariff[426] regulate the relationship between the principal and the attorney.

Subsection 2

For the purposes of the Analysis, we have mainly used the database containing case law, which is posted on the website sudovi.me. For the Constitutional Court case law, by searching the website Ustavnisud.me, selected decisions of this court may be found on the home page. Regarding the interviews that were conducted, they were used in order to clarify possible legal gaps in the laws and explain the reasons for the absence of case law on certain matters in the field of environmental protection and human rights. The interview requests were made by telephone through the respective representatives of the relevant stakeholders, representatives of civil society including NGOs, who wished to remain anonymous, while one NGO representative gave his interview for the purposes of this Analysis, which is presented further in this Annex. Interviews were also conducted with representatives of the courts, the legal representative of the State – the Protector of Property Legal Interests, the Centre for Alternative Dispute Resolution, the Ombudsman Institution, and the Constitutional Court. No official requests for access to information were forwarded, since they were deemed unnecessary during informal interviews with relevant representatives, which were essentially unnecessary since the analysis of the normative framework actually showed ambiguity, lack of transparency and inconsistency in the regulation of certain environmental protection mechanisms.

3.2.2.

Subsection 1

"Shadow Report" available at https://www.greenhome.co.me/wp-content/uploads/2020/07/ONLINE_Izvjestaj-iz-sjenke-2024-MNE_pages_compressed-1.pdf.

The seventh Shadow Report of Coalition 27 on progress in Chapter 27 – Environment and Climate Change covers the period from June 2023 to May 2024. The Shadow Report aims to present an overall picture of Montenegro's progress in the EU accession process for the period from June 2023 to May 2024, in terms of improving the situation in the field of environmental protection and climate change. This Report deals with ten thematic areas under Chapter 27 and refers to the implementation of the remaining commitments from the National Strategy, which are now an integral part of the Action Plan to meet the closing benchmarks in Chapter 27 – Environment and Climate Change. This Report assesses the implemented activities of the relevant institutions in this area and provides recommendations for strengthening the process of transposition and implementation of EU legislation covered under Chapter 27. This document attempts to clarify the essential problems in certain sub-areas and highlights the need to solve them during the negotiation process.

Subsection 2

An illustrative case that did not recognise the exclusivity of the constitutional right to a healthy environment is the Constitutional Court' decision regarding the constitutional complaint filed against the judgment of the Supreme Court of Montenegro, Rev. IP br. 192/18, of 22 January 2019[427]. The plaintiffs were the owners of plot, which is located in the cadastral Municipality of Nikšić, and the property is located in the immediate vicinity of the defendant Željezara AD Nikšić, at a distance of a few hundred metres from the furnace of the steel plant. According to the plaintiffs, their property has been exposed for an extended period of time to huge amounts of dust, smoke, various gases and an unbearable odour, which are poisonous

423 Article 152b Law on Civil Proceedings.
424 Article 53 of the Law on the Constitutional Court (Official Gazette of Montenegro no. 11/2015).
425 Official Gazette of the Republic of Montenegro No. 079/06, Official Gazette of Montenegro No. 073/10
426 Official Gazette of Montenegro No. 79/2017.
427 The Decision is available at https://sudovi.me/vrhs/odluka/328154

as such, and because of this, the health of the plaintiffs and their families is at risk due to the effects of toxic substances, because the third defendant does not have adequate filters for the filtration of smoke and waste, which causes waste water to spill into the Bistrica river bed. The defendants' liability was based on the LE, the Law on Environmental Impact Assessment and the Law on Air Pollution Protection. The Constitutional Court, in rejecting the constitutional complaint[428] held that the liability of the first defendant cannot be derived from the Article 23 of the Constitution. It further stated that this Constitutional provision, which guarantees the right to a healthy environment for everyone, is of a general and declarative nature.

Subsection 3

Decision of the Constitutional Court of Montenegro, U-III br. 213/23 of 12 April 2023. From the reasoning:

" Since the Basic Court in Podgorica, in the challenged decision, decided on the objection filed against the first-instance decision of the same court ordering a provisional measure, by which the objection of the opponent was upheld and the first-instance decision reversed, and such decision constitutes a decision of a procedural nature, which does not decide on a right or obligation of the applicant, it follows that the contested decision of the Basic Court in Podgorica does not constitute an individual legal act against which the Constitutional Court has jurisdiction to provide constitutional protection due to the alleged violation of Article 6 paragraph 1 of the ECHR. "

Section 4:

There is no exact information about all environmental black spots and environmental incidents in Montenegro, with their history and actual current situation. Bearing in mind the sensitivity of the topic, it is important to emphasise that it requires scientific research work, for which a multidimensional consultation is necessary, including scientific works in the field of ecology, official reports of the Government of Montenegro and state bodies of Montenegro, as well as reference works of investigative journalism and of NGOs dealing with the area of environmental protection. Finally, this report aims to present every environmental black spot or major environmental incident, with the available data, through a legal lens, in terms of its legal determination analysis. It is, therefore, clear that not all environmental incidents will be exhausted in the examples mentioned, nor would it be possible.

a. Industrial pollution

In Montenegro, until recently, there were officially four environmental black spots representing hazardous industrial waste dumps[429]: the Aluminium Plant Podgorica (Kombinat Aluminijuma Podgorica)[430] (two red sludge pools and a solid waste landfill)[431], Bijela Adriatic Shipyard (Jadransko brodogradilište Bijela) (grit and contaminated soil), Pljevlja Thermal Power Plant (Maljevac ash and slag landfill), and "Šuplja stijena" mine (Gradac tailings dump).

In this regard, on 10 October 2014, Montenegro signed a Loan Agreement for the implementation of the "Industrial Waste Management and Cleanup Project" with the International Bank for Reconstruction and Development (IBRD). The value of the loan, under which the funds could be withdrawn until 30 June 2019, was 50 million Euros. The project had two objectives: 1) remediation of locations where hazardous industrial waste landfills are located, namely: Aluminium Plant Podgorica (2 red sludge pools and a solid waste landfill),

428 U-III br. 971/19 of 2 March 2023.

429 Information of the Ministry of Sustainable Development and Tourism of Montenegro, accessed at https://wapi.gov.me/download-preview/00e4650f-25a0-43c6-a754-de61a1820ab3?version=1.0,

430 Hereinafter "KAP". KAP is located in the middle part of the Zeta Plain on extensive and highly permeable Quaternary deposits. The natural conditions and location of KAP determine the possibility of the impact of its waste material on groundwater. There is a solid waste landfill in KAP, which has been in use since 1971.

431 This industrial giant is one of the biggest polluters in Podgorica. Its red sludge pool is a serious environmental problem.

Adriatic Shipyard Bijela (grit and contaminated soil), Pljevlja Thermal Power Plant (Maljevac ash and slag dump) and "Šuplja stijena" mine (Gradac tailings dump), and 2) support for the construction of a system for the management of future hazardous waste at the national level.

Large amounts of industrial waste are the result of the production processes of the "Pljevlja" thermal power plant, the flotation plant of the "Šuplja Stijena" lead and zinc mine in Gradac and Šula, the "Vektra Jakić" wood processing plant and other wood processing plants, the operation of the town's boiler houses and other important industrial facilities in Pljevlja. [432]

According to the announcement of the Environmental Protection Agency, of 26 July 2023, concerning the above-mentioned environmental black spots of Montenegro, the last amount of contaminated soil, i.e. 6,769.71 tons, that are above the criteria for export, were exported from the location of the Bijela shipyard for Belgium, and the remaining activities concerning the export of contaminated bags, for which a permit for import to Portugal has been secured, are underway. It is expected that this activity will also be successfully implemented, which will formally complete the remediation project of the Bijela shipyard location. The work on the remediation of the flotation tailings pond "Gradac" and the ash and slag landfill "Maljevac" (i.e. the recultivation of Cassette II, the relocation of the Paleški stream, the rehabilitation of the landslide, the construction of a new sedimentation tank and the rehabilitation of steps 4 and 5) were completed in the second half of 2021.[433] Of the mentioned environmental black spots, the KAP red sludge pool is still officially "black", although the ash and slag landfill at the "Maljevac" site was, in fact, partially rehabilitated in the previous period.

Regarding the remediation of the black spot of the KAP red sludge pool[434], the Environmental Protection Agency issued a decision to initiate the procedure concerning the immediate threat of damage to the environment and ordered the operator to implement specific protection and restoration measures at its own expense in accordance with the Protection Plan, under the Law on Protection and Restoration. Since the operator did not submit a plan for the implementation of specific preventive measures, or inform the Agency about preventive measures undertaken, the Agency informed the operator in April 2022 that it will act in accordance with Article 16 paragraph 7 of the Law on Liability for Environmental Damage, i.e. it will start implementing preventive measures at the expense of the operator. Finally, the Environmental Protection Agency filed a criminal complaint on 15 February 2023 against WEG Kolektor and the responsible person in the legal entity.[435]

The latest information regarding the problem of red sludge reported by the media in Montenegro stated that an inventory of the damage from the red sludge pool is underway at the request of the municipality of Zeta.[436]

In the seventh Shadow Report for Chapter 27 – Environment and Climate Change, "A drop of progress in the sea of obligations", which covers the period from June 2023 to May

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432 The Report on Strategic Environmental Impact Assessment for amendments to the Spatial-Urban Plan of the Municipality of Pljevlja, Podgorica, of 10 December 2023, p. 154.

433 The Report on Strategic Environmental Impact Assessment for Amendments to the Spatial-Urban Plan of the Municipality of Pljevlja, Podgorica, of 10 December 2023, p. 167.

434 The red sludge pools of the former Aluminum Plant are the biggest environmental problem in Montenegro, but they have been privately owned since 2015, first by Ukrainian businessman, and then by a small company for the purchase of waste from Berane "Weg Kolektor". In the past nine years, nothing substantial has been done to solve this problem, although the World Bank has been interested in financing its ecological rehabilitation since 2014. In recent years, the Environmental Inspection has issued several fines to the owners for endangering the environment and human health, and last year the Environmental Protection Agency filed a criminal complaint against the current owner of "Weg Kolektor".

435 Information accessed at https://www.vijesti.me/vijesti/ekonomija/708107/crveni-mulj-privatna-imovina-drzavni-problem-tuzilastvo-istrazuje-ugrozavanje-sredine-i-zdravlja-ljudi,

436 https://www.dan.co.me/vijesti/drustvo/popisuju-stetu-od-bazena-crvenog-mulja-5252700,

2024[437], it was stated that not all environmental black spots have been remedied, not even after eight years from the signing of the Loan Agreement with the World Bank for the "Industrial Waste Management and Cleanup Project – IWMCP" due to the current environmental problem of the Steel Plant Landfill – Halda and Red Sludge Pool at KAP). The Steel Plant Landfill Halda was also mentioned in the Strategic Environmental Impact Assessment Report for the amendments to the Spatial-Urban Plan of the Nikšić Municipality[438], in addition to the urban areas of the town of Nikšić with the most environmentally threatened areas ("hot spots"), the surroundings of the Steel Plant, the Halda landfill, the Boksiti transfer station, areas of open bauxite mines, asphalt plant, Budoš town waste disposal site, parts of Bistrica, Gračanica and Zeta watercourses with quality class IV, etc.

In terms of civil liability for environmental damage, the red sludge pool has not reached judicial determination. See the example cited in the Analysis (judgment of the Supreme Court of Montenegro, Rev. Ip. 59/2019, of 2 April 2019).

The Pljevlja thermal power plant[439] is another priority environmental issue, which requires a more urgent approach .[440] This is because the problem of air pollution is one of the major problem, bearing in mind that according to the latest estimates of the European Environmental Protection Agency, it contributes to the premature death of about 1,200 people in Montenegro annually, of which the greatest impact is attributed to PM particles.[441]

In accordance with the Industrial Emissions Directive, the Pljevlja Thermal Power Plant is subject to limited operation according to the Large Combustion Plant Directive, which entered into force in accordance with the Energy Community Treaty on 1 January 2018. From then until the end of 2023, the power plant is allowed to operate for a maximum of 20,000 hours. After that, it must either be permanently closed or retrofitted to meet Annex V, Part II of the Industrial Emissions Directive. The quota of the power plant hours was exhausted by the end of 2021 and the thermal power plant has been operating illegally for the third year in a row since then. By 2023 it had used over 34,412 hours (14,000 hours more than allowed).

The Secretariat of the Energy Community initiated a procedure to resolve the dispute against Montenegro, but the power plant is still operating. The planned modernization project

437 This report was prepared as part of the project titled "Enhancing the CSO Environmental Engagement under the EU Accession framework (4E)" financed by the European Union and co-financed by the Ministry of Public Administration, Digital Society and Media. The content of the Report is the sole responsibility of the Centre for the Protection and Study of Birds (CZIP) and the project partners and does not necessarily reflect the position of the EU. Coalition 27 is an informal network of non-governmental organizations that was founded with the aim of monitoring the process of harmonization and application of policies in the accession negotiations between Montenegro and the EU, as well as proposing solutions that will contribute to the protection and improvement of the environment and climate change. Members of Coalition 27 are: Avlija, Centre for Protection and Study of Birds, Centre for Ecological Initiatives, Da zaživi selo, Society of Young Ecologists Nikšić, Dr. Martin Schneider-Jacoby, Green home, Mans, Medcem, Mogul, Natura, Naša akcija, Sjeverna zemlja, Zero waste Montenegro and Wildlife Montenegro.

438 The Report on Strategic Environmental Impact Assessment for amendments to the Spatial Urban Plan of the Municipality of Nikšić, Ministry of Ecology, Spatial Planning and Urbanism, Podgorica, February 2023.

439 "TPP Pljevlja".

440 In the National Strategy for Sustainable Development until 2030, it was pointed out that, from an ecotoxicological point of view, the town of Pljevlja is the biggest environmental black spot. Data on the state of the environment show that water, air, soil and landscape are degraded due to the direct influence of numerous sources of pollution144, to which the population is directly exposed. This is largely the result of poorly planned and insufficiently controlled industrial and urban development. The greatest damages are caused by the impact of technological operations in the Coal Mine, Thermal Power Plant, "Vektra Jakić", the slag and ash landfill in Maljevac, the transport system and the waste and tailings landfill in Jagnjilo. In addition to the above, the main sources of emissions of polluting substances (floating particles, PM10 and PM2.5 and polyaromatic hydrocarbons – PAHs in them) are represented by many boiler houses and individual furnaces.

441 In Podgorica, on 16 February 2024, the NGO Green Home organised the conference titled "Air Pollution in Montenegro", which was attended by representatives of institutions, non-governmental organizations and the media. Dr. Borko Bajić, on behalf of the Institute of Public Health of Montenegro, reminded the audience that air pollution is one of the most serious risks to human health, and that according to the latest estimates of the European Environmental Protection Agency, air pollution in Montenegro contributes to the premature death of approximately 1,200 inhabitants annually, of which the greatest impact is attributed to PM particles.

is uncertain, non-transparent and two years late, and the public was never given an economic justification for the project. The cost of the project has also increased since the tender, which supports the concerns raised by the unsuccessful bidders at the time. In April 2021, the Ministry of Capital Investments asked the public prosecutor to investigate the case, but EPCG continued with the investment without waiting for the results of the investigation. A serious step backwards followed in December 2022, when the Government and the Parliament adopted amendments to the Law on Industrial Emissions, which allowed the operation of the power plant until the end of non-existent negotiations on the extension of the operation of the Pljevlja Thermal Power Plant and the conclusion of the lawsuit of the Energy Community against Montenegro.[442] After spending 20,000 hours, the Environmental Agency began the procedure of withdrawing the integrated permit for the Pljevlja Thermal Power Plant in 2021, but the Government made a decision to stop that process, which is why the Pljevlja Thermal Power Plant has been in violation of legal requirements since then, operating without a valid integrated permit.[443]

The recommendation from the above report "A drop of progress in a sea of obligations" was the initiation of a solution with the Energy Community to speed up the misdemeanour procedure and charge penalties for overtime operation at the Pljevlja thermal power plant. The report called for Montenegro to immediately bring the Pljevlja coal-fired power plant in line with the Energy Community Treaty, publish a feasibility study for the planned modernisation project and publish the results of the public prosecutor's investigation into the tender process.

According to the conclusions of the Government of Montenegro, from the session held on 12 January 2023, it passed the Decision determining the public interest in the implementation of the project titled "District Heating of Pljevlja, towards Clean and Warm Pljevlja". On 1 July 2024, a meeting was held by the Government of Montenegro with representatives of the World Bank (WB) mission and with representatives of interested parties (the Office for Sustainable Development in the General Secretariat of the Government, relevant ministries of tourism, ecology, sustainable development and development of the north and energy and mining, as well as the UNDP Office in Montenegro) on future activities in the field of just transition of the Pljevlja coal region; the LURA (Land and Assets Repurposing Assessment) tool was also presented, which refers to the assessment of the future use of mining lands and assets. [444]

Montenegro records years of delay in the adoption and updating of its Air Quality Management Strategy with an action plan, and thus the regular undertaking of measures to reduce national air pollution, in particular in areas where the EU limit values for air quality have been exceeded. Such delays also exist in the creation or updating of air quality plans, as foreseen by the Directive on ambient air quality and cleaner air for Europe (Directive 2008/50/EC). The draft Air Quality Management Strategy for the period 2021-2029 received a positive opinion from the European Commission and, according to earlier reports should have been sent to the Government for adoption in 2023. That still has not been done.[445]

All the media in Montenegro reported that the first lawsuit was filed against the State of Montenegro due to air pollution in Pljevlja, and that many citizens of Pljevlja announced that

442 Milica Kandić, with the support of Coalition 27, A drop of progress in a sea of obligations, Shadow Report for Chapter 27 – Environment and Climate Change, for the period from June 2023 to May 2024, p. 71 and 71.

443 In the Conclusion of the Government of Montenegro, number: 04-2389/2, of 20 May 2021, the Government adopted the Information on the initiated procedures for the revision and withdrawal of the integrated permit for the "Pljevlja" TPP by the Agency for Nature and Environmental Protection and stated that until the completion of the initiated procedures of negotiations of the Ministry of Capital Investments of Montenegro with the Energy Community as a previous legal matter, it is necessary to terminate all initiated procedures for the withdrawal and revision of the integrated permit, due to immeasurable damage to the energy sector and the State of Montenegro. In the same Conclusion, the Ministry of Ecology, Spatial Planning and Urbanism and the Environmental Protection Agency are tasked with acting in accordance with the previous point of this Conclusion (which refers to the termination of the already started procedures).

444 https://www.gov.me/clanak/odrzan-sastanak-misije-svjetske-banke-sa-predstavnicima-zainteresovanih-strana-na-temu-pravedne-tranzicije-u-pljevljima-2,

445 Milica Kandić, with the support of Coalition 27, A drop of progress in a sea of obligations, Shadow Report for Chapter 27 – Environment and Climate Change, for the period from June 2023 to May 2024, p. 30.

they would sue the State. The case is ongoing.

b. Waste disposal sites

In addition to two sanitary landfills for the disposal of municipal waste in Podgorica (Livada) and Ulcinj (Možura), almost every town in Montenegro has an illegal waste disposal site, putting great pressure on the environment. There are 19 controlled waste disposal sites in Montenegro, 2 of which are intended only for the disposal of construction waste (Dragalj location in Kotor and Brajići location in Budva). Of the other 17 controlled waste disposal sites, 8 are under a certain type of control, i.e. they are fenced, and the deposited waste is partially levelled. Out of the eight controlled waste disposal sites, two were designed to have fences and gates, and some construction work was done on them prior to waste disposal, such as embankment preparation, access road construction, and the like. These two controlled waste disposal sites are located in Nikšić (Mislov Do location) and Andrijevica (Sutjeska location). According to the Ministry of Ecology, Spatial Planning and Urbanism[446], there are 334 uncontrolled waste disposal sites in Montenegro.[447]

The 28th Parliament of Montenegro, at the second sitting of the first regular (spring) session in 2024, adopted the Law on Waste Management, on 4 April 2024, which was published in the Official Gazette of Montenegro No. 34/2024 of 12 April 2024 and entered into force on 20 April 2024.

On 26 July 2024, the Environmental Protection Agency issued a statement that a waste monitoring system and a register of the release and transfer of pollutants have been established. These mechanisms allow better control and management of environmental issues, which is essential for the European integration process.[448]

c. Waste water

The management of the wastewater system in Montenegro is inefficient; although the level of conformity of national regulations in the field of wastewater with EU regulations is high, over 96 percent, the application of those regulations in practice is also not adequate. The capacities of local government to independently set up and maintain an efficient wastewater management system are also questionable, as highlighted in the success audit "Efficiency of Waste water System Management" by the State Audit Institution (SAI). The audit refers to the Ministry of Agriculture, Forestry and Water Management (MAFWM), the Ministry of Ecology, Spatial Planning and Urbanism, the Water Authority, the Capital City of Podgorica, and the municipalities of Danilovgrad, Bijelo Polje, Berane, Pljevlja, Budva, Bar and Herceg Novi, as well as water companies in those municipalities, the Company for the Construction of Water Supply and Sewerage Infrastructure in the Municipality of Herceg Novi, and the Directorate for Inspection Affairs. In order to improve the management of the waste water system, the state audit gave them 37 recommendations. The audit covers communal wastewater defined by the Law on Municipal Wastewater Management. Municipal waste water covered by that Law, the SAI explains, is wastewater from households or mixture of that water with industrial wastewater and/or storm sewage. The Water Administration has not prepared and the MAFWM has not adopted, an Operational Plan for the protection of water from accidental pollution for waters of importance to Montenegro. Also, local self-governments have not adopted an Operational Plan for the protection of water from accidental pollution for waters of local importance.

d. Water - Pollution of rivers and lakes: Tara, Morača, Zeta, Ćehotina

Environmental incidents are a widely covered topic in the media including pollution of the Tara River[449] due to the construction of the Bar-Boljari highway[450], pollution of the Morača

446 "MESPU".
447 State Waste Management Plan for the period 2023-2028, p. 42 and 43.
448 Established waste monitoring system and register of discharge and transfer of pollutants – Environmental Protection Agency (epa.org.me) https://epa.org.me/2024/07/26/uspostavljen-sistem-za-pracenje-otpada-i-registar-ispustanja-i-prenosa-zagadivaca/,
449 Tara River has been in the UNESCO World Cultural Heritage List since 1977.
450 https://www.cdm.me/hronika/zbog-zagadenja-tare-formiranja-dva-predmeta/,

River[451] and Lake Skadar[452], the Bolje Sestre spring[453], the Zeta river[454] as well as the Lim and Ćehotina rivers[455].

In the latest Report on the Strategic Environmental Impact Assessment for amendments to the Spatial-Urban Plan of the Municipality of Pljevlja[456], the plan envisages a solution to the problem of the polluted Mjednički stream, which is in turn one of the biggest causes of pollution of the Ćehotina river, and its ecosystem. The media in Montenegro also reported the news about an environmental incident – the discharge of toxic substances from the Pljevlja thermal power plant into the Ćehotina river. On 4 July 2019, the fish stock in the Vezišnica and Ćehotina rivers died as a result of this incident. On 25 September an indictment was filed with the Basic Court in Pljevlja against four people responsible for the Pljevlja Thermal Power Plant for discharging toxic substances into the Ćehotina river, which caused the death of the fish stock in the Vezišnica and Ćehotina rivers. The abandonment of the criminal prosecution was reported by the Montenegrin media, stating that this was due to the expert witness S.D., on whose findings the indictment was based, stating at the trial that she did not completely stand by her findings about the causes that led to the death of a large quantity of fish.[457]

The Chinese company China Road and Bridge Corporation, CRBC, did not repair the damage to the bed and banks of the Tara River in Mateševo, although it was required to do so by July 2022 at the latest, BIRN analysis showed.[458] Due to the destruction of the fish stock in Tara, following the lawsuit of the Sports Fishing Club "Tara and Morača", the Basic Court in Podgorica ordered the CRBC, in November 2021, to pay approximately 200,000 euros in compensation to the fishermen. After the appeal of the Chinese company, the High Court annulled the first-instance judgment, in January 2022. Attorney Vladimir Čađenović, who represents SFC "Tara and Morača", claims that an economic and financial expertise is expected, after which the exact amount of damage caused by CRBC should be determined.

The misdemeanour courts of Montenegro reached a guilty verdict and fined legal persons, as well as individuals within them, for the offence referred to in Article 35 paragraph 1 item 2 and paragraph 2 in conjunction with Article 27 paragraph 1 of the Law on Environmental Impact Assessment.[459]

The Report on the Strategic Environmental Impact Assessment of amendments to the industrial zone of the DUP – KAP Podgorica, of September 2019, mentions the problem of pollution of the Morača River. The existing state of the industrial facilities within the scope of the plan is completely unacceptable from an environmental point of view. All collected storm water from the KAP grounds and water from device cooling are introduced into the waste water channel from KAP. Water from the canal flows into the Morača River. Alkaline waters originating from red sludge pools, solid waste landfills and washing of storm water from polluted land in the

451 According to the Report on the Strategic Environmental Impact Assessment of amendments to the DUP, the industrial zone of the DUP KAP Podgorica, of September 2019, all the collected storm water from the KAP grounds and water from device cooling are introduced into the waste water canal from the KAP. Water from the canal flows into the Morača River.

452 Exploitation of gravel and sand has long-term harmful consequences for the water regime of the Morača River.

453 https://www.cdm.me/drustvo/regionalni-vodovod-agencija-i-uprava-neshvatljivim-odlukama-trajno-ugrozili-izvoriste-bolje-sestre/,

454 https://www.vijesti.me/vijesti/drustvo/423008/novo-zagadenje-zete-je-ekoloski-kriminal,

455 https://www.slobodnaevropa.org/a/srbija-reka-lim-deponija-smece-ekologija/32240769.html,

456 Report on the Strategic Environmental Impact Assessment for amendments to the Spatial-Urban Plan of the Municipality of Pljevlja, Podgorica, of 10 December 2023, p. 162.

457 Information accessed at https://www.vijesti.me/vijesti/crna-hronika/504667/slucaj-pomora-ribe-tuzilac-odustao-od-krivicnog-gonjenja-epcg-i-rukovodilaca-u-te-pljevlja,

458 In the text "The old glory of 'The tear of Europe' cannot be restored", by BIRN, of 10 January 2024, it was announced that BIRN's analysis showed that the Chinese company China Road and Bridge Corporation, CRBC, did not repair the damage to the bed and banks of the Tara River in Mateševo, although they were required to do so by July 2022 at the latest.

459 Decision https://www.gov.me/dokumenta/e030db2d-3d1a-45e9-ba39-ce783166cbb2, of the High Misdemeanour Court of Montenegro, PŽP.br.1675/20-2, of 13 November 2020.

area of KAP also have a negative impact on the quality of underground water.

e. Gravel exploitation

At the session held on 3 August 2022, the Government of Montenegro ordered the Ministry of Agriculture, Forestry and Water Management to form an interdepartmental team to undertake specific legal actions with an assessment of gravel and sand exploitation. Also, in the Conclusion from the 15th session, the Government tasked the Ministry of Agriculture, Forestry and Water Management to report quarterly to the Government on the results achieved in the fight against the illegal exploitation of gravel and sand from watercourses. The Ministry of Agriculture, Forestry and Water Management has formed an Interdepartmental Operational Team whose task is to monitor the situation on all watercourses and to propose appropriate measures with state administration.

The report of the Water Inspectorate of 27 January 2023 sets out that the Administration for Inspection Affairs has filed 32 criminal charges over the past two years for illegal gravel exploitation. It is stated that 13 criminal charges were filed in 2022 a lower figure than in 2021 when 19 charges were filed against companies or individuals. It can be seen from the document that the locations where exploitation was carried out are the Morača, Tara, Cijevna, Lim and Grnčar rivers. The Water Inspectorate also submitted 19 cases related to the exploitation of gravel in the period from July 2021 to 26 January 2023 to the Police Administration – Department for Suppression of Economic Crime, in order to assess, in cooperation with the Basic State Prosecutor's Office, whether there are elements of a criminal offence to be prosecuted *ex officio*.

North Macedonia: Baseline study of legislation, policy and practice on human rights and environment

1. Introduction

The Republic of North Macedonia has been a parliamentary democracy since 1991. The Parliament introduced the Ministry on Environment and Spatial Planning as part of the Government in 1998, which has a basic competence in monitoring the state of play of the environment and nature and providing measures for their protection and promotion.[460]

The protection of the environment is strongly incorporated in the fundamental values of the constitutional order of the Republic of North Macedonia in Article 8 which is further elaborated under Section 2.1.[461]

From 1991 until 2001, the protection of the environment was only within the competence of the Government i.e., the Ministry of Environment and Spatial Planning, but after adopting Amendment XVII, the competence for the protection of the environment was split between the Government as the central executive body and the municipalities as part of the local self-government.[462]

Despite the high level of importance accorded to the environment in the Constitution, the situation related to the protection and promotion of environment and nature in North Macedonia remains still at a low level. This is a result of the following factors:

1. lack of institutional capacity of the State to fulfil its own competences in the protection and promotion of the environment
2. lack of strategic approach and consistency in the development of mechanisms and capacities for the protection and promotion of the environment
3. lack of financial means allocated from the state budget for the protection and promotion of the environment
4. divided responsibilities for the protection of the environment between the central Government and the local self-government

The above factors have, for instance, resulted in a failure to adopt a National Plan for Air Quality since 2018. This has in turn contributed to major cities from North Macedonia being amongst the top 30 cities worldwide with the most polluted air.[463]

The citizens of North Macedonia are directly affected by the above situation, particularly in the last decade. However, only Civil Society Organisations (CSOs) are active to react and initiate different types of activities to pressure the Government and the municipalities to undertake measures for the prevention of air, water and soil pollution. CSOs have also initiated cases before the national institutions and courts, using available legal mechanisms, to no avail. They have had significant success in preventing financing for building hydroelectric power stations in the western part of North Macedonia, Boshkov Most and Lukovo pole. Approximately, 100,000 Macedonian citizens signed petitions[464] against these projects, for

460 Law on Changes and Amendments of the Law on the organisation and operation of the state administration bodies ("Official Gazette of Republic of Macedonia" No. 63/98)

461 Article 8 line 10 of the Constitution of the Republic of North Macedonia: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx

462 https://www.sobranie.mk/content/Odluki%20USTAV/Odluka%20za%20proglasuvanje%20na%20amandmanite%20IV-XVIII%20na%20Ustavot%20na%20RM.pdf

463 IQAir, Major Cities Ranking, available at: https://www.iqair.com/world-air-quality-ranking,

464 https://makfax.com.mk/zanimlivosti/ekologija/recisi-100-000-potpisnici-na-peticijata-za-spas-na-mavrovo/

the sole purpose of protecting the Mavrovo National Park and the biodiversity in that region, including the Macedonian lynx.[465]

In its 2024 Progress Report, the European Commission noted that North Macedonia is not fully aligned with the EU Directives on Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA), showing no progress in the recent period. In addition, challenges arise due to a lack of specialised staff and weak institutional capacity, leading to poor quality control in environmental assessments and the approval of infrastructure projects without thorough environmental consideration. Since the Law on Inspection was adopted in April 2022, no reforms have been initiated to improve the implementation of environmental legislation. North Macedonia needs to establish a robust institutional framework for coordinated and strategic environmental planning and ensure transparency and compliance with EIA/SEA directives. Additionally, full alignment with EU Directives on environmental liability and crime needs to be ensured. The Aarhus Centre is not fully operational, providing outdated information, and access to justice and public information on environmental matters is weak. Finally, the country must ensure that environmental monitoring meets EU standards.[466]

2. Substantive law and practice

2.1. Laws relating to environmental human rights

Constitution of the Republic of North Macedonia (1991)

As mentioned above, Article 8 of the Constitution of the Republic of North Macedonia introduces a special fundamental value directly related to the protection of the environment - proper urban and rural planning to promote a healthy human environment, as well as environmental protection and development.[467]

This fundamental value is further developed under Article 43 of the Economic, Social and Cultural Rights Subchapter of the Section on freedoms and rights, as a right to a healthy environment. Article 43 guarantees, on the one hand the right to a healthy environment for every person, and on the other, it sets out an obligation for everybody to promote and protect the environment and for the State (i.e. the Republic) to provide all the conditions for the exercise of the right of citizens to a healthy environment.[468] The Constitution further provides additional environmental protection in Article 55, where it lays down restrictions on the freedom of the market and entrepreneurship for the purpose of defending the Republic, protecting nature and the environment, or public health.[469]

Following the amendments to the Constitution in 2001, the protection and promotion of the environment were also transferred to the local self-government units. The amendments prescribed new competences for the local authorities which allow citizens directly and through representatives "to participate in decision-making on issues of local relevance particularly in the fields of public services (. . .), environmental protection and other fields determined by law."[470]

465 https://www.radiomof.mk/po-tragite-na-lisa-i-filipche-balkanskite-risovi-koi-obedinija-tri-drzhavi/

466 European Commission, *North Macedonia 2024 Report*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 30 October 2024, SWD(2024) 693 final, https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2024_en

467 Article 8 line 10 of the Constitution of the Republic of North Macedonia https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx

468 Article 43 of the Constitution of the Republic of North Macedonia https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx

469 Article 55 of the Constitution of the Republic of North Macedonia https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx

470 Amendment XVII of the Constitution of the Republic of North Macedonia https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx

The Constitution provides solid grounds for establishing further mechanisms and procedures for the protection and promotion of the environment and nature in North Macedonia that should be established by law.

Law on Environment (2005)

The 2005 Law on Environment promotes the principles of environmental protection[471] and sets out key objectives (see Annex II).[472] It enables full access to information about environment-related decisions and public participation in decision-making processes, as well as ensuring the application of the proportionality principle when weighing economic development and environmental protection. For instance, it sets out a requirement for polluters to compensate the costs of remediating pollution, and to restore the environment as closely as possible to its condition before the damage incurred.

The Law on Environment has a comprehensive approach in respect of prevention and protection of the environment, as well as determination of liability for environmental harm. The protection of the environment is based on monitoring, planning and environmental impact assessment. Liability for damage caused to the environment is regulated separately and the Law provides sanctioning by imposing misdemeanours divided in three categories with penalties ranging from 50 EUR to 200,000 EUR.

Criminal Code (1996)

The current Criminal Code provides for 12 offences related to the Environment and Nature[473], including ecocide introduced with the latest amendments of 2023.[474]

The Criminal Code continues to extend environmental protection, aligning with modern legal trends and the need to combat environmental crime.

Law on Misdemeanours (2019)

The Law on Misdemeanours was introduced in 2019[475], and it regulates the requirements and conditions for conducting misdemeanour proceedings and imposing misdemeanour sanctions. The Law on Misdemeanours provides for higher penalties for environmental misdemeanours when compared to other misdemeanours, prescribing fines that are twenty times higher than the fines set out in other areas. The time for the statute of limitation for misdemeanours related to environment is a five-year time limit for initiating environmental misdemeanour proceedings and ten years for conducting the proceedings. The types of misdemeanour proceedings are explained in Annex III.

Law on Civil Proceedings (2005) and Law on Obligations (2001)

The 2005 Law on Civil Proceedings regulates disputes concerning the fundamental rights and obligations of individuals and citizens. According to the Macedonian Young Lawyers Association[476] which has submitted several cases in front of regular courts, civil law judges (including Supreme Court Justices) have established a jurisprudence of not accepting cases

471 The principles are: the Principle of polluter pays, the Principle of proportionality and the Principle of prevention and Public participation and access to information principle.
472 Article 4 of the Law on Environment https://www.moepp.gov.mk/wp-content/uploads/2014/09/Закон%20за%20животната%20средина%20консолидитан%20текст%2019.07.2013.pdf
473 Criminal Code (“Official Gazette of Republic of Macedonia” no. 37/96)
474 The span of the sanctioning policy regarding crimes against the environment stretches from a fine to a life sentence in case of conducting Ecocide crime.
475 Law on Misdemeanours (“Official Gazette of the Republic of North Macedonia” no.96/19 and 253/23)
476 https://myla.org.mk/en/

related to the individual and collective protection of the environment submitted by citizens and CSOs.

The 2001 Law on Obligations[477] regulates the contractual relations, obligations, compensation but also the protection of personal rights[478] of all physical persons and legal entities in North Macedonia. According to its scope, it should be a valid legal ground for the protection of the right to a healthy environment, following the jurisprudence of the ECtHR.[479] The Law on Obligations also provides compensation in case of violation of personal rights as non-pecuniary damage and just satisfaction, as well as the possibility to seek a court order for the cessation of activity that breaches the protected rights. However, the case law on this matter varies, as elaborated under Subsection 2 paragraph 3.

Law on Environmental Inspection (2022)

The Law on Environmental Inspection[480] is the last adopted legislative act related to the protection of the environment in North Macedonia. This Law regulates the organisation of the Environmental Inspectorate as the sole institution for monitoring the state of the environment, conducting inspections and imposing sanctions for polluters, enforcing principles, planning, rights and duties of the inspectors, establishing an information centre, and reporting. The Environmental Inspectorate is the key public body for monitoring the state of the environment in North Macedonia, preventing damage, identifying harm caused, conducting the misdemeanour proceedings and imposing any fines. The Environmental Inspectorate is the only institutional point for citizens to inform or register any damage to the environment for further action and the identification of the perpetrator.

Ratified international documents

After its independence in 1991, North Macedonia included a novel provision on the protection of the environment as a human right in its Constitution. Following this, the Government became a signatory to major international legal documents and conventions aimed at protecting and promoting the environment and nature. For instance, the Government and the Parliament of North Macedonia signed and ratified the Convention on Environmental Impact Assessment in a Transboundary Context in 1991, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in 1997, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters in 1999, the United Nations Framework Convention on Climate Change in 1997, the Kyoto Protocol in 2004, the Paris Agreement in 2017, the Doha Amendment to the Kyoto Protocol in 2019, and other. The Government and the Parliament of North Macedonia have signed and ratified almost all international treaties and agreements on the protection of nature, the atmosphere, climate change, chemicals, waste, soil and industrial accidents.

The signature and ratification of these international treaties and agreements created the political will to incorporate them in the national legal system, primarily through legislation.

At the same time, North Macedonia in its aspirations to become a member of the European Union, is in the process of harmonisation with the *Acquis* Communautaire of the European Union, including Chapter 27 on Environment. In this process of harmonisation, North Macedonia transposed around 100 directives and regulations of the European Parliament and

477 Law on Obligations, Article 9, ("Official Gazette of Republic of Macedonia" No. 18/2001, 04/2002, 05/2003, 84/2008, 81/2009, 161/2009 and 123/13 and "Official Gazette of Republic of North Macedonia" no. 215/21)

478 Personal rights according to this Law are the right to life, physical and mental health, honour, reputation, dignity, personal name, personal and family life privacy, freedom, intellectual creativity and other personal rights

479 Attorney Aleksandar Godjo, Interview from 3 August 2024.

480 Law on Environmental Inspection ("Official Gazette of the Republic of North Macedonia" no.99/22).

of the Council in the national legislation on environment.[481]

2.2. How law on human and rights and the environment is applied in practice

Constitutional protection

The Constitutional Court on the Republic of North Macedonia is the protector of the constitutionality and legality in the legal system.[482] Since1991, the Constitutional Court in respect of constitutional protection has a dual role. Firstly, as part of its general competence, the Court, assesses the constitutionality of general legal acts such as laws, ordinances, decisions, rulebooks and plans. Anyone can submit an initiative to start proceedings for the assessment of the constitutionality of a law and the constitutionality and legality of a regulation or other general act.[483] Secondly, the Court is providing constitutional protection for a set of basic freedoms and rights of individuals, namely freedom of thought, association and assembly, freedom of expression and prohibition of discrimination.

In respect of Article 43 of the Constitution, the Constitutional Court has developed a practice mostly in the assessment of the constitutionality of the legislation related to the environment[484] and Detailed Urban Plans (DUPs), adopted by municipality councils for the urbanisation of sections of territory of the municipality. For example, the Constitutional Court invalidated the DUP for the Vodno mountain, which provided cutting significant amounts of forest on the Vodno mountain in Skopje, the capital of North Macedonia, for the purpose of the urban construction of buildings.[485] However, even in this practice there are limitations, because the Constitutional Court assesses only the procedural, rather than substantive, shortcomings of DUPs. In other words, it assesses the process by which DUPs are adopted by municipal councils without assessing their compliance with the General Urban Plans or the Spatial Plan of the Republic of North Macedonia, as documents on a higher level of legal hierarchy in spatial and urban planning.[486]

In practice, the Constitutional Court initially imposes interim measures (if the petitioner of the initiative so requests) for stopping the implementation of the challenged DUPs and after that, decides upon the case. These decisions have limited effect because the Constitutional Court assesses only the procedural aspects of the DUP. As a result, even if the Constitutional Court annuls the DUP, the Municipality Councils may adopt the same DUP through the correct legal procedure without any consequences. The real effect of Constitutional Court decisions which annul the challenged DUP is to provide the possibility for further and greater involvement of the public in the proceedings for adopting the new DUP.[487] However, even in cases of full participation of the public, in practice there is limited influence on the new DUPs.

According to the Constitution, the environment includes spatial planning, as well as its human dimension. This allows the Constitutional Court a wide scope for assessing the constitutionality and legality of normative acts. This includes cases which, in accordance with Article 55 paragraph 3 of the Constitution, limit the freedom of the market and entrepreneurship for the purpose of preserving the environment. Article 55 can also be a basis for evaluating whether laws relating to commerce, business and the economy that do not include restrictions

481 Information provided from the Ministry of Environment and Spatial Planning,
482 Article 108 of the Constitution of the Republic of North Macedonia https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx
483 Article 15 of the Rules of Procedure of the Constitutional Court of the Republic of North Macedonia https://ustavensud.mk/?page_id=4605
484 Constitutional Court Decision U.no.152/2005-1 dated 28 September 2006 https://ustavensud.mk/?p=9102
485 https://ustavensud.mk/%d0%bf%d0%be%d0%b4%d0%bd%d0%be%d1%81%d0%b8%d1%82%d0%b5%d0%bb/%d0%b3%d1%80%d0%b0%d1%93%d0%b0%d0%bd%d0%b8/%d0%a3-%d0%b1%d1%80-802021-1/
486 Constitutional Court Decision U.no.172/2010-1 dated 23 March 2011 https://ustavensud.mk/?p=10484
487 Attorney Aleksandar Godjo, Interview held on 3 August 2024.

based on environmental protection should incorporate such restrictions to ensure their constitutionality.

Criminal law protection

The criminal justice system of North Macedonia provides comprehensive protection of the environment and nature through law enforcement institutions, such as the Ministry of Interior and State Environmental Inspectorate, as well as the Public Prosecution Office.

The Law on Police and Internal Affairs, that regulates the work of the police force, does not provide for the creation of a special department within the Ministry of Interior for combating environmental crime.

The Law of the Public Prosecutor's Office provides dual competence to the public prosecution service for investigating environmental crimes. Since the adoption of the law in 2020 the Basic Public Prosecution Office for Fighting Organised Crime and Corruption has failed to submit any case to the Basic Criminal Court in Skopje, which is the only court competent for processing organised crime and corruption cases. According to the public prosecution, the lack of investigations and prosecutions of environmental crimes are a direct result of the lack of institutional capacity and financial means as well as the lack of willingness for international legal cooperation with other countries, even though most of the investigations have had regional or international elements.

In the last four years, the Basic Public Prosecutor's Office for Prosecution of Organised Crime and Corruption have initiated a few investigations. None of them have been brought to the Basic Criminal Court Skopje, a court competent for organised crime cases.

The number of criminal cases with regards to environmental justice is very low. Overall, in the last four years, the Macedonian judiciary have pronounced approximately 242 final judgements[488] in criminal proceedings, sentencing approximately 280 persons, with the following sanctions: imposed penalties - fines and imprisonment (101); alternative sanctions (172), and security measure (1).[489] The prosecution of crimes against the environment in relation to the total committed crimes in the last six to seven years is not more than one percent which points to the fact that there is a huge number of undetected and unprocessed crimes.[490] The low number of cases is a result of the lack of police and prosecution' capacity to initiate proceedings for environmental crimes. Most of these crimes are premeditated, but some of them occur through negligence, which is also sanctioned by the Criminal Code.

However, even with the existing level of expertise, awareness and capacities, the police and the public prosecution i.e. criminal justice institutions are the most efficient and effective legal mechanism for fighting environmental crime in North Macedonia.

The state or local environmental inspectors or representatives of other institutions (Forest Police that is part of the Ministry of Agriculture, Forestry and Water Economy) usually initiate criminal cases, which are further investigated by the police and public prosecutors.

Misdemeanours

The Law on the Environment and other environmental legislation define the list of misdemeanours and misdemeanour proceedings in the event of a violation of its environmental provisions. In order to conduct misdemeanour proceedings, the Minister of Environment and Spatial Planning can establish a misdemeanour commission. The decisions by the misdemeanour commissions are subject to legal remedies before the national courts.

488 Information obtained from the Supreme Court of the Republic of North Macedonia

489 https://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/MakStat__Sudstvo__ObvinetiOsudeniStoriteli/275_SK2_Mk_T13_ml.px/table/tableViewLayout1/?rxid=46ee0f64-2992-4b45-a2d9-cb4e5f7ec5ef

490 Gordana Lazhetic, Professor of Criminal Procedural Law at the Law Faculty Iustinianus Primus, University Sts. Cyril and Methodius, interview held on 1 August 2024.

The State Environmental Inspectorate and local authorised environmental inspectors monitor the implementation of legislation and conduct inspections at the national and local levels. If they identify irregularities or violations, they are obliged by the law to propose a settlement procedure to the perpetrator of the misdemeanour offense by issuing a misdemeanour payment order before submitting the case to court. In addition, the state and authorised inspectors can offer the perpetrator of the misdemeanour offense a settlement and reach an agreement by which the perpetrator of the offense has to pay the fine, other fees or remedy the harm caused.[491]

The national environmental inspectorate, in the last three years, has conducted 4894 inspections which identified 999 irregularities and initiated around 100 misdemeanour proceedings with prescribed fines in amount of more than 1,000,000 EUR.[492]

In this period, 285 citizens contacted the State environmental inspectorate in order to register irregularities related to environmental laws, asking for inspections by the State environmental inspectorate in 61 cases, and by the local authorised inspectors in 224 cases.[493]

For more detailed information, please see Annex V.

Civil law protection

The Macedonian legal system provides civil legal protection through legislation on court proceedings that includes environmental cases, in particular concerning compensation claims. Civil law protection is provided by civil procedural laws, mainly by the Law on Trial Procedure. See Annex VI.

Nevertheless, court practice shows that almost all of the claims for civil protection have been rejected. Most often in its decisions, the court refers to Article 15 paragraph 1 and 2 of the Civil Code when it decides to reject the lawsuit. This is due to the fact that civil law judges do not recognise the constitutional right to a heathy environment as a right under the scope of protection of the trial procedure i.e. civil law.[494] In a few civil cases, submitted by either individuals or by CSOs, regarding air pollution and pollution caused by dumps (irregular landfills), Skopje Civil Basic Court[495] and Struga Basic Court[496] rejected the lawsuits on the grounds of incompetence. These cases were confirmed by the Court of Appeal of Skopje[497] and Bitola[498], and the Supreme Court of the Republic of North Macedonia[499] confirmed Case P4 no. 578/19 of the Skopje Civil Basic Court. As initiators of the court cases, the national CSOs identified that the national courts have not been engaged with environmental protection[500] nor have they recognised the right to a healthy environment guaranteed by the Constitution to be protected by civil law.[501]

If we take into consideration the existing judicial practice, it is obvious that judicial practice and jurisprudence in dealing with environmental rights cases in civil proceedings is very poor. The number of cases is significantly small, and it can be observed that the court rejects the claim in most of the cases.

In the explanatory statement of the judgements, the courts noted that the plaintiffs in the

491 Elena Mujoska Trpevska, Senior Researcher, the Macedonian Academy for Sciences and Arts, interview held 1 August 2024.
492 https://www.sei.gov.mk/dokumenti/shest-mesechni-izveshtai/
493 Ibid
494 Professor Milica Shutova, Civil Law Department, Goce Delchev University, Interview from 1 August 2024.
495 Case P4 no. 578/19 of the Skopje Civil Basic Court.
496 Case P1 6/21 of the Struga Basic Court.
497 Case GZH-507/21 of the Skopje Appeal Court.
498 Case TSZH-59/22 of the Bitola Appeal Court.
499 Case Rev2 no. 85/2022 of the Supreme Court of the Republic of North Macedonia.
500 Professor Milica Shutova, Civil Law Department, Goce Delchev University, Interview from 1 August 2024.
501 Bojan Trpeski, Project Manager in the Macedonian Young Lawyers Association, Interview held on 22 July 2024.

lawsuits request establishing of facts and not protection of the rights.[502] The existing practice at all court levels, including the Supreme Court, is an indicator that civil law judges are not open to providing wider judicial protection of the human rights of the individuals and groups, including the constitutionally guaranteed right to a healthy environment. In particular, they do not identify and recognise the right to a healthy environment as an individual right as determined by the law on obligations, which is the legal ground for taking cases in front of the court. This prevents citizens, groups and CSOs from bringing cases relating to the right to a healthy environment before the civil courts.

This obstacle could be avoided by adopting the new law on civil proceedings which has been before Parliament since 2020. This procedural law will introduce a new type of lawsuit called a "Lawsuit for the protection of collective interests and rights", which would include the protection of the environment.[503]

Administrative law protection

Administrative law in North Macedonia is one of the legal segments regulating environmental protection in administrative proceedings. See Annex VII about the scope of protection provided by the Law on General Administrative Procedure (LGAP). Judicial protection in administrative matters is regulated by the Law on Administrative Disputes[504] adopted in 2019, entering in force in May 2020. According to this Law, the specialised administrative courts are the Administrative Court in the first instance and the Higher Administrative Court in the second level. This Law does not provide specialised procedure for the protection of human rights as the previous Law on Administrative Disputes of 2006 did.

In January 2020, one domestic CSO, the Centre for Legal Research and Analyses[505], supported 12 cases[506] submitted by citizens from various municipalities to the Administrative Court against the Prime Minister of the Government, the Minister of Environment and Spatial Planning and the Director of the State Environmental Inspectorate, for protection against an unlawful action, i.e. omission of the fulfilment of a legal obligation by an official. The above officials and state bodies failed to provide the plaintiffs with the enjoyment of the right to a healthy environment, because they failed to comply with the legal obligations and standards established in the Law on Ambient Air Quality, guaranteed with the constitutional right to a healthy environment. The unlawful action applies to the territory of each municipality, where the plaintiffs live or work. These cases were overturned twice by the Supreme Court, after which the Supreme Court confirmed the seven rejecting decisions of the Administrative Court. The legal team submitted a motion to the General Session of the Supreme Court for the harmonisation of the court practice, taking into consideration that the same department of the Supreme Court changed the court practice deciding on the case i.e. same legal matter for the third time.

On the General Session of the Supreme Court held on 8 October 2024, the Supreme Court justices established a general position related to the air pollution in North Macedonia. The principal standing determined that the constitutionally guaranteed right to a healthy environment is an individual right of the citizens who are entitled to request the State to adopt basic planning documents to improve air quality. Further, the principal standing determines that the right to a healthy environment can be breached by acts and omissions of public officials. In respect of legal protection, the principal standing determines that citizens are entitled to use administrative dispute proceedings to protect the right to a healthy environment. This principal standing of the Supreme Court is the first one in which it determines a positive obligation for

502 Professor Milica Shutova, Civil Law Department, Goce Delchev University, Interview from 1 August 2024.
503 Article 509 and 510 of the Draft Law on Trial procedure https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=58350
504 Law on Administrative Disputes (Official Gazette of the Republic of North Macedonia no. 96/19).
505 https://cpia.mk/en/
506 For further details, refer to Annex I

the State to provide legal protection of the right to a healthy environment.[507]

The above-mentioned cases were initiated in accordance with Chapter VII Special provisions for the Law on Administrative Disputes from 2006[508] which was valid until May 2020. The current Law on Administrative Disputes of 2019 provides more limited protection than the Law of 2006. The current law only allows for challenging the act of a relevant institution but not a conduct or action, such as the failure to adopt a Strategy for clean air or similar strategic documents, as was the case with the Law of 2006. This restriction prevents full protection in cases of violation or non-respect of individual constitutional rights including the right to a healthy environment, which creates a legal gap in the full judicial protection of human rights and freedoms guaranteed by the Constitution. The change of this law was initiated by the Ministry of Justice due to the fact that according to the previous law the court proceedings were lengthy, and the judgements had a minor effect. The new law limits the length of the proceedings to up to nine months and provides the possibility for judges to impose fines for failure to implement their decisions.

2.2.3. Alternative Dispute Resolution Mechanisms

Alternative dispute resolution is one of the newest mechanisms introduced in North Macedonia, with the first law being adopted in 2013. The current Law on Mediation from 2021[509] places mediation as one of the types of alternative dispute resolution relating also to disputes in environmental matters.[510]

This competence of the mediators has not been implemented in practice, due to the fact that there have been no requests for mediation on environmental matters.[511] This is a result of the low level of implementation of mediation in North Macedonia and a lack of knowledge and awareness that mediation may be used as alternative dispute resolution in environmental cases.

3. Environmental Procedural Law and Practice

3.1. Environmental rights of information and participation

Access to information is one of the human rights guaranteed by the Constitution of the Republic of North Macedonia. Article 16 states that “Free access to information and the freedom of reception and transmission of information are guaranteed.”

The constitutional right on access to information is further implemented by the Law on Environment, which provides special status on access to information, by prescribing this right as one of its principles. In respect of the provision for access to information, please see Annex VIII.

In 2019, CSO Milieukontakt Macedonia[512] established the Aarhus Centre in North Macedonia. The focus of the Aarhus Centre is to ensure the implementation of the Aarhus

507 http://www.vsrm.mk/wps/portal/vsrm/sud/vesti
508 Law on Administrative Disputes (Official Gazette of the Republic of Macedonia no. 62/06 and no. 150/10).
509 Law in Mediation Procedure (Official Gazette of the Republic of North Macedonia no. 294/21).
510 Article 1 of the Law in Mediation Procedure (Official Gazette of the Republic of North Macedonia no. 294/21)
511 Mediation as a procedure for resolving disputed relationships so far, from the interviewed mediators, never has it been applied in the area of environmental protection, protection against discrimination and in proceedings against adult perpetrators of crimes - https://epi.org.mk/wp-content/uploads/%D0%90%D0%9D%D0%90%D0%9B%D0%98%D0%97%D0%90-%D0%97%D0%90-%D0%9F%D0%A0%D0%98%D0%9C%D0%95%D0%9D%D0%90-%D0%9D%D0%90-%D0%9C%D0%95%D0%94%D0%98%D0%88%D0%90%D0%A6%D0%98%D0%88%D0%90%D0%A2%D0%90.pdf
512 https://milieukontakt.mk/

Convention in the Republic of North Macedonia.[513] The establishment and functioning of the Aarhus Centre was supported by the OSCE Mission to Skopje. In 2022, the Aarhus Centre produced an annual report on the implementation of the Aarhus Convention at the local level i.e. by the municipalities in North Macedonia. According to this Report, the monitoring of the web pages of the 80 municipalities – 79 plus the City of Skopje, in 2022 revealed that 56% of information relevant to public participation in decision making at the local level, which includes environment, urbanism, local economic development, youth participation, forums and responsible budgeting is published, compared to 44% of unpublished information.[514] The Aarhus Centre is still active and it monitors certain segments of information by the local self-government.

In respect to the language of the information published, almost all information is provided in the Macedonian and Albanian languages on the web pages of the state institutions. There are exemptions, whereas some of the web pages are only in the Macedonian and English language, in municipalities where the major population is Macedonian, or Albanian and English in municipalities where the major population is Albanian.

The basic legal mechanism for access to information[515] in North Macedonia is the Law on Free Access to Information of Public Character of 2019.[516]

The Law on the Environment regulates both the Right to participation and the Right to information, following the principle of public participation and access to information (Article 17). This law obliges the Government and other public bodies to allow public participation in the process of preparation of laws, other regulations and legal acts but also in the procedure of preparing documents for adoption, regulations drafting.

In practice, providing information and public participation in processes related to the environment, are only formally respected by the competent state and local authorities. Usually, this information does not have a wide scope since state authorities publish information on their web sites. As a result, access to information and public participation depends on the accessibility of the web sites. Some of the public bodies or municipalities, are not fully transparent and fail to publish information of public interest or when such information is published it is not easily found by the citizens and interested parties.[517]

There is also a positive practice of public participation in the creation of draft legislation and participation in public debates. In the process of drafting the Law on Environmental Inspection, the public was involved by sharing the draft law as well as by organising public debates about it.[518] The public had an opportunity to provide comments of the draft on the official portal ENER (www.ener.gov.mk), and at the end of the time for providing the comments, all comments were delivered to the competent institutions as part of the draft legislation.

3.1.3. Rights of Assembly and Protest

The right to assembly and protest is also one of the constitutionally guaranteed rights in North Macedonia. Article 21 of the Constitution provides that “Citizens have the right to assemble peacefully and to express public protest without prior announcement or a special license. The exercise of this right may be restricted only during a state of emergency or

513 https://arhus.mk/?page_id=805
514 Aleksandra Shackarska, Milieukontakt Macedonia, interview held on 26 July 2024.
515 Law on Free Access to Information of Public Character (Official Gazette of the Republic of North Macedonia no. 101/2019).
516 The Law regulates the conditions, the manner and the procedure for exercising the right to free access to public information held by holders of information. The competent body for monitoring the implementation of the law, publishing the list of information holder, developing policies for access to information, conducting appeal procedure against decision for rejecting a request for public information is the Agency for Protection of the Right to Free Access to Public Information
517 Aleksandra Shackarska, Milieukontakt Macedonia, interview held on 26 July 2024.
518 Nikola Jovanovski, Centre for Legal Research and Analyses, interview held on 24 July 2024.

war." This constitutional provision was further implemented by the Law on Public Assembly from 1995 [519]. The Law sets out the manner of peaceful assembly and protest and determines restrictions for the limitation of these rights and defines the public assembly by determining the size of the group (at least 20 individuals).

The practice thus far has shown that the Rights of Assembly and Protest are fully respected in North Macedonia. There were very few cases when the police restricted public assembly and protest of the citizens i.e. the restrictions were imposed only when the legal requirements for restriction were fulfilled.

In recent years there have been protests for the protection of Lake Ohrid, calling for the closure of wild dumps, measures against air pollution in major cities and protests against the opening of mines on the territory of North Macedonia. These protests were organised by citizens' initiatives or environmental CSOs. Most of these protests had little impact, except in the cases of the opening of mines. In these cases, the Government on two occasions cancelled the issuance of the mining concessions.

3.2. Rights of Access to Justice, Remedies and their effectiveness

3.2.1. Access to Justice

The Macedonian legal system provides legal remedies by procedural legislation in four different legal areas: constitutional, criminal and criminal-misdemeanour, civil, administrative and administrative-misdemeanour. From a procedural point of view, every procedure has different requirements for submitting a case for the protection of human rights.

In practice, there are no specific barriers to access to justice. The expenses of the court procedures vary, thus initiation and conducting of some of the procedures are free of charge (constitutional, most of the administrative, criminal, misdemeanour). Court fees and expenses are obligatory in cases of civil proceedings and administrative disputes proceedings. For civil procedure, the Law on Court Fees determines the amount by value of the dispute, however for administrative disputes, fixed court fees are determined, regardless of the subject or value of the case. The Tariff Code of the Macedonian Bar Association determines the attorney's fees.[520]

There are attorneys and legal experts that support CSOs in submitting cases for providing legal protection of human rights, including the right to a healthy environment. CSOs through various projects or programmes, in most cases, financially support these cases. The main obstacles in these cases are the following: the lack of financial means to obtain expertise to assess the levels of pollution, environmental damage and compensation. In addition, in North Macedonia there are very few institutions that are equipped and experienced to conduct forensics or to be engaged as expert witnesses in court proceedings. [521]

The Ministry of Justice provides free legal aid, as defined by the Law on Free Legal Aid from 2019 for individuals that need for legal aid. For the scope of this law, please see Annex IX.

Initiated cases generally challenge the conduct of the state or local institutions and bodies. There are very few cases against corporation.[522] The low number of cases against corporations is a result of lack of financial mean for taking cases before the national courts, for forensics and high court and attorney's fees, because the plaintiffs in all cases were citizens or CSOs.

519 Law on Public Assembly (Official Gazette of the Republic of Macedonia no. 55/95, 19/06, 66/07 and 152/15 and Official Gazette of the Republic of North Macedonia no. 31/20).
520 Attorney Aleksandar Godjo, Interview from 3 August 2024.
521 Bojan Trpeski, Project Manager in the Macedonian Young Lawyers Association, Interview held on 22 July 2024.
522 https://svedok.mk/mk/record.php?id=1275

3.2.2. Access to remedies and their effectiveness in practice

Legal remedies in administrative, court and constitutional court proceedings are effective, taking into consideration their legal effect on the reviewed conduct or decision. If the public body in administrative proceedings, or courts in court proceedings determine irregularities or violations of human rights, the reviewed actions are cancelled or annulled. There is a difference between the effect of the decisions and judgements of criminal and civil courts as compared to administrative public body and administrative courts. The effect of the first group, criminal and civil is final; however this is not the case with the decisions and judgments of administrative bodes and administrative courts whose effect depends from the willingness of the public body whose decision was annulled.[523] The Law on Administrative Disputes from 2019 introduced provisions which determine the sanctions imposed by the administrative courts in cases where a public body is not following the standards set out in the judgements or decisions of the administrative courts. So far, the administrative courts are not using the provisions to impose sanctions on the public bodies.

In addition, non-enforcement of a court's decision is a criminal offence according to the Criminal Code. In respect to criminal sanctioning policy, the Criminal Code prescribes a range of imprisonment from one year to a life sentence in the case of Ecocide. Nonetheless, the courts prevalently impose fines for environmental crimes.[524] To date there have been no registered cases for Ecocide.

Administrative protection of the right to a healthy environment is minor, or does not exist, taking into consideration the findings of the administrative court and the Supreme Court in the cases of air pollution. In these cases, the courts did not use the principle of proportionality, which is common practice in the work of the public administrative bodies and courts, because they are not deciding about the merit of the cases.[525]

4. Key environmental concerns in the national context

North Macedonia has been facing various serious environmental issues over the last few decades. The key environmental issue for Macedonian citizens is air pollution, since it has a direct effect on their health and quality of life. A few cities in North Macedonia are permanently on the Air quality index (AQI), as cities with the highest level of air pollution in the region, Europe and globally.[526]

Another key environmental issue is the old deposit of Lindane in the former Chemical Factory OHIS. The Government, aware of the level of hazardous risk of this issue, asked for international support for the disposal of around 63,000 tons of Lindane abroad for further processing and final disposal using the best available technique, which are not available in North Macedonia. This activity is supported by UNIDO and implemented by UNOPS.

As a result of climate change, which results in very high temperatures during the summer months, North Macedonia is facing an outbreak of forest fires, the largest in the last decade. In 2024, North Macedonia asked for huge air support for fighting the forest fires, invoking the NATO mechanism. This environmental issue is high risk not only for the population but also for forests and agricultural land as well as for the air quality.[527]

In 2021 and 2022, the Commission for Protection of Discrimination identified discrimination

523 Zharko Aleksov, PhD, Centre for Legal Research and Analyses, interview held on 26 July 2024.
524 Gordana Lazhetic, Professor of Criminal Procedural Law at the Law Faculty Iustinuanus Primus, University Sts. Cyril and Methodius, interview held on 1 August 2024.
525 Konstantin Bitrakov, Assistant Professor of Administrative Law at the Law Faculty Iustinianus Primus, University Sts. Cyril and Methodius, interview held on 24 July 2024.
526 https://www.iqair.com/north-macedonia
527 Ana Colovic Leshovska, EKO SVEST, interview held on 5 August 2024

against local Turkish minorities in Radovish[528], a local Roma minority in Kavadarci[529] and in Prilep[530] because the municipality did not build a water supply and sewage system to provide clean water. The Commission obliged the municipalities to stop the discrimination and to provide access to clean water within a period of 6 months. According to the Commission, Kavadarci municipality undertook activities to implement the Commission's findings, connecting the Roma settlement to the sewage and water supply system

5. Concluding summary and recommendations

The legal system in North Macedonia provides a clear formal legal framework but fails to fully ensure effective mechanisms for the protection of human rights, including the right to healthy environment, in criminal, misdemeanour, and administrative proceedings, as can be seen from the examples above. The civil law protection appears to be even less efficient and effective, in particular, when it comes to the protection of environmental rights. This is a result of lack of awareness among citizens and the public, as well as legal professionals and the legal community, about the possibility for a protection of environmental rights.

The State Environmental Inspectorate is the institutional focal point for the protection of the right to a healthy environment, because it is the most relevant institution taking into consideration its expertise and competences. The Inspectorate is highly efficient in monitoring the state of the environment and bringing proceedings in response to environmental harm.

The judiciary is still on a very basic level in understanding environmental rights and identifying instances of environmental harm[531]. Most public prosecutors and judges are not familiar with the international case law and developments relating to the protection of human rights and the environment, because they do not follow the jurisprudence of international courts and bodies. Moreover, they very likely are not fully equipped to investigate environmental crimes due to a lack of technical equipment, specialised human resources and know-how on these issues. Still, the criminal justice system has established solid practice on the protection of environmental rights in the judicial system in North Macedonia. This is a result of a comprehensive legal framework, active environmental inspectors and complaints submitted by citizens and CSOs.

This is also case in the civil justice system in which there is less interest by judges to identify violations on human rights including the right on healthy environment, in particular, in relation to protection of other substantive rights. Taking into consideration the above-mentioned cases before the civil court departments, it can be concluded that there is a drastic difference in court practice established in the same court. Moreover, civil courts are failing to address the principle of proportionality, when assessing the individual against public interest, as they rarely assess cases on the merits. For example, the Bitola Court of Appeal in one case rejected a case against pollution by irregular landfills in Struga without recognising the constitutional guaranteed right to healthy environment and in the other case accepted the case on the protection of the right of access to clean water in Prilep, citing all relevant international documents including the practice of the ECtHR.

This example is applicable also in the administrative practice of the Supreme Court in which different judges from the same department brought diametrically opposite decisions on cases against air pollution. This situation could be prevented by using the mechanism for harmonisation of court practice in the Supreme Court by principal legal opinions and legal standing.

528 https://kszd.mk/wp-content/uploads/2022/10/08-242-%D0%BE%D0%B4-28.07.22-%D1%83%D1%82%D0%B2%D1%80%D0%B4%D0%B5%D0%BD%D0%B0-%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%BC%D0%B8%D0%BD%D0%B0%D1%86%D0%B8%D1%98%D0%B0.pdf

529 https//kszd.mk/wp-content/uploads/2022/10/0802-120-од-19.04.22-утврдена-дискриминација.pdf

530 https://www.errc.org/uploads/upload_en/file/5414_file1_naredba-za-vlastite-da-obezbedat-voda-za-romskite-zaednici-vo-prilep.pdf

531 For further details, refer to Annex IV

Recommendations

1. Introducing constitutional amendments for increasing the competence of the Constitutional Court to fully protect all rights and freedoms guaranteed by the Constitution
2. Adopting the Law on Civil Proceedings that has been before the Parliament since 2020, which will introduce extended civil legal protection of the rights guaranteed by the Constitution
3. Building additional capacities through specialised trainings of the State Environmental Inspectorate and the police for identification and processing irregularities, violations, and crimes against the environment
4. Providing templates (hard copy and electronic) of motions for citizens for reporting irregularities to the relevant environmental institutions (Ministry of Environment and Spatial Planning, State Environmental Inspectorate, local environmental inspectors, etc.)
5. Providing a special budget for technical support and forensics for fighting environmental crime for the State Environmental Inspectorate, police and public prosecutors
6. Supporting appellate courts in all jurisdictions, together with the Supreme Court, to work on case-law harmonisations on issues related to the environment, to ensure the principle of legal certainty
7. Introducing legal reasoning and the principle of proportionality in legal drafting for candidate judges and prosecutors under the Academy for Judges and Public Prosecutors
8. Introducing lex specialis training curricula related to human rights standards in environmental cases both for civil and criminal judges as well as prosecutors, as a part of continuous training
9. Usage of the HELP online course on Environment and Human rights, in particular for candidate judges and prosecutors
10. Introducing legal drafting course to enhance legal reasoning, in particular, related to the principle of proportionality (focus also in environmental related cases) as part of the continuing legal education in the Academy for Judges and Public Prosecutors
11. Developing a more comprehensive Manual/Guidelines for judges/prosecutors in dealing with environmental related cases from the human rights perspective and standards
12. Knowledge sharing and exchange of good practices with other countries in the region as well as in EU/CoE member states to improve policy and practice, providing specific training for lawyers to better deal with strategic environmental litigation before domestic and international courts
13. Introducing Environment and Human Rights in the curricula of the Law faculty and raising awareness among students as well as among high school students
14. Increasing the level of public participation in the process of drafting legislation and strategic documents produced by the relevant environmental institutions, as well as providing an opportunity for the public to initiate post legislative scrutiny of environmental legislation or parliamentary oversight in the Parliament of North Macedonia
15. Providing institutional support to the High Court and the Supreme Court through peer-to-peer trainings and guidelines on international environmental law and jurisprudence for increasing awareness for environmental issues

6. Annex

Annex I

Case against air pollution

In January 2020, twelve plaintiffs from different municipalities in North Macedonia submitted motions against the Prime Minister of the Government, the Minister of Environment and Spatial Planning and the Director of the State Environmental Inspectorate and the institutions that they represent to the Administrative Court. The motion was for the protection against an unlawful action, i.e. an omission of the fulfilment of a legal obligation by an official regarding air pollution in the specific municipalities, where the Ministry of Environment and Spatial Planning has installed stations for measuring air pollution. The plaintiffs used the reports by the Ministry of Environment and Spatial Planning as evidence for air pollution.

The plaintiffs in their motions referred to Chapter VII Special Provisions - Article 56 - Article 62 of the Law on Administrative Disputes from 2006 (this law has not been in force since May 2020). This Chapter offers a legally prescribed procedure for protection against an unlawful action, concerning the rights ensured by the Constitution when no other judicial protection is provided. This procedure is urgent.

According to the motions of the plaintiffs, these officials and state bodies failed to provide the plaintiffs with the enjoyment of the right to a healthy environment, since they failed to comply with the legal obligations and standards established in the Law on Ambient Air Quality, guaranteed by the constitutional right to healthy environment.

The plaintiffs in the motions argued that the unlawful action applies to the territory of each municipality, where the plaintiffs live or work. The reasons for submitting these cases were the following: 1) The above-mentioned officials did not act in accordance with the Law and did not adopt basic planning documents to set goals for the quality of the ambient air i.e. they did not prepare and adopt the National Plan for the Protection of the Ambient Air within the seven-year period of. 2) The officials did not take the actions and measures provided for by law to reduce pollution i.e. to prevent the frequent exceeding of the limit value of PM10 particles. 3) The Director of the State Environmental Inspectorate did not conduct inspection of this process and did not determine irregularities and violations of the Law on Ambient Air Quality.

The Administrative Court rejected the motions of the plaintiffs on the grounds that the omission of the officials is not a specific administrative action that violates the right or freedom of an individual, organisation or community. Additionally, the Court stated that it does not have competence to supervise, evaluate and control the legality of the work of the bodies, but instead only the competence to evaluate the legality of the procedures and acts of the mentioned representatives of the state administration.

The plaintiffs submitted appeals to the Supreme Court that overturned the decisions of the Administrative Court stating that the Administrative Court has full competence to take the cases and decide upon them. The Administrative Court brought the same decisions again, rejecting the motions of the plaintiffs, who again submitted their appeals to the Supreme Court, which again overturned the decisions of the Administrative Court on the grounds of wrongfully determined factual situation.

The Administrative Court, for the third time, brought decisions and rejected again the motions on the same grounds as previously. The plaintiffs yet again submitted appeals to the Supreme Court which rejected 7 out of the 12 appeals on the same grounds as the Administrative Court.

In May 2023, the plaintiffs submitted a request to the General Session of the Supreme Court for the harmonisation of the court practice, taking into consideration that the same department of the Supreme Court changed the court practice deciding on the case i.e. same legal matter for the third time. The General Session of the Supreme Court on 8 October 2024

adopted a principal standing for determining a positive obligation for the State to provide legal protection of the right to healthy environment.

Annex II

The main objectives of the Law on Environment from 2005 are the following: Preservation, protection, restoration and improvement of the quality of the environment; Protection of human life and health; Protection of biological diversity; Rational and sustainable utilisation of natural resources; Implementation and improvement of measures aimed at addressing regional and global environmental problems**.** [532]

Annex III

According to the Law on Misdemeanours from 2019, the misdemeanour proceedings may be conducted in two manners. The first one is conducted before the Misdemeanour departments of the regular basic courts which are part of the Criminal Departments. The other manner is conducting the misdemeanour proceedings by misdemeanour commissions, whose decision may be challenged before the administrative courts: the Administrative Court and the Higher Administrative Court. The competence whether one case is going to be proceeded by regular courts or administrative courts is regulated by special legislation where the misdemeanour provisions are determined.

Annex IV

With regards to continuous professional training in the Academy for Judges and Public Prosecutors, in the last five years, there have been only 25 trainings related to environmental justice, which were not provided in a consistent manner. During these trainings, 104 judges and 154 public prosecutors were trained.

Annex V

The State Environmental Inspectorate is the most competent institution for the identification of irregularities in implementation of environmental legislation in North Macedonia. It consists of 28 employees, including the Director, of which 18 are state inspectors for environment, three for nature and two for water economy, all experts in their area. The remaining staff, four in total, are administrative officers. Members of the State Environmental Inspectorate are very active in the field as well as having visibility among the public. All information about the activities of the State Environmental Inspectorate is promptly published on the social media of the State Environmental Inspectorate. The annual budget of the State Environmental Inspectorate for 2024 is approximately 580,000 EUR.[533] The Government should provide an additional budget for increasing the capacities of the State Environmental Inspectorate because it is the main focal point for citizens to raise complaints and cases regarding irregularities and damage to the environment.

Annex VI

Law on Trial Procedure, Law on Non-contentious Procedure and Law on Enforcement, are procedural laws that provide legal protection for citizens in civil matters in North Macedonia. The trial procedure is a dominant procedural safeguard mechanism for the protection of rights, individuals and legal entities. It does not provide a special procedure for protection of personal rights nor the right to a healthy environment. However, if a person considers that her/his right

532 Article 4 of the Law on Environment https://www.moepp.gov.mk/wp-content/uploads/2014/09/Закон%20за%20животната%20средина%20консолидитан%20текст%2019.07.2013.pdf

533 Annual work plan of the State Environmental Inspectorate for 2025

to healthy environment is violated, he/she can file a lawsuit before a civil court. The court should take into consideration the possible violation of one's personal right, defined by the Law on Obligation and implement the principle of proportionality and principle of precaution, prescribed in the Law on the Environment and adopt a judgement.

Annex VII

The Law on General Administrative Procedure (LGAP) provides a possibility for an individual, legal entity, or group to intervene in the administrative procedure conducted by a public body; including procedures related to the protection of the environment. According to the LGAP, individuals, legal entities or groups may submit a legal remedy, most often appeal, against certain decisions if they consider that there is a legal interest in that administrative procedure. For example, an individual, legal entity or a group can submit an appeal against a Decision to issuing a development consent following an environmental impact assessment. The right to legal remedy derives from the Law on Environment and the Law on General Administrative Procedure, with a requirement to present a relevant interest of the party to intervene in the proceedings.

The LGAP also provides a special legal remedy – administrative compliant for challenging the quality of public service of general interest. For example, if a citizen is dissatisfied with the work of a public enterprise or provider of public services, including environmental matters (communal hygiene, waste management, parks and greenery, etc.), a complaint could be filed in accordance with Article 120 of LGAP. After receiving the administrative complaint, the public body for licensing, monitoring and controlling of the providers of public service is obliged to decide upon it. If the public body rejects the administrative complaint, the citizen has a right to challenge this decision before the Administrative Court. In practice, this legal remedy is rarely in use.

Annex VIII

Article 17 defines the Principle of public participation and access to information which determines the guarantees for providing access to information related to the state of the environment.[534] The Law also contains a special Chapter VIII on Access to Environmental Information which defines access to information, information holders, requests for information and its form, the grounds for rejection of the request for obtaining information, the manner of collection and publishing the information and update of information related to the environment, as well as the competent body for dissemination of information, and the fee for obtaining information. This part of the Law is harmonized with the Aarhus Convention.

Annex IX

According to the Law on Free Legal Aid, from 2019, individuals are entitled to obtain free legal aid if they fulfil the requirements determined by this law. Free legal aid is divided in two parts, primary legal aid (legal advice) and secondary legal aid (representation in civil, administrative procedures and administrative disputes procedures). The Law on Free Legal Aid has a general approach in providing free legal aid to individuals, but it has a restrictive approach regarding the scope of protection, by excluding free legal aid for constitutional, criminal and misdemeanour proceedings.

534 Article 17 of the Law on Environment https://www.moepp.gov.mk/wp-content/uploads/2014/09/Закон%20за%20животната%20средина%20консолидитан%20текст%2019.07.2013.pdf

Serbia: Baseline study of legislation, policy and practice on human rights and environment

1. Introduction

The Republic of Serbia is a parliamentary democratic republic based on the rule of law. The supreme representative body and holder of constitutional and legislative authority is the National Assembly while the Government of the Republic of Serbia is the holder of the executive power.[535] The judicial authority is unique on the territory of the Republic of Serbia. The judicial system consists of courts, with general and special jurisdiction,[536] which are autonomous and independent in their work, adjudicating in accordance with the Constitution, laws and other general acts, when stipulated by the Law, generally accepted rules of international law and ratified international treaties.[537] The Republic of Serbia has been a member of the Council of Europe since 3 April 2003. It applied to join the European Union in 2009 and has been a candidate for membership since 2012.

2. Substantive law and practice

2.1. Laws relating to environmental human rights

2.1.1. Environmental/human rights protection in the national constitution

The first instances of developing the constitutional protection of the right to a healthy environment can be found in the Constitutional Amendment to the Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) of 1963. It prescribed the obligation of the Federation to regulate "the protection of the human environment from dangers to life and health of people that threaten the entire country".[538] The Constitution of Serbia (2006) contains a provision that forms the basis of constitutional protection of the environment, but also many provisions that regulate other rights which indirectly relate to environmental protection. According to Article 74 paragraph 1 of the Constitution, everyone has the right to timely and complete information about the state of the environment, which includes the right to both active and passive information .[539] The right to access environmental information is further strengthened by Article 51 of the Constitution, which guarantees the right to true, complete, and timely information on matters of public importance.[540] The right to protection of the environment also connects to the right to protection of physical and mental health, in cases concerning the potential exposure of

535 See: *Constitution of the Republic of Serbia*, Art. 98.
536 See: *Constitution of the Republic of Serbia*, Arts. 142(1), 143(1), 143(2).
537 See: *Constitution of the Republic of Serbia*, Art. 142.
538 Amendment XXX, Official Gazette of SFRY, no. 29/1971, Art. 2 item 9.
539 Cf. Constitution of the Republic of Serbia, Official Gazette of RS no. 98/06, Art. 51.
540 In the practice of the Constitutional Court of Serbia, there have been many cases in which the constitutionality or legality of decisions on compensation for environmental protection and improvement of the environment in local self-government were evaluated. In one of them, the Constitutional Court established the non-compliance of the Decision determining the payers, amount, terms, method of payment, and use of funds of the local environmental fund adopted by the local self-government body, with the Constitution and the law, because the municipality did not hold a public hearing in the process of determining the proposal Decisions on compensation for the protection and improvement of the environment, made by the municipal assembly, which is a mandatory part of the procedure in accordance with Art. 7 para 2 of the Law on Local Self-Government Financing. According to the opinion of the Constitutional Court, this constituted a violation of the constitutional right of being informed (Art. 51 para 1 of the Constitution of Serbia). See Decision of the Constitutional Court No. IUo-8/2015, published in Official Gazette of RS, no. 14/2017, dated 9 November 2016.

citizens to considerable environmental pollution (Article 68 paragraph 1 of the Constitution).[541]

The notion of sustainable development is partially applied in Article 74 paragraph 3 of the Constitution of Serbia, which sets out the duty of every person and the Republic of Serbia as well as the autonomous provinces not only to protect but also to improve the environment.

The Constitution also contains provisions that allow the possibility of limiting certain rights if that is what it takes to achieve environmental protection. Thus, the freedom of entrepreneurship can be limited by law if necessary for the protection of the environment, natural resources, or human health and safety.[542] For example, the constitutional provision on the use and disposal of agricultural, forest, and urban construction land in private ownership, can be limited by law to avoid the risk of environmental degradation.[543]

The administrative procedures that regulate access to environmental information and public involvement in environmental decision-making have short deadlines for taking procedural actions. Thus, the right to a trial within a reasonable time, as a right guaranteed by the Constitution, is essential for the application of environmental legal standards.[544]

2.1.2. Specific pieces of legislation

During the 1970s and 1980s, a series of special laws regulating various areas of environmental protection were adopted in Serbia. The first systemic law that comprehensively regulates environmental protection and establishes the principles and basics of protection in Serbia was adopted in 1991. The law used the Swedish Environmental Protection Act of 1969 as a model.

The new approach to environmental protection became part of the legal framework in 2004 when the current Law on Environmental Protection, Law on Environmental Impact Assessment, Law on Integrated Pollution Prevention and Control, and Law on Strategic Environmental Impact Assessment were adopted.[545] With a view to aligning the legal framework with that of European Union legislation, the new Law on Environmental Impact Assessment and the new Law on Strategic Environmental Assessment are adopted on 27 November 2024.[546] In 2009, 16 special laws were adopted that regulate issues of importance

541 See Separate opinion on the decision of the Constitutional Court IUo-39/2022 of 11 July 2024, which determines that the Regulation on the termination of the Regulation on the determination of the Spatial Plan of the special purpose area for the implementation of the project of exploitation and processing of the jadarite mineral "Jadar" (Official Gazette of RS, number 8/22) is not in accordance with the Constitution and the Law.

542 Constitution of the Republic of Serbia, Art. 83, para 2. In one of the decisions of the Constitutional Court, the position was expressed that the restriction of the freedom of entrepreneurship can only be made within the limits of the law, and the adoption of a regulation introducing stricter restrictions for nature protection exceeds the constitutional and legal powers. See: Decision of the Constitutional Court of Serbia, IUo-49/2009, dated March 29, 2012. In another decision, it was pointed out that the restriction of entrepreneurship by banning the construction of nuclear power plants is not found to be an unconstitutional restriction. The reasoning was that the law that introduced the ban was passed for the purpose of environmental protection, which does not prohibit further research and development by the experts in that field, which, in some years' time, may result in reaching the conditions that guarantee the safety of the construction of nuclear power plants and adequate risk management. See: Decision of the Constitutional Court of Serbia, IUz-1575/2010, dated 8 July 2011.

543 Constitution of the Republic of Serbia, Art. 88, para 2.

544 In one case, the Constitutional Court considered a violation of the right to a trial within a reasonable time and the right to peaceful enjoyment of property that occurred after the purchase of an apartment with hidden defects that could, among other things, endanger the health of the applicant and the state of the environment. Bearing in mind that if the mentioned damage exists, it represents a danger to human life and health, the safety of the environment or endanger the environment, as well as the fact that the subject inspection procedure competent for decision-making lasted for nine years and four months, and it has not yet been legally decided on the obligation of the applicant of the constitutional appeal to carry out rehabilitation of the object in dispute. The Constitutional Court found that the applicant's right to a trial within a reasonable time was violated. See: Decision US No. Už-4301/2015, dated 20 April 2017.

545 The laws were published in the Official Gazette of RS, no. 135/2004.

546 Law on Environmental Impact Assessment, Official Gazette of RS, no. 94/2024. The Law on Strategic Environmental Impact Assessment, Official Gazette of RS, no. 94/2024.

for certain areas of environmental protection.[547] After 2010, laws in the fields of water, air, forest, soil, biological diversity, nature protection, industrial risk management, integrated chemical management, waste management, climate change, and sustainable use of natural resources contain provisions that align domestic law with tendencies found in international regulations, EU standards and regional standards.

Overall, the legislative framework of environmental law in Serbia represents an extensive and complex set of regulations containing about 300 legal documents and an array of additional obligations for the state and the business sector. These derive from international agreements and rules that guarantee the public's right to information about the environment, participation in decision-making that has an impact on its preservation and improvement, and the right to access adequate legal protection.[548]

2.1.3. Ratification of international treaties

International environmental law, the environmental *acquis* of the European Union, and the rules of the Energy Community, as well as the practice of the ECtHR have had a significant impact on the development of environmental law in Serbia. (See further below: Annex III)

According to 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.[549] The Aarhus Convention has become a part of the Serbian legal system through the adoption of 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.[550]

2.2. Law on human rights and the environment applied in practice

2.2.1. An analysis of the effectiveness of constitutional provisions

In the domestic legal framework that regulates issues of importance for environmental protection, there is a good legal basis for environmental protection through the protection of basic human rights, which needs to be further developed. The basis for the protection of procedural rights is found in the application of the standards of the Aarhus Convention, which include access to environmental information, public participation in environmental decision-making, and access to justice. In the judicial practice that will be presented below, there is a trend towards the "greening" of human rights and a deep understanding of the impact that the

547 These are the following: Law on Environmental Protection Fund, Law on Nature Protection; Law on National Parks; Law on Protection and Sustainable Use of Fish Funds; Law on Chemicals; Law on Prohibition of Development, Production, Storage and Use of Chemical Weapons and on its Destruction; Law on Biocidal Products; Law on Waste Management; Law on Packaging and Packaging Waste; Law on Transportation of Dangerous Substances; Law on Traffic in Explosive Substances; Law on Air Protection; Law on Protection from Noise in the Environment; Law on Emergency Situations; the Law on Protection against Ionizing Radiation and on Nuclear Safety; Law on Protection against Non-ionizing Radiation. The laws were published in the Official Gazette of RS, no. 36/09.

548 The list of regulations in the field of environmental protection is available at:https://www.ekologija.gov.rs/sites/default/files/inline-files/List_of_regulations.pdf. The table of competences of the inspection in the field of environmental protection is available at:https://www.ekologija.gov.rs/sites/default/files/inline files/Inspection_competences_in_the_field_of_environmental_protection.pdf

549 *Constitution of the Republic of Serbia*, Art. 16. In its decision *Už*-11320/2021, the Constitutional Court of Serbia stated that the courts should interpret the provisions of the Law (in this case the right to a trial within reasonable time) in accordance with the ECHR, as well as practice and positions of the ECtHR.

550 *Law on Ratification of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters,* Official Gazette of the Republic of Serbia, No. 38/09. In the Preamble of the Aarhus Convention, adequate protection of the environment is determined as a basic human right, and the institutes regulated by it are the basis of the right of every person to live in an environment that corresponds to his health and well-being and the duty to protect and improve the environment.

state of the environment has on the enjoyment of other rights.

In the practice of administrative bodies, there are decisions that indicate an increased public interest regarding access to environmental information, participation in environmental decision-making, and procedures for judicial protection of procedural and substantive rights in matters of importance for environmental protection. It is common to find decisions in which environmental protection inspectors ban companies from exercising activities that have a negative environmental impact until the environmental impact assessment has been concluded. In such decisions, as a rule, taking urgent measures is required to protect the environment.[551] For example, residents of a street who had been subjected to excessive noise from catering establishments for a lengthy period submitted a request to the environmental protection inspectorate and market inspection. The inspectorate-imposed work restriction measures on these establishments and temporary actions to reduce the noise. Similar cases arise from other types of pollution (e.g., emissions during the heating season, PM particles, ionising radiation, unpleasant odours, etc.). The precautionary principle is also applied to restrict business activities that harm the environment and carry a risk to human health.[552]

In the practice of the Commissioner for Information of Public Importance and the Protection of Personal Data (the Commissioner), who is the second-level authority in the procedure of exercising the right to access to information, there is a rich practice, containing views on the application of numerous legal standards woven into the procedure of access to environmental information.[553] In practice, there is an obligation for a restrictive interpretation of terms such as 'generally known facts', especially when requesting access to environmental information. This is to ensure that access to environmental information, which is considered of special public importance, is not unjustly denied.[554] Before the amendments to the Law on Free Access to Information on Public Importance (LFAIPI) in 2021, the right to access environmental information could have been denied if the information seeker 'misused' the right. This led to many cases in which public authorities refused requests for access to environmental information. On the initiative of the Commissioner, Article 13, which allowed for the possibility of denial of access to information of public importance due to abuse of rights,

551 See: Ministry of Science and Environmental Protection, Directorate for Environmental Protection, Sector for Inspection Affairs, Department for Environmental Protection from Pollution, Decision no. 353-1598-14/2006-11; Decision of the provincial environmental protection inspector, no. 501-559/2016-02 of 21 May 2016.

552 In the explanation of a decision on the use of a base station for mobile telephony, we come across an opinion on the decisive importance of the "analysis of the benefits that the source of non-ionizing radiation provides to users of mobile telephony in relation to the potential risks of harmful effects due to the daily exposure of residents to low-intensity fields in the immediate vicinity and assessment of the level and duration of exposure of the population". Decision of the City Administration of the City of Belgrade, Secretariat for Environmental Protection, no. 501.4–22/13-V-04, dated 10 July 2013. yr., p. 4. Sight. Decision of the City Administration of the City of Belgrade, Secretariat for Environmental Protection, no. 501.4–22/13-V-04, dated 10 July 2013; Decision of the City Administration of the City of Belgrade, Secretariat for Environmental Protection, no. 501.4–27/14-V-04, dated 2 April 2014; Decision of the City Administration of the City of Belgrade, Secretariat for Environmental Protection, no. 501.4–3/14-V-04, dated 28 March 2014; Decision of the City Administration of the City of Belgrade, Secretariat for Environmental Protection, no. 501.4–179/12-V-04, dated 2 December 2013.

553 M. Drenovak-Ivanović. *Environmental Law*. Beograd 2021, 179-185.

554 Deciding on the appeal against the decision rejecting the request for access to information in such a case, the Commissioner for Information of Public Importance indicated the standards in the application of Art. 10: "The legal wording 'unless it is common knowledge' should be interpreted very restrictively. The good will of the authorities, and the need to affirm the idea that the 'ruling principle' in the work of the authorities should be replaced with the 'principle of good governance', asks the authorities to completely abstain from this option. The term common knowledge, in addition to the requirement of availability to a greater number of citizens, depends on a number of specific circumstances, such as: who the applicant is; whether the applicant is a person with access to official gazettes at work by nature of their job; if employed, his education, profession, etc. (...) When it comes to general acts of a company or other persons that were not published in an official gazette and not available or found in some other information medium when the information was requested (a website, etc.), the information cannot be denied pursuant to the provisions of Article 10 of the LFAIPI, arguing that the general acts were previously posted on the company's bulletin board before entering into force." From the reply of the Commissioner No. 07-00-76/2005-04 dated 30 September 2005 and No. 011-00-18/2005-01 dated 25 November 2005.

was deleted from the LFAIPI in 2021.[555]

In the Commissioner's practice, when deciding on the right to access environmental information, it is common to encounter arguments that link this right with the right to information as a basic human right. In doing so, the derived facts are evaluated "in the spirit and in accordance with the criteria and standards of a democratic society."[556] Thus, in several of the Commissioner's decisions, it is indicated that environmental information, especially regarding polluting substances and emissions, is information for which there is a "greater interest of the public to know". This information is considered of public importance *par excellence*. An important aspect for accessing such information is the Commissioner's view that public authorities must provide the requested information even when they are exempt from the obligation to conduct analyses and prepare reports that generate such data, if such information is contained in the documents at their disposal.[557] Public authorities have complied with the decisions of the Commissioner and released information, including information on water quality in areas where the mining company Rio Tinto was undertaking Lithium exploration.

After 20 years of practice, certain shortcomings have been observed that should be eliminated through the adoption of new regulations.[558] The gap between the transposition and implementation of the horizontal environmental *acquis*, relevant for the Aarhus Convention and protection of human rights related to the right to a safe, clean, healthy, and sustainable environment, was pointed out in the reports of the European Commission on Serbia's progress on integration as early as 2012, and the European Commission Progress Report on Serbia for 2021[559] indicated a deep divergence and concrete, individual examples in

555 The amendments to the Law on Free Access to Information on Public Importance (LFAIPI) in 2021 significantly changed how access to environmental information could be denied, particularly regarding the issue of 'abuse of rights.' On the initiative of the Commissioner, Article 13, which allowed denial of access to information due to abuse of rights, was deleted from the LFAIPI. Prior to the amendments, public authorities could deny access to environmental information if the request was considered excessive or unreasonable, often citing the volume of the data or the frequency of requests. For example, an environmental NGO's request for air quality data was rejected because of its broad scope, with the authority claiming that fulfilling the request would disrupt its operations. This highlights the tension between ensuring transparency and managing administrative burdens. In many decisions, the Commissioner emphasized the need for authorities to consult with requesters and attempt to modify their requests before denying access. The text should have a footnote at the end: M. Drenovak-Ivanović, Ekološko bravo, Beograd 2021, 183-184

556 Decision of the Commissioner for Information of Public Importance and Personal Data Protection, number: 071-01-2478/2021-03, dated 6 September 2021.

557 Decision of the Commissioner for Information of Public Importance and Personal Data Protection, number: 071-11-7902/2023-03 of 9 October 2023; Decision of the Commissioner for Information of Public Importance and Personal Data Protection, number: 071-01-1871/2020-03, dated 1 October 2020; Decision of the Commissioner for Information of Public Importance and Personal Data Protection, number: 071-01-89/2021-03, dated October 18, 2021; Decision of the Commissioner for Information of Public Importance and Personal Data Protection, number: 071-01-761/2021-03, dated 22 March 2021.

558 There is a need to harmonize the Law on Planning and Construction with international standards; adopt regulations related to environmental impact assessment and strategic environmental impact assessment that are harmonised with the EU; harmonise and adopt the Directive on criminal offenses against the environment; implement the Action Plan for the Development of Administrative Capacity and the Air Protection Program; passes a regulation on appropriate assessment; accept the Industrial Emissions Directive; continue international cooperation on transboundary rivers. See: European Commission Progress Report on Serbia for 2022, Brussels, 8 November 2023 SWD (2023) 695. European Commission Progress Report on Serbia for 2024, issued in Brussels on October 30 (SWD (2024) 695, final, p. 88), states that there has been no improvement in public participation and consultations compared to the previous reporting period. The report emphasises the need for Serbia to involve various ministries, particularly the Ministry of Finance, in the preparation of the Environmental Protection Strategy and the implementation of the Green Agenda. It also calls on the Ministry of Environmental Protection to regularly publish comprehensive reports and updates on green investments and their environmental impacts.

559 European Commission Progress Report on Serbia for 2021, 128-130. Cf. European Commission Progress Report on Serbia for 2012, Bruxelles 10 October 2010 SEC (2012) 333, 78; European Commission Progress Report on Serbia for 2014, Bruxelles, 8 October 2014 SEC (2014) 332, 99; European Commission Progress Report on Serbia for 2015, Bruxelles, 10 November 2015 SEC (2015), 78; European Commission Progress Report onr Serbia for 2019, Bruxelles, 29 May 2019. SWD (2019) 219, 87; European Commission Progress Report for Serbia for 2020, Bruxelles, 6 October 2020, SWD (2020) 352, p. 115-116.

which this may be especially noted (decision-making of air quality plans,[560] irregularities in the involvement of the public in the wake of COVID-19 restriction measures, irregularities and lack of transparency in environmental impact assessment procedures related to Chinese investments,[561] etc.). Therefore, the European Union's Common Position in Chapter 27 sets, as a closing benchmark, the need for Serbia to "demonstrate that it will be fully prepared to ensure the effective implementation and enforcement of the horizontal Directives at the date of accession."[562]

The recently adopted Law on Environmental Impact Assessment and the Law on Strategic Environmental Assessment (27 November 2024) require ongoing evaluation to determine if the updated regulations lead to improved outcomes.

2.2.2. Judicial practice and decisions

The argumentation found in some of the most influential judgments of the Basic Court, the Administrative Court, Higher Court, and the Supreme Court in the field of environmental protection includes analyses of facts and circumstances that align with the practice of the ECtHR. In this context, the most important judgments will be highlighted. A comprehensive analysis of selected cases is provided in Annex I of this document.

In Serbian case law, there are cases highlighting the importance of understanding the basis of the right to peaceful enjoyment of possessions and the possible limitations introduced by law to protect the environment. In one case, the owner of a plot located in an area declared a nature reserve by a Decree requested compensation equal to the market value of the plot in question, believing that the adoption of the Decree resulted in the *de facto* expropriation of the plot. The court considered the legality and legitimacy of the interference with the plaintiff's property rights using the concept of fair balance (proportionality) taking into account the judgment of the ECtHR referred to by the plaintiff (*Matos e Silva LDA et al. v. Portugal* and *Elia S. rl v. Italy* - judgment dated 16 September 1996, and 2 August 2001). The court rejected the plaintiff's request.[563]

The practice of the ECtHR had an important role in answering the question of whether an environmental NGO can have the status of a party in an administrative dispute. It also addressed the questions of whether such status is linked to the NGO's prior involvement in an environmental impact assessment and whether its legal standing differs when filing a lawsuit against a construction permit for a project that is not required by law to undergo an environmental impact assessment. In that sense, we refer to the judgment of the Administrative Court, two judgments of the Supreme Court, and the judgment of the Higher Court regarding the participation of associations in environmental protection and the basis of the right to a fair trial. In support of the arguments, reference was made to the ECtHR case law.[564] The Serbian case law indicates that environmental organisations have legal standing in administrative disputes concerning decisions where they have participated in the relevant decision-making process

560 An environmental NGO has submitted a request for access to information of public importance to the City Administration, requesting information on the activities undertaken by the City Administration to implement the current Air Quality Plan 2016-2020, which should help the City Administration improve air quality and eliminate the cause of pollution. The City Administration refused the request with the explanation that it was an abuse of rights since that same NGO had been submitting many requests for access to information. On 8 November 2021, the Commissioner issued a decision that annulled the contested decision of the City Administration of the City of Belgrade, fully respecting the arguments of the environmental NGO.

561 Drenovak-Ivanović, M. (2020). Standing in Environmental Law after Urgenda, Juliana and COVID-19 Crises: Who Should Force Governments to Act in Environmental Issues Related to Climate Change? *EU and comparative law issues and challenges series (ECLIC)*, *4*, p. 3-20.

562 European Union Common Position, 17. The closing benchmarks are a special mechanism of the negotiation methodology that indicates the previous issues that should be resolved in the negotiations so that negotiations on a certain chapter can be completed.

563 Judgement of the Supreme Court of Cassation Rev 3985/2021 of 21 April 2023.

564 Decision of Administrative Court of 19 April 2019; Judgment of the Supreme Court of Cassation 17 March 2023; Judgment of the Supreme Court 41/2023 of 8 August 2023.

(e.g. EIA, integrated permission, etc.). An environmental association can obtain legal standing in other administrative disputes, provided that there is a legally relevant connection between the plaintiff's, namely, the interest it seeks to protect—and the subject of the administrative decision. This includes consideration of whether the use of e.g. a disputed construction permit violates the interest the association aims to defend.[565] The practice of the Public Prosecutor shows that environmental associations, established as citizens' associations, often serve as legal representatives for individuals harmed by environmental crimes. This role grants them the right to object to decisions by the Public Prosecutor, such as dismissing criminal charges or refusing to initiate criminal proceedings. By exercising this right, these associations contribute to meeting the requirements of the Aarhus Convention, ensuring that decisions are accessible and transparent.[566]

For the first time in Serbian case law, a decision was recently made on an *actio popularis* claim, reflecting the need to review the role of protectors of collective and wider interests of the public and access to environmental justice within the judicial practice of Serbia. The *actio popularis* claim has in theory been available for anyone seeking the elimination of a source of danger threatening considerable damage, as prescribed in the Serbian Law of Contracts and Torts of 1978. However, it was not until 44 years later, in September 2022, that the Higher Court passed judgment on such a claim granting *locus standi* to an environmental non-governmental organisation. The organisation had brought an action against the government for its failure to apply the National Emissions Reduction Plan (NERP), with the judgment becoming final in August 2023. [567] The question that had a decisive role in the court's decision regarding the application of *actio popularis* was whether a lawsuit was the only means of legal protection by which the right to an effective legal remedy could be exercised in accordance with Art. 13 of the European Convention on Human Rights or whether the omissions that led to failure to apply the NERP could be remedied by other appropriate measures. When deciding on the *locus standi* of the environmental non-governmental organisation, the Higher Court considered not only the provisions of domestic law, but also the standards set forth in the judgments of the ECtHR.

The supply of drinking water and its importance for fulfilling the basic life needs of every person, as a foundation of the right to life was discussed in an important case decided by the Basic Court. The case in question considered the application of the "user pays" principle in the drinking water supply law.[568] The court concluded that water of drinking quality was not delivered to users, and for that reason, there was no right of the utility company to charge for the service.

The right to respect for private and family life and its quality has been discussed in many national cases. In one case, the inaction of the local self-government unit, which resulted in harmful effects of unpermitted noise levels in residential areas, led to a finding of non-pecuniary damage due to the violation of personal rights.[569] When assessing the level of the violation of rights, the Court considered the practice of the ECtHR. In its reasoning the court stated that a person's right to respect for their home, as a space where private and family life takes place, includes not only the right to physical space but also to the quality of enjoyment of that space, i.e., the right to quiet enjoyment of the space, which derives from the analysed practice of the ECtHR. The court found that the plaintiffs were entitled to monetary compensation for non-pecuniary damage.

In Serbian jurisprudence, views on the relationship between freedom of assembly, freedom of expression, and the right to a peaceful enjoyment of possessions in environmental

565 https://www.vrh.sud.rs/sr-lat/uzp-1322021-41271

566 Sinđelić, Danijela. The Course of Criminal Proceedings in Cases of Environmental Crimes, with a Special Focus on the Hazardous Waste Case in Obrenovac." Drenovak-Ivanović, M. (ed.), Handbook on the Application of Environmental Law – Case Studies. Belgrade, 2020: 127–152

567 Judgment of the Higher Court, no. 181/21 of 22 September 2022

568 Judgment of the Basic Court in Vrbas, P. 372/2019 of 5 June 2017.

569 Judgment of the First Basic Court in Belgrade, 56 P no. 20265/2020 of 30 March 2021.

matters have been affected considerably by the practice of the ECtHR. An example can be found in a decision of the Basic Court, where the court considered whether protesters interfered with the plaintiff's possession by removing a wire fence, entering their property, and continuing with protest activities.[570] The opinions expressed in ECtHR case law along with an analysis of views expressed in more than 15 cases brought before that court played a key role in the court rejecting the claim as unfounded.[571]

Administrative and independent bodies rely on the practice of the ECtHR to find arguments to support their decisions. Therefore, training civil servants on the recent practice of the ECtHR and providing a guide containing the most important judgments related to indirect environmental protection through the human rights system would help improve environmental protection practices.

The curricula of the courses Environmental Law, Climate Change Law, Legal Clinic for Environmental Law, and Master's Studies in Environmental Law at the Faculty of Law of the University of Belgrade organised around the Jean Monnet Chair in European Environmental and Climate Change Law,[572] contain mandatory work with students on solving case studies by mandatory application of the ECtHR practice. Such an approach has results, bearing in mind that lawyers and jurists in environmental NGOs, who have completed these programmes in current legal practice, build argumentation in environmental cases by referring to the views of the ECtHR. The programmes established with the support of the OSCE Mission to Serbia within the Judicial Academy aim to familiarise the participants of the Judicial Academy with the importance of the ECtHR practice in the field of environmental protection. Based on the results achieved, it is recommended that such a course within the Judicial Academy be further strengthened with an additional course that would point to the current practice of the ECtHR in the field of environmental protection and climate change.

2.2.3. Alternative dispute resolution mechanisms

The Ombudsperson (Protector of Citizens) plays an important role in assisting the public in achieving legal protection in environmental matters. Since May 2010, when the Ombudsperson started its work, there have been 538 complaints related to the violation of the right to a healthy environment (as of December 2019), which represents 1.4% of all complaints submitted to this institution.[573] Acting on complaints and on his own initiative, the Ombudsperson issued 31 recommendations, ten opinions, and one legislative initiative in the field of environmental protection.[574] Statistical data show that even in 87.4% of the cases, the state body addressed the omissions pointed out by the Ombudsperson after the initiation of the control procedure.[575]

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570 Judgement of the Basic Court in Novi Sad P. 51978/2021 of 23 December 2022.

571 The argumentation reads: "Although judicial practice is not a formal source of law, ECtHR practice guides the court in the application of positive law to the facts, with the aim of representing a corrective to domestic practice."

572 Jean Monnet Chair in European Environmental and Climate Change Law, https://environment.ius.bg.ac.rs/

573 The low number can be explained by the fact that the Ombudsman is generally a remedy of last resort and a range of quicker and more stringent routes for challenge exist.

574 Cases Summary is presented in M. Drenovak-Ivanović. *Environmental Law*. 2021, p. 171-179.

575 After the international conference "Joint efforts towards a healthy environment: the role and importance of the Ombudspersons " held on 13 and 14 June 2024, the Protector of Citizens launched an initiative to establish the "Belgrade Platform for the Improvement and Protection of the Environment", which called for a joint response to contemporary challenges in the field of environmental protection by representatives of the legislative, executive and judicial authorities, the academic community, the civil and business sectors, the media and independent institutions from the Serbia, Italy, Turkey , Hungary and Bosnia and Herzegovina. The aim of the platform is to raise awareness on the importance of environmental protection, as well as to encourage competent authorities to take concrete steps towards the preservation of natural resources and the realisation of citizens' rights to a clean, healthy and sustainable environment.

3. Environmental Procedural Law and Practice

3.1. Environmental rights of information and participation

3.1.1. Access to environmental information

The LFAIPI provides a realisation of the constitutionally guaranteed right to information. The scope of environmental information considered to be of public importance is defined in line with the Aarhus Convention. This ensures the right to access such information as part of the broader right to access information of public importance. Additionally, a specific legal framework has been established to govern access to environmental information.[576] Everyone has the right to access 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 it is accessible to them. This includes information about proposed environmental plans and policies at the national level, as well as local and regional level projects that relate to the environment and/or have environmental impacts. If the authority possesses a document containing the requested information in the language in which the request was submitted, it is obliged to make the document available to the requester and to create a copy in the language in which the request was submitted (LFAIPI Art. 18 para. 4).

As mentioned in Section 2.2.1, the Commissioner has established a good practice for accessing environmental information of public importance. In the practice of the Commissioner, there has been an increase in the number of reported complaints regarding violations of the right to access environmental information (from 1.40% in 2018 to 6.37% in the first quarter of 2023). There is a rise in the number of executed decisions of the Commissioners ordering access ordered to requested information, that have not been implemented, which is a worrying trend. The largest number of complaints are filed against ministries and local self-government bodies by the largest citizen associations that deal with environmental protection.[577]The Commissioner's reports show that the public often appeals to the Commissioner due to denied access to information that is required to be made public without a special request from the party.[578]

The right to access environmental information has been expanded to environmental information not regarded as information of public importance. This expansion has been achieved through several laws: (a) the Accounting Law (which requires non-financial reporting on environmental, social, and governance issues, human rights and anti-corruption efforts); (b) the Law on Consumer Protection (which requires that business practices that must not be misleading); (c) the Law on Climate Change (which includes rules on greenwashing which prohibit the misleading of potential buyers of new passenger cars through the use of labels, symbols or inscriptions related to the consumption of fuel or CO2 emissions, paragraph 1,

576 Special status is guaranteed to the information on emissions and information regarding a threat to protection of public health and the environment. When it comes to such information, exceptions to the right of access to information cannot be applied. The deadline for accessing such information is 48 hours, unlike the deadline for accessing other environmental information that is considered information of public importance (15 days). The requester of such information is exempt from the obligation to pay a fee. Access to other environmental information that is considered information of public importance is regulated in the same way as access to information of public importance.

577 The percentage of denied information related to environmental threats and protection amounts to 1.83%, which, according to the Commissioner's assessment, is a high percentage and which is particularly concerning given that this information has privileged status in the sense of shorter and urgent deadlines for processing requests for access and resolving complaints, and which are of exceptional importance for people's health and their decisions regarding behaviour in relation to their content.

578 Report of the Commissioner for the year 2023, Belgrade, 2024, p. 91.

point 7). These provisions are explained in Section 2.1.2.[579]

3.1.2. Rights of participation

The participation of the public in environmental decision-making must be guaranteed from the earliest decision-making stage, when their opinions and attitudes can have an impact on the content of the decision. Environmental protection starts with determining the basis for sustainable use and protection of natural values. These are general acts of a strategic nature. A strategic environmental impact assessment is carried out for those general legal acts that, in the form of plans, programmes, foundations or strategies, as well as their changes, represent the basis for the development of activities that affect the environment and stable climatic conditions.[580] The authority responsible for the preparation of the plan or programme has the obligation to ensure public participation in the consideration of the strategic assessment report in accordance with the procedure regulated by the Law on Strategic Environmental Impact Assessment.[581] The public, local self-government units, businesses, and civil society are also included in the preparation of environmental protection laws through consultations.[582] The interested public, as a party to the proceedings, is a mandatory participant in the environmental impact assessment procedure (regulated by the Law on EIA) and the integrated permit issuing procedure (regulated by the Law on Integrated Prevention and Control of Environmental Pollution).

In 2018, the Ministry of Environmental Protection made 17 positive decisions regarding environmental impact assessment studies, but the interested public was involved in the decision-making related to only two of these procedures. Further, the Ministry of Environmental Protection decided to give consent to 19 environmental impact assessments in the period January–July 2019, but the interested public participated in only three of these procedures. Environmental NGOs in the field of environmental protection and sustainable development took part in two of those three proceedings, and in the third, an environmental NGO founded to protect the safety of birds. The majority of recommendations that these three organisations provided in the presented opinion were taken into account in the decision-making process (102 out of 109 in all three cases). In the period from 1 January to 2 August 2024, 12 decisions were issued giving consent to environmental impact assessment study. The interested public participated in five of them, including local associations and environmental NGOs.[583] The

579 An example of good practice can be found in the Corporate Governance Code developed by the Serbian Chamber of Commerce. The code contains principle 33, "good corporate governance practice requires socially responsible business operations of the company, the establishment of specific and binding principles related to environmental protection and ethical behaviour, as well as the publication of relevant information related to all socially responsible activities carried out by the company." Although they do not have binding force, they are applied as a soft law instrument containing principles and recommendations for best corporate governance practices that are recommended to all capital companies.

580 An example can be found in public participation in the process of preparing the Integrated National Energy and Climate Plan of Serbia for the period 2021–2030 with a vision to 2050 of the Program of adaptation to changed climate conditions with an action plan, https://www.ekologija.gov.rs/sites/default/files/inline-files/RADNA%20VERZIJA_Program%20prilagodjavanja%20na%20izmenjene%20klimatske%20uslove_Akcioni%20plan.pdf

581 Law on Strategic Environmental Impact Assessment, Official Gazette of RS, no. 135/2004 and 88/2010As mentioned earlier in this document, the drafts of the new Law on Strategic Environmental Impact Assessment and the Law on Environmental Impact Assessment are prepared with the aim of harmonising them with Directive 2001/42/EC on the environmental impact assessment of certain plans and programmes. For more data, see: https://www.ekologija.gov.rs/sites/default/files/inline-files/OBRAZLOZENJE%20ZAKONA%20JAVNA%20RASPRAVA.pdf The development of a new Strategy for the implementation of the Aarhus Convention is underway.

582 An example can be found in the procedure in which the draft Law on Climate Change was adopted, in which representatives of the economy and civil society, together with representatives of competent authorities and organizations, formed a working group for preparing the law, and the public also took part in the public discussion that preceded its adoption.

583 Decisions that contain opinions of the interested public are available at: https://www.ekologija.gov.rs/obavestenja/procena-uticaja-na-zivotnu-sredinu/doneta-resenja-i-zakljucci/resenje-o-saglasnosti-na-studije-o-proceni-uticaja?page=0

analysis of the proceedings conducted in which the interested public was involved as a party to the proceedings indicates a significant increase in participation.

Involvement of civil society in environmental decision-making concerning mining projects and the right to a fair trial

The other significant environmental concern in Serbia is related to the implementation of horizontal *acquis* on public participation in environmental decision-making and a recent case on public participation concerning mining projects related to critical raw materials.

The European Commission Progress Report on Serbia 2020 highlights of divergences in the transposition and implementation of the environmental *acquis* that are important for public participation in environmental decision-making. The Report emphasised that decisions on projects with a significant impact on the environment "should be based on feasibility studies and technical projects in accordance with EU's best practices and transparent, competitive public procurement procedures.""[584] Two basic shortcomings are identified: (a) in the process of drafting regulations, qualitative public hearings are not always ensured; and (b) when public hearings are conducted, the public is not given sufficient time to participate meaningfully and provide informed feedback within the consultation deadline. Examples of these issues were observed in the year following the assessment and corresponding recommendations. For instance, during the adoption of amendments to the Law on Nature Protection, the public was given a short deadline to submit comments. Another shortcoming that widens the gap between the transposition and implementation of the EU *acquis* in the field of environmental protection is non-compliance with legal regulations on environmental impact assessment and other related laws.

Non-compliance with the Planning and Building Act often leads to environmental impact assessments being carried out only after the relevant construction permits have already been issued. The Progress Report's recommendation highlighted that this problem needs to be overcome "urgently" due to its significant consequences. Non-compliance is also observed in strategic documents. Recommendation is that "strategic environmental impact assessments should be performed for the plans and programs of all relevant policy areas, and not only in the area of environmental protection." [585] The practice of non-compliance with the minimum standards of public participation and interested public in making environmental decisions is also indicated in the reports of environmental organisations.[586] Often, there is also a bad practice where projects that have a significant environmental impact are split into several smaller ones, which do not require an environmental impact assessment procedure.[587] The European Commission Progress Report on Serbia for 2024 highlights that public participation and consultations have not seen any improvement compared to the previous reporting period.[588]

584 European Commission Progress Report on Serbia for 2020, Brussels, 6 October 2020 (SWD) 352, p. 116-117.

585 *Ibid.*

586 Coalition 27.," Shadow Report for Chapter 27 Environment and Climate Change." Belgrade (2021): pp 18-23.

587 Salami slicing can't pass after all- Ministry of Environmental Protection rejects Zijin's request to decide on the need for environmental impact assessment https://reri.org.rs/en/salami-slicing-cant-pass-after-all-ministry-of-environmental-protection-rejects-zijins-request-to-decide-on-the-need-for-environmental-impact-assessment/

588 European Commission Progress Report on Serbia for 2024, Brussels, 30 October 2024 SWD (2024) 695, final, p. 87-88,

The European Commission 2021 report analyses, for the first time, the obligations of the candidate country in connection with the implementation of a project that may have a significant impact on the environment, in this case the "Jadar" project[589]. It noted: "When it comes to the Jadar project, at the beginning of 2021 the Government undertook to comply with the highest standards in the field of the environment, as well as to carry out a strategic environmental impact assessment before making changes to the Spatial Plan."[590] However, concerns have been raised about whether these commitments were fully upheld, particularly as the possibility of exploiting lithium and boron minerals from the 'Jadar' deposit has sparked protests demanding a ban on such exploitation. This illustrates the importance of adequate public participation in environmental decision-making on environmental matters as the basic guarantee of the protection of human rights associated with the right to a safe, clean, healthy, and sustainable environment. A solid basis for such participation is found in the legal framework that prescribes special administrative procedures that establish if the conditions for carrying out activities are met (the environmental impact assessment procedure and the procedure for issuing an integrated permit). A project developer cannot commence construction, implementation, or operation of a project that requires an Environmental Impact Assessment (EIA) or a decision on the necessity of an EIA without obtaining approval from the competent authority on the EIA study or a decision confirming that an EIA is not required.[591]

3.1.3. Rights of Assembly and Protest

The Law on Environmental Protection, as well as special laws that prescribe procedures with the participation of the interested public, recognise associations of citizens and social organisations that deal with environmental protection and that are registered with competent authority as part of the interested public (Art. 3 para. 1 item 28). The Law on Gathering of Citizens does not prescribe a special status for associations dealing with environmental protection.[592] In 2023, Serbia established a cooperation with the UN's first Special Rapporteur on Environmental Defenders under the Aarhus Convention.[593]

During November and December 2021, in Serbia, several protests were held where environmental associations expressed their concerns about the development of the Jadar lithium mine project. Following widespread environmental protests in late 2021, the Government withdrew all permits for the project in February 2022. The explanation of the Proposal for the Regulation itself[594] states that the sole and exclusive reason for its adoption is "continuous anxiety of citizens." In June 2024, the Constitutional Court found that such a Regulation is not in accordance with the Constitution and the law, considering that "continuous anxiety of citizens" must have been important for the Government's decision on the further fate of the

589 The Jadar Project is a proposed lithium mining and processing operation in Serbia

590 European Commission Progress Report on Serbia 2021, p. 129.

591 Analysis of the legal framework, the framework of importance for the adoption of strategic and planning documents that form the basis for further consideration of the possibility of conducting the Jadar project, the order of adoption of acts and the verification of elaborations, the position of expert bodies and technical commissions, the procedural position of the public and the interested public as mandatory participants in decision-making, and on the basis of the procedures that follow, with the environmental impact assessment and the procedure for issuing an integrated permit among them, is provided in M. Drenovak-Ivanović 2021. *The legal framework of environmental protection in the "Jadar" project*. Project Jadar - what is known? (*Pravni okvir zaštite životne sredine u projektu Jadar"*. Projekat Jadar - šta je poznato?). Serbian Academy of Sciences and Arts, p. 71-82.

592 M. Drenovak-Ivanović. The Legal Status of Representatives of Collective and Public Interests in Environmental Protection. Belgrade. 2021 (*Pravni položaj zastupnika kolektivnih i širih interesa javnosti u zaštiti životne sredine*. Belgrade 2021).

593 The response to the questions of Michel Forst, the UN Special Rapporteur, on environmental defenders under the Aarhus Convention concerning the alleged persecution, penalization or harassment of an environmental activist, in connection with the exercise of his rights under the Aarhus Convention is available at: https://unece.org/sites/default/files/2024-07/ACSR_C_2023_20_Serbia_Response_15.07.2024_redacted_0.pdf

594 The Decree on the Termination of the Decree on Establishing the Spatial Plan of the Special Purpose Area for the Implementation of the Jadarite Mineral Mining and Processing Project "Jadar"

project, but "in this case, the opinion of the interested public could only be evaluated in the procedure and in the manner prescribed by the Law on Environmental Impact Assessment."[595] After such a decision, a series of environmental protests were held during July and August 2024.[596] At the same time, the company holding the exploration permits published a draft of the Environmental Impact Assessment Study although the EIA procedure had been stopped. This indicates the need for a new approach to the right of assembly and protest, allowing for public participation in environmental protection beyond the procedures established by the law on strategic environmental impact assessment, the law on environmental impact assessment and the law on integrated prevention and control of environmental pollution (e.g. an open dialogue that includes all shareholders, supported by the views of the scientific community, and based on conversation, knowledge and facts).

3.2. Rights of Access to Justice, Remedies, and their effectiveness

3.2.1. Access to Justice: standing and access to remedies and their effectiveness in practice

When an appeal/case relating to the environment is filed by an individual, a group of individuals, an NGO, or another entity, they can initiate administrative court proceedings, civil proceedings, criminal proceedings or lodge a constitutional appeal.

The Law on Environmental Protection provides that the public concerned is entitled to exercise their right to a healthy environment by initiating proceedings for review of environmental decision-making before the competent authority or the court in accordance with the law. Every person affected by damage has the right to reimbursement.[597] There are also provisions for challenging decision-making related to EIA and Integrated Environmental Pollution Prevention and Control Permits.

A civil action is initiated by filing a lawsuit. Any natural person or legal entity may be a party to the civil proceedings.[598] The Law on Contracts and Torts provides that anyone can demand others to remove the source of danger that may cause considerable damage to them or 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.[599]

The Criminal Procedure Code provides that the request for criminal prosecution should be submitted to the competent public prosecutor, while private charges are submitted to the competent court.[600]. The inspector responsible for the environment may, within the limits of his authority, file criminal charges with the competent authority if a criminal offense was committed.[601] Criminal offenses in the domain of the environment are defined in Chapter XXIV of the Criminal Code.

595 Decision of the Constitutional Court IUo-39/2022 of 11 July 2024.

596 In the section Cluster 1: The Fundamentals of the Accession Process - Democracy, the European Commission Progress Report for 2024 highlights that several individuals were arrested and charged with 'incitement to the violent overthrow of the constitutional order' following post-election and anti-lithium protests. Some of these cases were later resolved through plea deals. The report also mentions further incidents of interrogations and house searches targeting environmental activists, as well as the detention and questioning of activists and representatives from civil society organizations (CSOs) at border crossings. - European Commission, Progress Report on Serbia for 2024, Brussels, 30 October 2024 SWD (2024) 695, final, p. 22.

597 *Law on Environmental Protection*, Art. 81a and Art. 107.

598 *Civil Procedure Code*, Official Gazette of RS, No. 72/11, 49/13, Arts. 74 and 91.

599 *Law on Contracts and Torts*, Official Gazette of SFRY, Nos. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia and 57/89, Official Gazette of FRY, No. 31/93 and Official Gazette of Serbia and Montenegro, No. 1/2003, Art. 156.

600 *Criminal Procedure Code*, Art. 54.

601 *Criminal Procedure Code*, Art. 224.

The Constitution states that a constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organisations exercising delegated public powers that 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.[602]

Procedural barriers may pose serious difficulties for NGOs or members of the public wishing to bring legal cases. These include legal standing for citizens' associations, environmental NGO's, and the public concerned (analysed in Section 2.2.2 and Annex I - Right to a fair trial in national case law),[603] litigation costs, and costs in the process of securing evidence or requests for temporary measures.[604] The law on legal aid and the regulation on reimbursement of the costs of the proceedings could support participation of environmental organisations and NGOs as a parties in access to environmental justice cases.[605] Although the court can exempt a party from paying court costs if they are not able to bear these costs, in practice one cannot find a case where the court exempted an environmental organisation from payment of procedural costs, perhaps due to its own poor financial situation.[606]

The requirement for 'adequate and effective legal remedies' under the Aarhus Convention also suggests the possibility of applying 'fair, equitable, timely and not prohibitively expensive" injunctive relief (AC, Art. 9 para. 4.). The practice of the Administrative Court and the Supreme Court includes good practice in the application of injunctive relief. In one case, the Administrative Court made a decision postponing the execution of the disputed decision until its legality had been decided upon due to the consequences that the start of construction can have on the environment.[607] In that case, an environmental NGO contested a decision

602 *Constitution of the Republic of Serbia*, Official Gazette of RS, No. 98/06, Art. 170.

603 For example, a civil court can issue a decision, which has legal effect in a specific litigation, to recognise the status of a party and those forms of association and organization that do not have party capacity, if it determines that, considering the subject of the dispute, they meet the essential conditions for acquiring party capacity, and especially if they have property on which execution can be carried out. Environmental organizations and NGOs usually do not have such property.

604 As an example, that illustrate the challenges posed by the application of temporary measures, are exemplified by the Law on Planning and Construction (LPC). It regulates issues of importance for the application of temporary measures that can delay the construction of an object due to the impact on the environment. The owner of the project can start the construction based on the final decision on the building permit and the notification of the works. However, the owner of the project has the possibility to start the construction "at his own risk and responsibility" based on the decision on the construction permit that can be a subject of an administrative dispute and the notification of works (LPC, Art. 138a). If the investor does not start construction of the facility until a final decision is made because the party has initiated an administrative dispute (for example due to violations of the environmental impact assessment phase), which challenged the issued permit, and if it is determined that the lawsuit is unfounded, the investor will have the right to compensation for damages and lost profits. (LPC Art. 138.a para. 3) This also raises the question of whether a potentially wide circle of persons, associations that represent collective interests could in practice be significantly narrowed due to the exposure to potential costs that are very high (e.g. the estimated value of the works alone can amount to more than 143,000,000 dinars) if they do not prove the grounds for contesting the permit.

605 Examples of good practice can be found in the work of the Environmental Law Clinic (ELC), an extracurricular educational program that cultivates well-prepared legal professionals in the field https://www.osce.org/mission-to-serbia/562842 and the Anti-SLAPP initiative project Serbia - Strengthening the resilience of civil society and the media, which launched a call for applications in July 2024 for providing financial support to local civil society organizations, in order to support local activists in defence against SLAPP proceedings (strategic proceedings against public participation) and other pressures that activists in Serbia face. The project is implemented by the organizations Partners for Democratic Changes Serbia (Partners Serbia), the Balkan Research Network of Serbia - BIRN Serbia and the Network of Committees for Human Rights in Serbia - CHRIS, with the support of the Delegation of the European Union to the Republic of Serbia. More about SLAPP lawsuits in domestic and comparative practice see N. Nicović, Environmental Law Clinic (ELC. Uncovering environmental crimes: role of the non-governmental organizations, activists and citizens in criminal proceedings against the polluters in Europe, in M. Drenovak-Ivanović (ur.), 25 Years of the Aarhus Convention, Belgrade, 2024. https://ius.bg.ac.rs/%d0%b7%d0%b1%d0%be%d1%80%d0%bd%d0%b8%d1%86%d0%b8/

606 Civil procedure law (Zakon o parničnom postupku), Official Gazette of the RS, Nos. 72/11 of 28 September 2011, 49/13 of 5 June 2013-CC, 74/13 of 21 August 2013 - CC, 55/14 of 23 May 2014, 87/18 of 13 November 2018, 18/20 of 3 March 2020 and 10/2023 of 9 February 2023, Art. 168 para. 4.

607 Decision of the Administrative Court 7 U 6063/19 of 19 April 2019.

allowing an investor to carry out preparatory works on a location that is within a cultural heritage of exceptional importance. The plaintiffs requested the court to postpone the execution of the building permit until the final decision on its legality. The court took into account the fact that the preparatory works would be carried out on "cultural heritage of exceptional importance" and considered that by starting the construction and carrying out the preparatory works, "damage would be caused to the wider interests of the public, for the protection of which the plaintiff was organised (...) which could hardly be compensated". The court also considered that the delay was not against the public interest, and did not cause irreparable damage to the opposing party. The criteria on which the court assessed the damage caused to the other party is relevant for the /consistency of the practice in the application of injunctive relief. The administrative court went on to annul the construction permit. This shows that unlawful practice generally may result in successful legal challenges.

The Supreme Court of Cassation has taken the view that a measure to prevent a challenged decision being implemented (in that case the temporary suspension of works) represents a measure of a "temporary and preventive nature" established in accordance with the recommendation of the Committee of Ministers of the Council of Europe on temporary judicial protection in administrative proceedings. It has pointed out "that the decision does not decide on the subject of the dispute, nor does it prejudge the outcome of the administrative dispute".[608]. This provides a basis for legal action to prevent imminent damage or danger to the environment.

4. Key environmental concerns in the national context

Air quality and the right to a safe, clean, healthy, and sustainable environment

One of the biggest challenges in protecting the environment and public health in Serbia is air pollution, a concern that is both local and global. Research shows that emissions from thermal power plants located in the Western Balkans are not restricted to the region, but also greatly affect air quality in the EU.[609] Data from the European Environment Agency in its annual reports reveal the impact of emissions on public health in Serbia.[610] The recently published report of the Environmental Protection Agency of Serbia on the state of air quality in 2022 shows that excessive air pollution was recorded in all agglomerations with more than four million inhabitants.[611] In addition, there is no air quality monitoring system in the territory, which has about 1.5 million inhabitants.[612]

Long-term exposure to poor air quality has a negative impact on the protection of the

608 Recommendation No. R (89) 8 of the Committee of Ministers to Member States on Provisional Court Protection in Administrative Matters, adopted on 13 September 1989. Sight. The Judicial Review of Administrative Acts: Recommendation Rec (2004)20 Adopted by the Committee of Ministers of the Council of Europe on 15 December 2004 and Explanatory Memorandum, p. 29–31.

609 HEAL, *Chronic coal pollution, Report Summary 2019*, 2020, https://www.env-health.org/wp-content/uploads/2019/02/Chronic-Coal-Pollution-report-1.pdf According to the newest Report, phasing coal out by 2030, instead of 2050, would bring to the Western Balkans a ,,significantly greater reduction of illness and early deaths: asthmatic children would be free from asthmatic symptoms for 272,993 additional days compared to a 2050 phase-out, 32,476 cases of bronchitis would be avoided in healthy children, 2,657,043 days off work with sickness would be avoided, 11,768 premature deaths due to PM2.5 pollution would be avoided and over 1,202 premature deaths due to other pollutants." HEAL, Curing chronic coal – How an early coal power phase out in the Western Balkan region can save lives, improve health and strengthen the economy', 2022, https://www.env-health.org/curing-chronic-coal/#1528198360361-d0c48b01-9fca.

610 European Environmental Agency (2017), *Coal-fired power plants remain top industrial polluters in Europe*, from https://www.eea.europa.eu/highlights/coal-fired-power-plants-remain

611 An Annual Report on air quality in the Republic of Serbia for 2022, Environmental Protection Agency, http://www.sepa.gov.rs/download/Vazduh_2022.pdf

612 RERI. *Analysis of the Annual Report on the State of Air Quality in the Republic of* Serbia for 2022. Belgrade 2024. Available at: https://reri.org.rs/wp-content/uploads/2024/06/Analiza-godisnjeg-izvestaja-o-stanju-kvaliteta-vazduha-u-Republici-Srbiji-za-2022.-godinu.pdf

right to life, the right to respect for private and family life, the quality of private and family life and the right to information. Serbia is a signatory to the international agreements that set the framework for air quality protection. The development of science and new professional analyses have, over time, indicated an increased impact of certain emissions on the deterioration of human health. In this regard, a number of protocols have been introduced in order to gradually reduce emissions with the largest impact on human health and introducing obligations that include the control of emissions and gases not envisaged by previous protocols. Serbia has not ratified new Protocols and amendments to existing Protocols of the Convention on Long-range Transboundary Air Pollution adopted after 2012. Further, rules on reducing emissions that have a considerable impact on human health have not been introduced into national legislation. Bearing in mind that these rules are mostly part of the environmental *acquis* and the intensive process of harmonisation of Serbian law with EU law further to the signing of the Stabilization and Association Agreement, it is expected that the rules envisaged by unratified Protocols and accompanying amendments will nevertheless become part of the domestic legal framework.[613] Having in mind the case law presented in Section 2.2.2., the right to an effective remedy in matters related to air quality would be significantly strengthened with the implementation of the recently Revised Industrial Emissions Directive (2024/1785) to ensure that individuals have the right to compensation for damage to human health caused by large industrial installations operating in breach of law.

5. Concluding summary and recommendations

The above analysis indicates that the Serbian legal framework in the field of environmental protection is harmonised with the EU environmental acquis and ECtHR case law to a large extent. However, there are certain shortcomings when it comes to implementation.

Recommendations

1. To complete the process of harmonising the horizontal environmental legislation with the environmental *acquis*, which guarantees the procedural basis for protection of human rights, namely, there is a need for further harmonisation of the Law on Strategic Environmental Impact Assessment (introduction of the obligation to conduct a strategic assessment for all projects listed in the EU Directive on Environmental Impact Assessment), the Law on EIA, and the Law on Integrated Prevention and Control of Environmental Pollution with the requirements arising from the relevant EU directives.
2. The changes should also include new regulations and the education of the public and civil servants to eliminate the bad practice that occurs when projects that have a significant environmental impact are divided into several smaller ones, which individually do not require an environmental impact assessment procedure.
3. The Law on Planning and Construction should be harmonised with the Law on EIA, especially concerning the inclusion of the interested public and the transparency of procedures, as well as establishing the order of actions in the process of issuing documents, to overcome the bad practice that occurs when construction permits are issued before obtaining consent to carry out an environmental impact assessment study.
4. It is necessary to work on raising the quality of public consultations, particularly in research and decision-making processes related to mining projects. This includes ensuring that public hearings are conducted regularly, with clear and easily

613 Elements that have an impact on the consistent implementation of legal framework that guarantees air quality protection in Serbia and cases related to air protection in the practice of the Serbian Protector of Citizens are presented in: Drenovak-Ivanović, M. (2020). Rights of individuals and obligations of the state in protecting air quality. *Zbornik radova Pravnog fakulteta u Nišu*, (89), p. 35-50.

understandable communication and adequate time for meaningful public input. Additionally, it is crucial to uphold respect for freedom of expression and assembly on environmental matters. It is necessary to further develop the legal framework that prescribes rules on corporate sustainability, transparency of investments and their impact on the environment, rules on the protection of the collective interests of consumers, and the prohibition of greenwashing, which represents a new pillar of protection. It is recommended that work is continued, through seminars and other forms of education, on strengthening administrative capacities at the central and local level. This includes education about challenges in accessing information, public participation in climate change matters, and climate litigations.

5. The regulatory framework (Civil Procedure Law and/or Law on Environmental Protection) should be amended to specify the criteria that should be for making a decision on the exemption from payment of the costs of proceedings in environmental matters.[614]
6. Practice and analyses show that lawyers who have attended courses in Environmental Law and the Legal Clinic for Environmental Law have notable results in initiating and conducting proceedings in which environmental protection is associated with the protection of human rights. As a result, it is recommended that such courses be additionally strengthened by their adoption as compulsory subjects at the Faculties of Law. Bearing in mind its complex legal nature and connection with all areas of positive law, it is necessary to introduce environmental law into the subject matter for passing the bar exam.
7. Further efforts are recommended when it comes to training Judicial Academy students, through the development of special courses that connect the practice of environmental protection with the practice of the ECtHR.
8. Special courses to train experienced judges and lawyers who are already in practice should be established with tailor-made programmes for different areas of law (environmental protection in criminal law, environmental protection in civil law and environmental protection in administrative law). Such programmes should refer to practical issues, recent ECtHR and European Court of Justice case law, as well as the newest legal challenges (climate disputes and litigation).
9. It is necessary to enhance the administrative capacity of central and local authorities, in particular in the Serbian Environmental Protection Agency and environmental inspectorates. It is necessary to conduct training for employees in public authorities that perform environmental protection tasks, on all aspects of exercising the right to access environmental information, including the obligation to implement the public interest test in case of restrictions of rights, as well as on the Practice of the Commissioner in connection with such restrictions.

6. Annex

Annex I

Right to a peaceful enjoyment of possessions in national case law

In one case, the owner of a plot located in an area declared a nature reserve by a

614 Relevant criteria could include the legal position of the representative of the collective interest, the fact that it is an environmental association with the legal status of an environmental protection entity under national or international law, the fact that it is non-profit organisation with a low property value and project financing system, etc.

Decree requested compensation equal to the market value of the plot in question. The owner believed that the adoption of a degree resulted in the *de facto* expropriation of the plot without the implementation of the Law on Expropriation. The court's initial position was that the plot was part of a special nature reserve outside the construction area. The plot was located on a wetland, and, according to several laws on environmental protection, agricultural activities are not possible on such a terrain. The court also considered the compensation provided by law for the denial or limitation of the plaintiff's right to use the land and the ban imposed on him. Additionally, the court noted that the plaintiff did not provide evidence showing that he was unable to exercise the powers arising from his ownership rights over that land. Another way for the court to consider the legality and legitimacy of the interference with the plaintiff's property rights and the fair balance (proportionality) was in the light of the decision of the ECtHR referred to by the plaintiff (*Matos e Silva LDA et al. v. Portugal* and *Elia S. rl v. Italy* - judgment from 16 September 1996, and 2 August 2001). Further to this step, the court concluded that the above decisions could not be applied in this case, "since those decisions emphasise the uncertainty of the applicants regarding their property due to certain acts of the public authorities." In this case, there is no such uncertainty, because "the land owned by the plaintiff is, beyond any doubt, part of a special nature reserve and its use is limited to the extent prescribed by law and the Regulation". Based on that, the plaintiff's request was rejected. [615] This case points to the importance of understanding the basis of the right to peaceful enjoyment of possessions and the possible limitations introduced by law to protect the environment.

Right to a fair trial in national case law

The practice of the ECtHR had an important role in answering the question of whether an environmental NGO can have the status of a party in an administrative dispute. It also provided guidance on the question of whether such status is linked to the NGO's prior involvement in an environmental impact assessment and whether its legal standing differs when filing a lawsuit against a construction permit for a project that is not required by law to undergo an environmental impact assessment. This is evident from the judgment of the Administrative Court, two judgments of the Supreme Court, and the judgment of the Higher Court regarding the participation of associations in environmental protection and the basis of the right to a fair trial.

After the changes introduced in 2016 by the new GAPA, legal standing is granted to persons and associations of citizens dealing with the protection, improvement, and promotion of environmental protection, as protectors of collective and broader public interests, assuming that they have a legal interest for participating in procedures concerning environmental protection (GAPA, Art. 44, para. 3.). One of the first cases where an environmental association is recognised as a party in a procedure, on the grounds of GAPA is the Cable Car Construction case in Kalemegdan Park.[616] In that case, an environmental protection association filed a lawsuit claiming that the permit for preparatory works was unlawfully issued and that the public authority authorised construction works without a decision on the Study on EIA. The Administrative Court concluded, within two days, that the construction works could cause irreversible damage to cultural heritage and the environment, which are public interests that would be difficult to repair. As a result, the court decided to suspend all construction works on the cable car project until a final judgment is made on the legality of the construction permit. The Administrative Court previously considered the complaint of lack of active identification on the part of the plaintiff, with reference to Article 142, paragraph 2 of the Constitution of the Republic of Serbia, and in accordance with Recommendation R (2004) 20 of the Committee of Ministers of the Council of Europe to member states in the judicial control of administrative acts (Recommendation Rec (2004) 20 of the Committee of Ministers to member states on judicial review of administrative acts) dated 15 December 2004 and ECtHR practice (L'Erabliere vs. Belgium, application no. 49230/07, judgment dated 24 February 2009).

615 Judgement of the Supreme Court of Cassation Rev 3985/2021 of 21 April 2023.
616 Decision of Administrative Court, 19 April 2019.

The Supreme Court of Cassation, following the appeal against the judgment of the Administrative Court, found that the conclusion of the Administrative Court that the plaintiff had to file a lawsuit in this administrative dispute was correct, but for reasons other than those listed in the explanation of the impugned judgment. In the judgment Uzp 132/2021 of 17 March 2023, the Supreme Court of Cassation regarded that environmental protection associations do not have a direct right to file a lawsuit in an administrative dispute against a decision on a construction permit. This also applies in cases related to the construction permit for a project for which it was determined that an environmental impact assessment must be carried out. Even though it does not have a direct right to file a lawsuit, the Association for Environmental Protection can obtain prosecutorial standing in an administrative dispute against a construction permit, when it concerns a project for which the need for an environmental impact assessment has been determined. In support of this position, it was noted that "the ECtHR acted similarly in the case, referred to by the Administrative Court as well, L'Elablière ASBL v. Belgium, application no. 49230/07 of 24 February 2009, paragraph 29 when it recognised the right of access to the administrative court to a non-profit association whose activities were aimed at environmental protection in several municipalities in Belgium, and on the occasion of contesting the legality of the permit for the construction of waste collection facilities.

The legal standing of the association for environmental protection is determined in each specific case, starting from determining if there is a legally relevant connection of the plaintiff, i.e., the interest whose protection he is engaged in, with the object of decision-making by the administrative act, and taking into consideration whether by using the disputed construction permit there was a violation of the interest that the plaintiff as an association intends to protect, namely the interest of environmental protection and whether it was based on the Law on Planning and Construction, which was applied to issue the contested construction permit. [617]

Building on the reasoning set out in judgment Uzp 132/2021 of 17 March 2023, the Supreme Court's decision in other case provides important guidance on the legal standing of environmental NGOs in administrative disputes. In that case, the Court distinguishes whether consent for an Environmental Impact Assessment is required during the construction permit phase or can be deferred to a later stage, such as before construction begins. It also highlights that participation in the EIA process is both a right and an obligation of the public, suggesting that an NGO's prior involvement in administrative proceedings may become a key criterion for determining its legal standing in future cases.[618]

In practice, we also come across cases in which companies are sentenced to a fine for illegal construction. Deciding on the lawsuit of two environmental associations, in September 2024, the Commercial Court issued a verdict in which it condemned the company engaged in the exploration and exploitation of copper ore for the construction of a mining facility (flotation waste), bearing in mind that the construction without a permit is contrary to the provisions of the Law on environmental impact assessment and the Law on mining and geological research. The company was sentenced to a fine of two million dinars, and the responsible person to 150,000 dinars. The penalty prescribed by law for the construction of mining facilities and the performance of mining works without approval is from 1,500,000 to three million dinars.

The Right to an effective remedy and national case law

For the first time in Serbian case law, a decision was recently made on *actio popularis* claim, as a result of a need to review the role of protectors of collective and wider interests of the public and their status in access to environmental justice in the judicial practice of Serbia. Although the *actio popularis* claim, available for everyone to use when demanding the elimination of a source of danger threatening considerable damage, was prescribed in the Law of Contracts and Torts of Serbia in 1978, it was relied upon only 44 years later, in September 2022, when for the first time the Higher Court passed a judgment which approved

617 https://www.vrh.sud.rs/sr-lat/uzp-1322021-41271
618 Judgment of the Supreme Court 41/2023 of 8 August 2023.

the claim and granted *locus standi* to an environmental non-governmental organisation. The judgment became final in August 2023.[619]

An environmental non-governmental organisation filed a lawsuit to eliminate the risk of damage. The question that had a decisive role in the court's decision in terms of applying *actio popularis* was whether a lawsuit was the only instrument of legal protection by which the right to an effective legal remedy can be exercised in accordance with Art. 13 of the ECHR or can the omissions that led to failure to apply National Emissions Reduction Plan (NERP) be remedied by other appropriate measures? Analysing the positive law, the Higher Court found that the Law on Air Protection, which regulates the legal framework relevant to the protection and improvement of air quality and the supervision of the implementation of the regulations adopted for its execution, does not prescribe penalties for violations of the NERP, nor inspection of its implementation, which also excludes the possibility of initiating extraordinary inspections. Therefore, the argument was that "in civil proceedings, it is the court that decides whether the NERP was properly applied and the right to life as well as the right to private and family life was violated, as guaranteed by the ECHR. The Higher Court approved the claim and ordered the defendant to "coordinate his operating activities with the normative framework and operate his activities in a way that does not endanger lives and health of people".[620]

The Higher Court also considered the legal standing of an environmental NGO. Apart from the provisions of domestic legislation, the Court took into consideration the standards expressed in nine judgments of the ECtHR. Will the first successful case of *actio popularis* open the door to a wider application of this action when there is no possibility of applying another legal remedy? Will the court decide on the existence of other relevant measures by looking into the ECtHR practice when it comes to the right to an effective remedy? Will the success of the *actio popularis* lawsuit pave the way for the development of climate litigation in Serbia? These are the questions that will be approached in the future through evolutionary and innovative interpretation of domestic law provisions and the provisions of the ECHR.

Right to life in national case law

Although the judgment does not refer to the relevant practice of the ECtHR, in one case from the practice of the Basic Court the reasoning of the judgment refers to the relationship between the quality of drinking water and the right to life. [621] The case in question considered the application of the "user pays" principle in the drinking water supply law. On that occasion, the question was raised whether the user of the communal service of drinking water supply can request a bill reduction if the water is not of appropriate quality. In the reasoning of the judgment, in which the court concluded that water of drinking quality was not delivered to users, and for that reason, there was no right of the utility company to charge for the service, it is stated that when it comes to the supply of drinking water, it is "a food product of vital importance for the realization of life needs of natural persons in a country. Water is one of the most important conditions for human survival and life on Earth. It has a special place among numerous environmental factors, necessary for human life and health. Water plays a very important role in human life".

Right to respect for private and family life (quality of private and family life) in national case law

In one case, the inaction of the local self-government unit, which led to the harmful effects of the unpermitted noise level in residential areas, was brought into a causal relationship

619 Judgment of the Higher Court, no. 181/21 of 22 September 2022
620 *Ibid.*
621 Judgment of the Basic Court in Vrbas, P. 372/2019 of 5 June 2017.

with non-material damage due to the violation of personal rights.[622] The case was initiated as a response to a lawsuit filed by street residents who were exposed to excessive noise from catering facilities for compensation for non-material damages due to mental pain arising from the violation of personal rights. The lawsuit was filed against the city that caused damage by inaction since no measures were taken to reduce the noise level following the limit values. Tenants were exposed to noise levels exceeding the limit values continuously, for more than two years.

Noise exposure reduced their daily life quality, thereby their right to respect for their home and their dignity were threatened. The measured noise level had a negative impact on health. The level of the violation of rights, the duration of exposure to noise and changes in everyday life were taken into account (some persons exposed to noise took refuge from noise in parts of the apartment that are not intended for rest and cannot be ventilated, others experienced it at work). The assessment also took into account the practice of the ECtHR. In the reasoning of the judgment, it is stated that the right of a person to respect for the home, as a space where private and family life takes place, includes not only the right to physical space but also to the quality of enjoyment of that space, i.e. the right to quiet enjoyment of the space, which derives from the analysed practice of the ECtHR. Therefore, it was concluded that the violation of the right to respect for the home includes both violations resulting from physical injury (e.g. unauthorised entry into the home) and those that are not physical (e.g. noise, unpleasant smells, emissions). Considering the stated circumstances, the court found that the plaintiffs were entitled to monetary compensation for non-material damages.

Freedom of expression in national case law

The views on the relationship between freedom of assembly, freedom of expression, and the right to a peaceful enjoyment of possessions in environmental matters were affected considerably by the practice of the ECtHR. We find an example in the decision of the Basic Court, in which the court considered whether the protesters interfered with the plaintiff's possession by removing a wire fence, entering a property, and continuing with their protest activities.[623] Taking into account all the facts and circumstances of the case, the court found that cutting the fence "was intended as a symbolic message" showing that a fence was erected on a marked mountain trail through a National Park that is a public good and cannot be fenced. Assessing whether the defendants acted illegally when cutting the fence and entering the plot, the court took as the starting point the analysis of ECtHR practice regarding the application of Art. 10 of the ECHR about the standards of protection of freedom of expression and its limitations. The analysed practice refers to the legal nature of the way of expressing ideas, and determining the difference between reprehensible protest actions and those that represent a violation of the criminal law; freedom of speech as an invitation to discussion, pointing to a problem in the exercise of power, informing the public; and, finally, to the balancing of conflicting rights (the right to freedom of expression and the property right). The opinions expressed in ECtHR practice and the analysis of views expressed in more than 15 cases brought before that court played a key role in the court rejecting the claim as unfounded.[624]

Annex II

Rules are being developed against misleading business practices, as well as on protecting the collective interests of consumers. According to the Law on Consumer Protection, the right to timely and complete information about the state of the environment and the impact that goods and services have on sustainable development becomes a basic

622 Judgment of the First Basic Court in Belgrade, 56 P no. 20265/2020 of 30 March 2021.
623 Judgement of the Basic Court in Novi Sad P. 51978/2021 of 23 December 2022.
624 The argumentation reads: "Although judicial practice is not a formal source of law, ECtHR practice guides the court in the application of positive law to the facts, with the aim of representing a corrective to domestic practice."

consumer right.[625] A request for the protection of the collective interest of consumers can be submitted by associations or unions established to achieve the goals of consumer protection, which have the status of a party to the proceedings.[626] In the existing practice, there are no examples of taking the protection of consumer collective interest as a basis for access to environmental information. Bearing in mind the rising public interest in the impact of goods and services on the environment and climate change, the involvement of consumer associations and unions in consumer rights procedures as a result of getting illegal or incorrect information on environmental and climate risks, can contribute to the further application of the pillars of the Aarhus Convention.

At the same time, the amendments to the Accounting Act introduce the obligation of non-financial reporting, which means that company Annual reports are obliged to include a non-financial report that contains information necessary for understanding the development, business results and position of the legal entity, as well as the results of its activities that are relating to the protection of the environment, social and management issues, respect of human rights, fighting corruption and issues related to corruption. The obligation of non-financial reporting applies to large legal entities that are companies of public interest that exceed the criteria of an average number of 500 employees during the business year, observed on the balance sheet date.[627]

Annex III

In December 2009, Serbia applied for EU membership. In 2011 the European Parliament ratified the Stabilization and Association Agreement between the EU and Serbia. Cluster IV - Green Agenda and sustainable connectivity was opened for negotiations in December 2021. The European Union's Common Position on Chapter 27 sets out 8 closing benchmarks.[628] With the Negotiating Position, environmental *acquis*, which has been in force since 1 June 2019, is accepted. This means that Serbia has expressed its readiness to transpose and implement legal *acquis* within the framework of Chapter 27 by the date of accession to the EU. Exceptions can only apply to certain requirements for transitional periods that will be determined in the further course of negotiations. Transitional periods and exceptions must be limited in both scope and duration.[629]

In 2006, Serbia adopted the Law on the Ratification of the Treaty on the Establishment of the Energy Community. This was the first treaty signed between Serbia and the EU that created the basis for the development of the regional energy market in the territory of Southeastern Europe and its connection with the EU energy market.[630] In November 2020,

625 Law on Consumer Protection, Official Gazette of RS, 88/21, Art. 2 para. 1 item. 3. The consumer's right to be informed includes, for example, the right to be actively informed about whether a repair service is provided and within what period it is guaranteed, and whether the product is more stable and of such characteristics that it can be expected to last longer, whether resources from renewable sources or a smaller amount of energy and water were used in the production, whether the product can be reused or recycled after use, whether the production process reduces the amount of GHG and whether its use releases a smaller amount of GHG, whether is the production or use of a product or the provision of a service has a more favourable impact on climate change and the measures by which harmful impacts are reduced and reflected in such impacts, etc.

626 Law on Consumer Protection, Art.174.

627 Accounting Law, Official Gazette of the RS, no. 73 of October 11, 2019, 44 of April 29, 2021 - state law, Art. 37 and 38.

628 European Union Common Position, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/27_eu_common_position.pdf

629 Bogojevic, S., & Drenovak-Ivanovic, M. (2019). Environmental protection through the prism of enlargement: time for reflection. *Common Market Law Review*, *56*(4).

630 By adopting the Law on the Ratification of the Treaty on the Establishment of the Energy Community (Official Gazette of RS, No. 62/06), the Republic of Serbia undertook to transpose and apply the environmental *acquis*, which binds the members of the Energy Community, among other obligations, to the rules on environmental impact assessment (Directive 2014/52/EU) and rules on limiting emissions of certain pollutants into the air from large combustion plants (Directive 2001/80/EC).

Serbia signed the Sofia Declaration on the Green Agenda for the Western Balkans, which identified five sectors in need of reforms to provide an institutional basis for a green transition.

According to 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.[631] Under the auspices of the United Nations, international conventions on the environment were developed that determine the right to a healthy environment, the principles, material and procedural assumptions that form its basis, as well as conventions dedicated to special issues such as civil and criminal liability for damage to the environment, safety standards for transportation hazardous substances and hazardous waste, etc. which Serbia signed and ratified.

The Aarhus Convention has become a part of the Serbian legal system through adoption of 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.[632] Although the legislation in Serbia, before the ratification of the Aarhus Convention, pointed to some extent to the realisation of ideas promoted by it, ratification provided a formal opportunity for consistent application of Convention rights. Different aspects of the Aarhus Convention are covered by the Law on Environmental Protection and the Law on Amendments to the Law on Environmental Protection, Law on EIA and the Law on Amendments to the Law on EIA, the Law on Strategic Environmental Impact Assessment and the Law on Integrated Environmental Pollution Prevention and Control, the Law on Free Access to Information of Public Importance. The first binding international agreement debated under the auspices of the World Health Organization to link environmental conditions and human health that Serbia has ratified is the UNECE Protocol on Strategic Environmental Assessment to the Espoo Convention (Kyiv, 2003).[633]

Serbia has signed the Council of Europe Convention on Access to Official Documents (CETS No. 205), Tromsø Convention, which entered into force on 1 December 2020, but has not yet ratified it.[634]

Serbia is a party to the UN *Framework Convention on Climate Change* and has ratified the Kyoto Protocol and the Paris Agreement.[635]

Under the auspices of the Council of Europe, several conventions were adopted that regulate the position of environmental associations and organisations as bearers of collective interests. Among them is the Convention on the Conservation of European Wild Flora and Fauna and Natural Habitats (Bern Convention).[636] By ratifying it, Serbia undertook to guarantee environmental associations and organisations the right to submit complaints regarding possible violations of the provisions of the Bern Convention.[637]

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631 *Constitution of the Republic of Serbia*, Art. 16. In its decision *Už*-11320/2021, the Constitutional Court of Serbia stated that the courts should interpret the provisions of the Law (in this case the right to a trial within reasonable time) in accordance with the ECHR, as well as practice and positions of the ECtHR .

632 *Law on Ratification of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters,* Official Gazette of the Republic of Serbia, No. 38/09. In the Preamble of the Aarhus Convention, adequate protection of the environment is determined as a basic human right, and the institutes regulated by it are the basis of the right of every person to live in an environment that corresponds to his health and well-being and the duty to protect and improve the environment.

633 Law on Ratification of the SEA Protocol to the Convention on Environmental Impact Assessment in a Transboundary Context, Official Gazette of the RS – International contracts, no. 1/2010.

634 https://www.coe.int/sr-RS/web/belgrade/news/-/asset_publisher/tM7Uo4CVRhTF/content/ratification-of-the-troms-convention-by-serbia-essential-for-better-access-to-official-documents-say-participants-of-event-in-belgrade

635 *Law on ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change*, Official Gazette of RS, no. 88/2007. *Law on Ratifying the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change*, Official Gazette of RS, no. 2/17 Law on Confirmation of the Paris Agreement, Official Gazette of RS, no. 4/2017.

636 *Convention on the Conservation of European Wildlife and Natural Habitats*, *ETS* no. 104, 1982.

637 Law on Ratification of the Convention on the Conservation of European Wild Flora and Fauna and Natural Habitats. Official Gazette of RS - International Agreements, no. 102/07.

General Recommendations

1. Summary of the position relating to human rights and sustainable environment in South-East Europe, based on the domestic baseline studies

Six baseline analysis reports were prepared on the basis of a common methodology, mapping legislation, judicial practices and policies relating to human rights and environmental matters in Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia and Serbia respectively. The methodology included a general overview of domestic laws on human rights and the environment (covering both substantive and procedural environmental protections), alongside an assessment of how effective these have been in practice and an analysis of whether/how they have been applied to key environmental concerns in their domestic context. The core goal of the reports was to assess the overall effectiveness of human rights-related environmental protection in each jurisdiction, through identifying good practices, gaps, challenges and capacity building needs.

While the domestic baseline reports present a varied landscape in some respects, there are also clear commonalities across the region. For example, all jurisdictions surveyed are pursuing EU accession and in various stages of harmonising their domestic legislation with the EU *aquis*. In a number of jurisdictions, the legal framework appears formally to protect the environment and human rights, but these protections are not adequately implemented and enforced.

In some jurisdictions, the case law of the ECtHR has been used to strengthen environmental outcomes in legal proceedings. In Serbia, references to such case law appear to be linked to the provision of legal training. Through capacity-building, such training could be broadened, as well as extended across the region. In other jurisdictions, knowledge of ECtHR case law is very limited and/or court decisions are not harmonised. For example, in Kosovo*, ECtHR case law is rarely referred to and in Albania the lack of direct reference to the environment in the ECHR has been used by judges to support a weakened legal approach at domestic level. In some jurisdictions, obtaining interim measures to prevent environmental harm while a case is being heard, as seen, for example, in Montenegro, represents a good practice that other jurisdictions should strive to follow.

Equally, in some jurisdictions, rights of environmental protest and assembly are respected and implemented, in others they are facing increasing restriction, or public knowledge of environmental issues is too limited to enable use of these rights. The reports also frequently cite difficulties in obtaining adequate information about environmental problems and decision-making. Nevertheless, there are positive examples of public engagement and action, for example successful protests against the construction of small hydropower plants in Bosnia and Herzegovina. In addition, there are examples of significant judicial pronouncements on environmental matters. For example, in a recent General Opinion, the North Macedonian Supreme Court found that the Government was required to adopt Air Quality Improvement plans under the RHE. This opinion is likely to play an important role in shaping both policy and jurisprudence related to air quality. However, there are also concerning examples of environmental protection being weakened, including protected areas legislation in Albania and laws on community participation in mineral exploration activities in Bosnia and Herzegovina. Furthermore, some of the analyses indicate that environmental crimes are underreported and prosecuted.

The baseline studies also identify a range of common environmental challenges across the region. These include air and water pollution, hydropower plants, development in protected areas and mineral exploration. Such concerns might benefit from common consideration and knowledge sharing.

2. General Recommendations

2.1. Substantive Protection

- Where not already the case, ensure that the right to a healthy environment (RHE)- including the rights of access to information, participation and access to justice and remedy in environmental matters- is explicitly protected in domestic constitutions and supporting legislation.
- Where not already the case, ensure that Constitutional Courts have full jurisdiction over cases concerning the RHE and other related human rights and environmental concerns.
- Ensure the application in legal cases of environmental principles established in international and EU law. This includes the precautionary principle- which provides that in situations where there is lack of scientific certainty as to the risk of environmental harm, action should nevertheless be taken to avoid such harm- and the polluter pays principle, which sets out that those responsible for environmental damage should pay the costs of it.638
- Apply the principle of non-regression to environmental legislation, so that existing levels of environmental protection in domestic law are not weakened.639 .
- Ensure national laws are otherwise fully compliant with European and international environmental law and policy, along with related human rights law. Any gaps in this area should be addressed by revising existing legislation or implementing new legislation as necessary.
- Strengthen coherence and consistency in the application of environmental law across all levels of governance by harmonising disparate or conflicting laws in favour of the strongest environmental and human rights outcomes.
- Ensure human rights and environmental obligations guide decisions related to economic development to ensure a just transition towards a society that is fair, equitable, inclusive and sustainable.640
- In view of the fact that the ECHR does not directly protect the RHE, the Council of Europe should consider producing guidance on how its jurisprudence can help implement and support constitutional provisions that explicitly contain rights and/or duties of environmental protection.

2.2. Procedural Rights

- As a general recommendation in the context of rights of access to information and participation, a checklist should be produced to guide institutions on how to fully implement these rights.

2.2.1. Access to Information

- Ensure that public authorities proactively provide all relevant information relating to

638 See e.g. https://eur-lex.europa.eu/EN/legal-content/glossary/precautionary-principle.html#:~:text=The%20precautionary%20principle%20is%20an,should%20not%20be%20carried%20out; https://environment.ec.europa.eu/economy-and-finance/ensuring-polluters-pay_en.

639 See e.g. https://www.taylorfrancis.com/chapters/edit/10.4324/9780367816681-83/principle-non-regression-lynda-collins.

640 See for example https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/key-messages-hr-a-just-trans.pdf.

environmental law, policy, plans and projects on their websites.

- Ensure that the public is informed in an appropriate and timely manner about specific proposed projects and developments, including through electronic and local media.
- Ensure that members of the public without access to internet facilities are still able to access environmental information, including proposed projects and developments that may impact them.
- Ensure that any restrictions on the availability of environmental information are strictly limited, with clear reasons for refusal; that there is an effective right of appeal against refusals to provide information and that public authorities comply with orders to disclose withheld information.
- Develop platforms that allow easy access to environmental data/plans, impact assessments and decisions taken by the responsible authorities.
- Support independent media outlets and ensure that journalists and other media personnel are able to report on environmental matters without facing intimidation or harassment.

2.2.2. Public Participation

- Facilitate meaningful public participation in environmental programmes and decision-making processes, particularly in Environmental Impact Assessments (EIA) and Strategic Environmental Assessments (SEAs). Ensure that consultations with the public are carried out widely (while focusing on the groups most affected) and in a timely manner. These consultations should be based on all relevant information, presented in clear and easily understandable language, and should allow the public sufficient time to provide meaningful, informed feedback during a reasonable consultation period. Ensure, with evidence, that the results of these consultations have been taken into account in final decision-making on such matters.
- Rights of public participation/consultation in the formulation of environmental law and policy should be protected in legislation where this is not already the case. Such rights should be fully implemented, with evidence as to how the results of the consultations have been taken into account in the preparation of such legislation and policy.

2.2.3. Access to Justice and Remedy

- Ensure that effective domestic remedies exist affording access to justice and compensation to victims of environmental harm
- Ensure that domestic courts apply a broad definition of “sufficient interest”, “affected public” etc when considering the question of standing/locus standi in public interest environmental cases.
- Ensure that decisions in environmental cases are based on adequate and appropriate investigations, including through cooperation and coordination with other public bodies as necessary, as well as identifying whether all relevant environmental permissions and permits have been obtained.
- Ensure that judgments in environmental cases are well-reasoned and appropriately balance the different interests being considered, through applying the proportionality principle, as set out in ECtHR case law.
- Ensure legal aid is available for environmental legal challenges. Any legal costs in bringing environmental cases should be limited and clearly set out, to reflect the public interest nature of environmental challenges, and avoid becoming a barrier to access to justice.

- Explore further the use of Alternative Dispute Resolution (ADR) as a potential form of resolution of environmental disputes, in appropriate cases.
- Ensure the development and implementation of laws preventing harassment, intimidation, and violence against environmental activists and environmental human rights defenders (EHRDs), including rapid response mechanisms and legal assistance funds as necessary.
- Ensure that environmental activists and EHRDs have legal protection against SLAPP suits, including through public awareness and capacity building amongst EHRDs and CSOs, training judges and other public officials as necessary and the development of mechanisms to protect EHRDs.
- Ensure the implementation and enforcement of decisions in favour of environmental claimants.

2.3. Institutional Capacity

- Streamline information-sharing and coordination processes on environmental matters both horizontally (across different areas and topics of governance) and vertically (at local and national levels). This could include the development of an online platform to streamline coordination and collaboration across departments and between central and local levels of government.
- Strengthen the application of environmental legislation by providing training on legal rights and duties. Such training should take a human rights-based approach and focus on the practical application of domestic, European and International environmental law, as well as related human rights law, with the focus on the ECtHR case-law. Training should include modules on responding to freedom of information requests, ensuring public participation and providing access to justice and remedy, as appropriate. Training should in particular be targeted towards:
    - School students, to enable them to understand the importance of environmental protection and the impacts of environmental degradation.
    - Universities, particularly law schools, with compulsory modules on environmental protection. It may also be useful to support the establishment of 'environmental law clinics', enabling students to apply their legal knowledge to practical contexts.
    - Judges, public prosecutors, lawyers, police services (tailored to their specific areas of oversight and practice) through their respective training centres/ academies.
    - Government and administrative officials at local and national level.
- Conduct public awareness campaigns related to access to justice in environmental matters via government agencies and CSOs. These should include the production of guidance/handbooks, so that members of the public - and in particular marginalised groups- are aware of their environmental rights and the availability of legal aid or other forms of assistance as needed.
- Provide adequate finance, staff and other resources for environmental agencies, inspectorates and other relevant public bodies (e.g. police, prosecutors, judiciary) to be able to implement and enforce a human-rights based approach to environmental law.
- Consider peer-learning and cross-country exchange, both within the South-East European region and externally, to share good practices and address challenges. This could tackle areas of common concern across the region including air and water pollution, hydropower, development in protected areas, mineral exploration and environmental crime.

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