COMPARATIVE ANALYSIS OF THE EXISTING MODELS OF LEGAL AID IN AND OUT OF THE EU AND BEST PRACTICES

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"The rule of law is the air we breathe"
Gustav Radbruch

Publication: COMPARATIVE ANALYSIS OF THE EXISTING MODELS OF LEGAL AID IN AND OUT OF THE EU AND BEST PRACTICES

Project: Equal access to effective justice

The project is funded by the European Union through a grant scheme
"Strengthening the impact of civil society on effective reforms in the judiciary "

Authors:
Natasha Amdiu
Kristina Najdovska Ilievski
Natasha Dokovska Spirovska

Approved by:
President of the Center for Ecological Democracy FLOROZON
Kiril Ristovski

Skopje, 2020

This publication was prepared with the support of the European Union. Content, views and opinions are the responsibility of the authors and in no way reflect the views of European Union.

CONTENT:

TERMS USED

UN - United Nations

UNESCO - United Nations Economic Commission for Europe, United Nations Economic Commission for Europe.

UNCSD - United Nations Sustainable Development Conference

EU - European Union

EEA - European Environment Agency

EPER - European Pollutant Emission Register

OECD - Organization for Economic Cooperation and Development

REC - Regional Environmental Centre

MoEPP - Ministry of Environment and Physical Planning

EIA - Environmental Impact Assessment

SEA - Strategic Environmental Assessment

IPPC - Integrated Pollution Prevention and Control

PER - Pollutant Emission Register

OGRM - Official Gazette of the Republic of Macedonia

SEE - Southeast Europe

FBiH - Federation of Bosnia and Herzegovina

RS - Republika Srpska

ECHR - European Court of Human Rights

INTRODUCTION

This publication aims to provide a comparative overview of the situation in the world, Europe, Republic of North Macedonia and the region for access to justice in the area of the environment. At the same time, it provides guidelines for strengthening the influence of civil society in effective reforms in the judicial sector, in accordance with international and European Union standards in order to assess the effectiveness of the legal sector through the cooperation of the public sector with the interested parties, ie the civil organizations.

The document was prepared by a team of experts, engaged within the project: "Equal access to effective justice", implemented by the Citizens' Association Centre for ecological democracy FLOROZON from Skopje, in partnership with Environmental Law and Management Association EMLA from Hungary. The project is funded by the European Union through CFSD grant scheme at the Ministry of Finance - "Strengthening the impact of civil society on effective reforms in the legal sector" EuropeAid / 159467 / ID / ACT / MK, contract number 12-6208 / 1.

The content of this analysis has been discussed in the context of Informal Coordination Body (National Coordination Body - NCB) for access to justice in the area of the environment, which is also formed within the scope of the abovementioned project. The purpose of NCB, among other things, is to define the positions of the various institutions and stakeholders, including the civil society sector and create a basis for a multidisciplinary approach through cross-sectoral cooperation of key stakeholders in the area of the environment.

The project is in accordance with Priority 2 of the abovementioned call, and the action is based on the conclusions of the New Judicial Reform Strategy ("Strategy") with The action plan 2017-2022, which was adopted on November 28, 2017 by the Government in the Republic of North Macedonia, which in turn correspond to the European Reports Country Progress Commission in recent years. More specifically, the project deals with capacity building of local and national organizations, as well as the relevant state bodies in the area of justice and protection of the basic human rights in a participatory and democratic manner, through the promotion of the mechanism for free legal aid. With the implementation of the action, in addition to being enhanced capacity to represent target civic bodies will also be contributed to the implementation of judicial reform in the country. Overall, this action is designed to respond to the overall progress of judicial reform in the country and to provide conditions for their achievement in a national context. Achieving the envisaged objectives will be based on a more comprehensive approach, primarily through establishment strong cooperation between stakeholders.

The right to an ecologically clean environment is guaranteed in over 100 constitutions across the world - it is defined according to the United Nations Environment Program as " declaration of an environment of a certain quality as a human right." According to the definition of the Program, environmental rights can be substantial and procedural. While the essential rights refer to the possibility of protection from the consequences that environmental degradation has on civil society and political rights, the right to life and freedom of expression, cultural and social rights, such as the right to health, water, food and culture, procedural rights are necessary prerequisite for exercising the first type of rights. They are a key point where they intersect with environmental and human rights law - they provide for formal steps to be taken in the defence process of human rights. Procedural rights include the right to a prior informed consent of citizens, access to information, participation in the adoption of decisions and access to justice.

This publication reviews international policies and instruments for access to justice, as well as national legislation, through the prism of the principle of access to justice in the area of environment, embodied in the legal system of Republic of North Macedonia through the Aarhus Convention, ratified by The Parliament of RNM in 1999.

This publication provides an overview of international instruments related to access to justice in the area of environment, review of access to free legal aid related with environmental cases, use of actio popularis jurisdiction of the court, how it is regulated internationally, and the right to environmental protection inevitably related to the right to life.

Furthermore, an overview of national legislation, including instruments, has been made related to access to justice in the environmental area, an overview of access to free legal aid (from the perspective of who is the user of it) seeking it the connection with environmental cases.

At the same time, the publication provides an overview of court cases internationally and nationally courts of several countries, for case law, as well as for the use of the Aarhus Convention as a mechanism for access to justice by state-ratified ones. On the other side, presentations on the use of national legislation in the focus countries, ie the use of free legal aid in case of violation of the right to a healthy environment, related to the violation of the right to life, represented through relevant cases from national and European courts (related to the European Human Rights Convention).

PART I: POLITICS AND LEGAL FRAMEWORK FOR ACCESS TO JUSTICE IN THE ENVIRONMENTAL POLICIES AND FREE LEGAL AID ON INTERNATIONAL, REGIONAL AND NATIONAL LEVEL

1.1. Development of international policies and legal framework

1.1.1. Defining and meaning of the terms access to justice and free legal environmental assistance

This document is trying to identify the research on the legal needs of the citizens common problems they turn to for help, certain protection mechanisms rights as well as solutions to certain legal problems. Effective access to justice is the key determinant of sustainable development, citizen well-being and a stable public administration. According to the Organization for Economic Co-operation and Development[1] (ОЕЦД), (OECD), governance the law, the legal certainty of the citizens and access to effective justice, affect economic performance of states, measured by increased gross domestic product (GDP), improving competitiveness and increasing investment, which in turn affects reducing poverty and improving the quality of life of citizens.

The connection between access to justice, the realization of human rights and development are also emphasized by the United Nations (UN) Sustainable Development Goals (SDG) adopted in 2016 year. The SDG is a global call for action to end the extreme poverty, to ensure sustainable future, environmental protection and allow people to enjoy equality, peace and justice. As a result of need and commitment of UN members at the international level, a special Development Goal No. 16 has been introduced: Peace, Justice and strong institutions, ie subsection no.16.3: Promoting the rule of law nationally and internationally and providing equal access to justice for all. This one underlines the importance of the relationship between trust in the institutions, the quality of legal systems and government confidence. Access to the judicial system improves citizens‘ trust in public institutions by providing safeguard measures against inappropriate behaviour.

When a certain right of individuals or a group of citizens is violated or damage is caused, access to justice is fundamental to the violated right of the individual and represents an essential component of the rule of law. Access to justice is exceptionally important, because if the laws are not enforced and the offenders are not sanctioned, citizens do not have the opportunity to realize their guaranteed rights, growth and development. In cases of ineffective or unavailable justice, there is an injustice that has a negative impact on individuals and wider effects on the whole society. Access to justice is important for the development of a country‘s economy, because the costs of unresolved legal issues are borne by the citizens, business and the society. Failure to comply with the law citizens‘ needs can have negative effects on other areas of their own everyday life, and unequal access to justice further undermines equality in society, especially when it comes to vulnerable groups of citizens. The inability to solve legal problems reduce economic opportunities, deepen the spiral of poverty and undermines human potential and inclusive growth.

Access to justice in relation to environmental issues means that citizens can go to court, that is, to seek judicial protection if the public authorities do not respect the rights and do not fulfil the obligations arising from the international documents, the Constitution and domestic legislation related to environmental protection, which in turn affect their lives and their health. Citizens

1 Organization for Economic Co-operation and Development (OECD), https://www.oecd.org/gov/access-to-justice.htm, [accessed on May 26, 2019]

play an important role in the maintenance and protection of nature and the environment. Public authorities must meet certain minimum requirements when responding to requests for information related to environment, public consultation, checking the condition of air and water, preparing plans for environmental protection and limiting potential harmful activities of various entities. Unresolved legal disputes in the area of the environment can lead to further legal, social and health problems and costs.

Access to justice, in addition to protecting personal rights and freedoms, is also a tool which allows the public to challenge decisions made by public bodies and to resolve disputes before an independent and impartial body. The right to access justice for environmental issues is slowly gaining more importance international and European level, enabling the public to influence the re-examination of certain decisions that are contrary to environmental law.

Free legal aid is the provision of assistance to persons who are unable to afford it legal representation and access to the judicial system. Legal aid is considered central in ensuring access to justice by ensuring equality before the law, right to a defence counsel and the right to a fair trial. The proper functioning of the legal system assistance is necessary for any society based on the rule of law, whereas, especially the vulnerable categories of citizens, they are provided with faster and easier access to legal aid, as one of the fundamental human rights.

Republic of North Macedonia in its commitments to achieve full-leggedness membership and entry into the European Union has the obligation to harmonize the national legislation with international standards in the area of legal aid, and in order facilitating citizens‘ access to justice.

The right to a clean environment is a right that everyone should enjoy, no matter what their status is, the place where they live and the economic conditions in which they live. The right to a clean Environment is one of the few rights whose enjoyment is firmly tied to the obligation to care for the environment, both for people and for all entities that have their own economic and social role in society. The need to guarantee this right is not just a need for the protection of the individual in society but also of the society itself.

1.2. The basics for developing the concept of access to justice in the area of the environment in the world under the auspices of the United Nations

1.2.1. Stockholm Declaration

The first UN Conference on Environment was held on June 5, 1972 in Stockholm, Sweden whose official declaration is commonly referred to as the Stockholm Declaration.

As a result of the Stockholm Declaration, the United Nations Program emerged for the environment (UNEP). The twenty principles of the Declaration are widely recognized human environmental impacts, meaning for the first time in history, issues for the environment they behaved publicly and globally. The declaration emphasizes the need for nations to design integrative development plans that they combine science and technology in order to reduce air, land and water pollution and human impact on the environment. It calls on every nation to create wildlife protection regulations and conserve the natural resources available in their country and proposes the creation of national policies for the population because the overpopulation disrupts the state of natural resources. The Stockholm Declaration provided the basis for many of the environmental policies that have been established in 113 participating countries.

Additionally, the basic principles presented in the Declaration and Discussions that led to it causing the creation of the United Nations Environment Program, which later developed more specific environmental protection protocols In Principle 1 of the 1972 Declaration of the United Nations Conference on the human environment states that “man has a fundamental right to freedom, equality and appropriate living conditions, a quality environment that enables life of dignity and well-being ”as well as the various constitutional texts in the Member States of the

Council of Europe, which embodies the provisions on environmental protection consistently. Recommendation 1885 (2009) called for the preparation of an additional protocol to European Convention on Human Rights, recognizing the right to a healthy and sustainable life environment;[2]

The Declaration encourages countries around the world to introduce environmental education as well as a basic part of the educational process, so Article 19 states: "everybody should strive to understand the meaning of his responsibility in the area of protection and improving the environment".

1.2.2. Agreement from the Rio Conference

Considering the need for further activities aimed at protection of the environment, organized by the United Nations from June 3 to 14, 1992 in Rio de Janeiro a major environmental and sustainable development conference known as the Earth Summit was held. Three main Agreements emerged from this conference[3]: Agenda 21, the Rio Declaration on the Environment and Development and the Statement of principles for sustainable forest management. At the conference the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD) were signed, and negotiations began on the Convention on Desertification (UNCCD). It was decided at the Rio Summit to establish The United Nations Sustainable Development Commission, in addition senior officials of 179 governments, attended by representatives of the United Nations, local authorities, business sector, representatives of scientific research circles, NGOs and other organizations that reached a consensus on a global partnership to balance needs of healthy economy, social development and a high-quality environment. This common agreement is contained in the Declaration on Environment and Development, the 27 principles of which determine the rights and obligations of states in their efforts to develop and improve human well-being.

The Rio Summit is a milestone in animal protection issues environment and sustainable development, as well as global democratic processes, because for the first time the importance it involved the entire public in decision-making and solutions related to this issue.

The conference in Rio was held at a time when the provisions on human rights and freedoms become the dominant criterion for all countries. It is estimated that degradation the environment is a kind of form of human discrimination and obstruction his freedoms. Therefore, to solve environmental problems more and more is approached as an essential issue to remove the unfair differences that exist in the world and in individual countries, even in developed[4].

The Rio Declaration also sets out Principle 10, which defines law to the public for access to environmental information, the right to participate to the public in making decisions related to the environment and the right of access to justice. Principle 10, ie Partnership for Principle 10, is the basis for adoption of the Aarhus Convention - 1998 at the Fourth Ministerial Conference: „Environment for Europe", held in Aarhus, Denmark, under the auspices of the Economic Commission on Europe of the United Nations.

Agenda 21 is a global consensus and a high degree of political agreement for the inability to separate development and the environment. For its realization governments are most responsible, and national strategies, policies, plans and programs are paramount. Agenda 21 is a complete system of a new „law" that starts from the proclamation of values and reaches the realization of specific goals.

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2 Parliamentary Assembly, Future action to be taken by the Council of Europe in the area of environment protection https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=16731&lang=en [accessed on April 22, 2019]

3 Sustainable Development and Environmental Protection through United Nations Documents, publisher Macedonian Green Centre, 2008, p. 4, https://civil.org.mk/wp-content/uploads/2013/05/djeklarazia.pdf [accessed on 16.6.2019]

4 Sustainable Development New Global Paradigm, by Margarita M. Matlievska, Monograph, Skopje 2011, p.25 https://www.academia.edu/2925222/ [accessed 31.05.2019]

Consequently, Agenda 21 is not limited to formulating legal rules, but it prepares them, shapes them, gives instructions, takes care of their implementation and it verifies their effectiveness. More importantly, Agenda 21 also includes mechanisms for monitoring and implementation of the proposed measures.

1.2.2.1 Framework Convention on Climate Change

This Convention was signed on 4 June 1992 at a summit in Rio de Janeiro and entered into force on 21 March 1994[5]. According to the Convention, governments should:

- Collect and share information on greenhouse gas emissions;
- Establish national strategies for reducing greenhouse gas emissions gases and to adjust to the expected impacts, including giving financial and technological support to developing countries;
- Provide support in preparation for adjustment to the effects of climate change.

In December 1992, the UN General Assembly established the Sustainable Commission development[6] (UN Commission on Sustainable Development, CSD) as intergovernmental, functional body established for the purpose of effectively monitoring the recommendations and commitments that have arisen from the Conference on Environment and Development. The commission is composed of 53 members who have a three-year term and report to the Council on Economy and Social Affairs (ECOSOC). The Commission is responsible for monitoring the progress of the implementation of the Agenda 21 and the Rio Declaration, as well as providing guidelines for monitoring the Plan for implementation from Johannesburg, locally, nationally and internationally. The commission assesses progress based on national reports that countries submit to it.

An important international document confirming the commitment and promise of funding Development is the Monterrey Consensus[7] (Monterrey Consensus) derived from the United Nations International Development Fund Conference in Monterey, Mexico, 18-22 March 2002. It contains 73 articles relating to support tools of development, starting with tackling development funding challenges, mobilization of international cash flows, mobilization of domestic financial development resources, accelerating international trade as a driver of development, increasing international financial and technical cooperation for development, improvement the coherence and consistency of international monetary, fiscal and trade development support systems.

1.2.2.2 Documents arising from the World Summit on Sustainable Development in Johannesburg

The World Summit was held in Johannesburg, South Africa, from August 26 to September 4, 2002 on Sustainable Development (WSSD) and marking the 10th anniversary of the Rio Conference. Basic aim of the Summit was to identify clearly established implementation mechanisms the concept of sustainable development globally, regionally and especially, nationally, making progress in implementing the recommendations and objectives of Agenda 21, as well as harmonization of the manner of further action. At the Summit two documents were adopted:

- (Political) Johannesburg Declaration; and
- Johannesburg implementation plan.

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5 Law on Ratification of 4 December 1997 "Fig. Journal of the Republic of Macedonia "no. 61/97, and entered into force on April 28,1998, http://www.zeleni.org.mk/fileadmin/user_upload/publications/Odrzliviot_Razvoj_i_Zivotnata_sredina_niz_dokumentite_na_UN.pdf [accessed 04.06.2019]

6 Margarita M. Matlievska, Sustainable Development New Global Paradigm, Skopje 2011, The Functions of The Commission is set out in the resolution of the General Assembly no. A / RES / 47/191 of 22 December 1992,

7 ibis

With the Johannesburg Declaration, the representatives of the peoples of the world, among others, confirm their commitment to sustainable development, as well as building a humane, just government and a caring global society, aware of the need for human dignity for all.

United in a common determination to make a decisive effort, the peoples are committed to that, they will respond positively to the need to create a practical and clear plan that will eradicate poverty and bring development to humanity.

The Implementation Plan, among other things, strongly confirms the common commitment to the principles of Rio and the full application of Agenda 21. With this document it is agreed that the internationally development goals will be confirmed and strengthen the commitment to take concrete actions and measures at all levels and encourage international cooperation. In the Plan for implementation, the basic principles for achieving sustainable development are for the benefit of all of peace, stability, security and respect for cultural diversity, human rights and fundamental freedoms, including the right to development.

20 years since the Rio de Janeiro Declaration, based on the adopted Resolution 64/236 of the General Assembly, a Sustainable Conference was held in Rio de Janeiro United Nations Conference on Sustainable Development (UNCSD) called Rio + 20 to unite states, private and civil society and other interest groups in the direction of reduction of poverty, promoting social equality and providing protection of environment.

The main goal of Rio + 20 was to provide a political commitment for sustainable development, assessment to advance and overcome existing gaps in the implementation of conclusions from major gatherings for sustainable development and addressing new challenges[8]. Within Rio + 20 7 discussion areas were identified that need to be addressed separately: decent work, energy, sustainable areas, food safety and sustainable agriculture, water, oceans and preparations for disasters and natural disasters.

1.2.2.3 Kyoto Protocol

The Kyoto Protocol is an international document (which expanded the Framework Convention for United Nations Climate Change since 1992) which binds states members to reduce greenhouse gas emissions. It is considered the first and widest cooperation of countries around the world on environmental issues. This Protocol was adopted in Kyoto, Japan, on December 11, 1997, and entered into force on 16 February 2005. There are currently 192 countries signatories to the Protocol (Canada has withdrawn from Protocol in 2012). The Kyoto Protocol pursues the goal of UNFCCC United Nations Climate Change Convention) in order to reduce the onset of global warming by reducing greenhouse gas concentrations in the atmosphere to "a level that would prevent dangerous anthropogenic interference in the climate system" (Article 2 of the Protocol). The Kyoto Protocol applies to six gases with the effect of Greenhouse, listed in Annex A: Carbon Dioxide (CO2), Methane (CH4), Nitric Oxide (N2O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs) and Sulphur hexafluoride (SF6).

A second round of commitments, known as the Doha Amendment, was agreed in 2012. which provides for: new obligations on the signatories of the Kyoto Protocol to the period 2013 - 2020, which clearly shows the interest in animal protection environment through the reduction of greenhouse gases is at the highest level in the international community. According to the Doha Amendment, 37 states have binding goals: Australia, EU (and its 28 member states), Belarus, Iceland, Kazakhstan, Liechtenstein, Norway, Switzerland and Ukraine. Japan, New Zealand and Russia participated in the first round, but did not took on new goals in the second period of commitment. In May 2019, 128 states accepted the Doha Amendment, while entry into force requires the acceptance of 144 states.

8 The right to a clean environment is the responsibility of every citizen and company - a review of management waste, publisher Center for Legal Research and Analysis - CPIA, December 2014, p.3, https://cpia.mk/ [accessed on 12.06.2019]

Although a global agreement, this protocol does not provide for penalties and trade sanctions for states which ratified it but failed to reduce greenhouse gas emissions. On the other hand, any state that has ratified it, can easily withdraw from it, it is only necessary to give notice one year in advance.

Given that the second round of commitments ends in 2020, negotiations that were held as part of the annual UNFCCC climate change conferences and measures, resulted in the adoption of the 2015 Paris Agreement, which is special instrument within UNFCCC instead of Kyoto Protocol.

1.2.2.4 Aarhus Convention

Convention on Access to Information, Public Participation in Decision Making and Access to justice on environmental issues, commonly known as Aahus convention was signed on June 25, 1998 in the Danish city of Aarhus. Entered into force on October 30, 2001. Starting in March 2014, the convention was ratified by 47 parties, 46 countries and the European Union (EU). All countries that have ratified it are from Europe and Central Asia. The Convention is legally binding on all entities that ratified it. The EU has begun implementing the principles of the Convention in its legislation, especially in the Water Framework Directive (Directive 2000/60 / EC). Liechtenstein and Monaco signed the Convention but did not ratify it.

The Aarhus Convention is an approach based on rights: the public, both in the present and in the future, has the right to know and live in a healthy environment. The Aarhus Convention gives it to the public rights regarding access to information, public participation and access to justice, in government decision-making processes on environmental issues (local, national and cross-border). This Convention focuses on reciprocity and public-state interactions on issues that regulate life environment.

The Aarhus Convention is a multilateral environmental agreement through which increasing the opportunities for citizens to access environmental information and a transparent and secure regulatory procedure is ensured. This Convention allows not only a mutual and trusting relationship between civil society and governments, but also the strengthening of the position of the public and its participation in the decision-making process, leading to environmentally responsible societies. Each Party to the Convention has an obligation to promote them the principles contained in it, as well as to fill in a national report, always accepting consultative and transparent procedure.

The Convention provides access to rights based on public law, starting with the right of everyone to know and live in a healthy environment. The terms "public" and "affected public" are distinguish in a way that: the former make up all the actors of civil society, a the latter are those individuals or organizations who are concerned or interested in making environmental decisions (for example: NGOs for the environment).

The principle of non-discrimination is observed in the Convention, so all information should be provided, regardless of the nationality or citizenship of the applicant.

Raising awareness of the importance of the environment, but also promoting public education on the environment are two key elements of the Convention gives them great importance.

The Aarhus Convention is based on three (3) pillars:

The first pillar, ***access to information*** guarantees the right of every citizen to receive comprehensive and readily available access to environmental information. Public authorities they must provide all the necessary information and timely and transparent yes collect and distribute them. They may refuse to do so only under certain conditions situations, for example: in the case of national defence.

The second pillar, ***public participation in decision-making,*** predicts that the public she must be familiar with all relevant projects and should be allowed to participate in the decision-making process. This opportunity strengthens the capacity of decision makers, because they can use

knowledge and expertise of people in the area of environment. This improves the quality of environmental decisions, but also the procedural legitimacy of the procedures during their adoption, as well as the results achieved.

The third pillar is essential for this analysis and relates to ***access to justice***. Namely, the public has the right to judicial and administrative proceedings in cases where the state violates it or does not comply with environmental law and the principles of the Convention.

The Aarhus Convention is **"the procedure for regulating the environmental protection",** it focuses more on determining and listing procedures instead setting standards and determining outcomes, enabling involved parties to interpret and implement the Convention in accordance with national systems and conditions. This model is a perfect example of multi-level management.

On the other hand, the risk, which includes wasting time and resources that could be different to invest in defining results makes the Convention vague, weak and open to multiple interpretations. Other critics note the fact that private bodies are excluded from the mandatory procedures provided for in the Convention (Mason, 2010).

It can also be debated whether the NGOs involved are credible they represent the interests of the environment, because ordinary citizens often do not financial resources to be able to participate effectively in the processes. Relative differences between participants and the inequalities of social group resources as well suggest the possibility of improper and uneven environmental protection.

The Aarhus Convention actually provides for innovations in international environmental law: linked environmental rights to human rights, recognized obligations to the future generations, found that sustainable development can only be achieved through inclusion to all stakeholders, linked the responsibility of states and the protection of the environment and focuses on the interaction between the public and public authorities in a democratic context. With The adoption of this Convention can already clearly see the aspirations of the international community for greater involvement in guaranteeing the right to a healthy animal environment at the international, regional, national and local levels.

1.2.2.5 Paris Agreement[9]

to the threat of climate change is Paris Agreement. The climate change agreement was adopted on December 12, 2015 in Paris, France at the Global Climate Change Summit organized by The United Nations aims to unite countries around the world in the fight against climate change changes by adjusting green energy sources, reducing greenhouses gases and reducing global warming.

The specific activity required of member states that they renounce the use of non-renewable energy sources (coal, oil and gas) and use renewable sources energy (windmills, solar panels, use geothermal and hydropower). Countries in development, which cannot achieve those goals on their own, must be supported by more developed countries.

The Paris Agreement aims to limit global warming to less than 2◦ C above pre-industrial levels (from 1850-1900), to 2100. The agreement, too thus, states more rigid goals to limit the increase in temperature only 1.5◦ C above pre-industrial levels. The agreement also provides for increased support of developing countries in the fight against climate change and requires developed countries to also provide $100 billion in the Green Climate Fund.

Under the Agreement, each country has an individual plan (or "nationally defined" contributions") for dealing with (its) greenhouse gas emissions. This Agreement has in order to increase the capacity of countries to strengthen their capacity to cope with the impact of climate change. It also allows developing countries and the most vulnerable countries increased financial support and technological support, which will support their activities in accordance with national goals.

9 Paris Climate Agreement, in force from 4 November 2016, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/ paris_agreement_english.pdf [accessed 13.05.2019]

The Paris Agreement of 22 April 2016 (Earth Day) was opened for signing at the UN headquarters in New York. It entered into force on November 4, 2016, 30 days after the so-called "Double threshold" (ratification of 55 countries participating with at least 55% of global emissions).

According to the United Nations, the Agreement is "a hybrid of legally binding and non-binding. "provisions", but there is no clear consequence or punishment for states that do not comply with the goals. Experts, however, believe that no country will withdraw from the Paris Agreement due to international pressure, opposition from their own citizens and the economy.[10]

Of the 196 negotiating countries that have signed the Agreement, 181 have ratified it to date (countries).[11]

The Convention has one Protocol - *the Kyiv Protocol on Registry on release and transfer of pollutants* adopted at an emergency meeting of the parties on 21 May 2003 year, in Kiev, Ukraine. 36 countries and the European Union have signed the Protocol.

The Kiev Protocol is the first legally binding international instrument for registering pollutants and pollutant emisions (PRTRs).

UNECE Convention on Access to Information, Public Participation in Decision Making and access to justice in relation to environmental issues (Aarhus Convention) remains an example of the application of the concept of "environmental democracy" in Principle 10 of Rio Declaration on Environment and Development.

The Convention shows how environmental democracy can promote transparency and cross-border cooperation, and how that helps environmental resource management.

The Convention laid the foundations for a peaceful, inclusive and righteous society.

The strong commitment of the Parties to the Aarhus Convention to promote the environment democracy in the context of the implementation of the 2030 Agenda for Sustainable Development, was confirmed by the Budva Declaration. Today, the Aarhus Convention is part of the legislation on 47 parties, of which 46 countries and the EU.

1.2.2.6 Other United Nations environmental conventions

Convention on Biological Diversity - CBD (Open for Signing the Rio Summit) de Janeiro) is ratified by the Law on Ratification (Official Gazette of the Republic of Macedonia 54/97) and is in force in 1998. This Convention is defined for the first time in international law the protection of biological diversity as a common obligation of all mankind. She took them covers all ecosystems, species and genetic resources and connects traditional efforts for protection against the economic goals of sustainable use of biological resources and sets the principles for fair and equal sharing of the benefits of exploitation of genetic resources. The Convention offers decision makers guidelines based on the principle of caution, according to which the absence of complete scientific evidence should not be an excuse to postpone measures to prevent or minimize threats from reduction or loss of biological diversity.

The Convention to Combat Desertification (UNCCD) was adopted on 17 June 1994 in Paris and entered into force on 26 December 1996. In the Republic of Macedonia, the Convention is ratified in 2002 ("Official Gazette of the Republic of Macedonia" 13/02). The purpose of the Convention is to prevent it spreading the deserts and mitigating the effects of droughts in the most affected areas face severe droughts and desertification, with particular emphasis on the territory of Africa.

10 J. Meyer / RTR / AFP, *What does the Paris Climate Agreement bring?* published in DW on 13.12.2015, https://p.dw.com/p/1HMg4 [accessed 22.04.2019]

11 United Nation, Climate Change, What is the Paris Agreement, https://unfccc.int/process/the-paris-agreement / what-is-the-paris-agreement-0 [accessed on 06.05.2019]

1.2.3. Development of a legal framework for access to justice and free legal aid in within the United Nations

1.2.3.1 Universal Declaration of Human Rights

On December 10, 1948, the United Nations General Assembly adopted and proclaimed Universal Declaration of Human Rights. This historic act of the Assembly called on them all Member States to publish the text of the Declaration in order to cause it to be distributes, displays and reads mainly in schools and other educational institutions, regardless of the political status of states or territories. It has been adopted and proclaimed of the General Assembly Resolution 217 A (III) of 10 December 1948.

The General Assembly proclaims the Universal Declaration of Human Rights as one general standard of achievement for all peoples and nations. Although not binding, this one The Declaration is generally accepted by the member states of the United Nations and represents based on a number of binding international conventions and agreements.

The declaration is directly or indirectly based on the constitutions of the states that strive to protect and guarantee human rights.

The principle of non-discrimination in the realization of rights has been established for the first time with the Universal Declaration of Human Rights of the United Nations adopted in 1948 and further developed in: International Covenant on Civil and Political Rights and Freedoms (MPPGP), the Pact for Economic, Social and Cultural Rights (MPESKP), the Convention on elimination of all forms of racial discrimination (CERD), the Elimination Convention of all forms of discrimination against women (CEDNES), the Convention on the Rights of the Child (CPC), the Convention on the Rights of Persons with Disabilities (CPLP) as well as the Conventions of the International Labour Organization (ILO). With these basic documents the guarantee of the right to equality and the suppression of any form of discrimination have been proclaimed as the highest standard in the corpus of basic human rights and freedoms.

Article 1 of the Declaration clearly states that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should they treat each other in the spirit of universal humanity. Article 2 emphasizes that all the rights and freedoms set forth in this Declaration belong to all people without given their differences, such as: race, skin colour, gender, language, religion, political or other persuasion, national or social origin, property, birth, or other status. The Declaration states, inter alia, that everyone has the right to life and liberty and security of person (Article 3 of the Declaration), no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation torture, cruel, inhuman or degrading treatment or punishment. Everyone has the right everywhere to be recognized as a person before the law. All people are equal before the law and have right without any discrimination, to equal protection by law. According to Article 7, all people are equal before the law and belong to all, without any discrimination, equal protection before the law. Everyone has equal protection against any form of discrimination contrary to this Declaration and any incitement to such discrimination.

Everyone has the right to the protection of the national law against such violations of rights recognized by the constitution and laws (Article 8).

The Declaration, within its normative text, establishes several human rights guaranteed by the right of access to justice, but initially include both conditions in which the person may exercise their right to legal aid in the International Covenant on Civil and Political Rights civil and political rights: first, if there are not enough funds to provide legal advocacy and secondly, when the fulfilment of this right is in the interest of justice. Namely, in Article 7 proclaims the principles of equality before the law, equal protection with the law and equality in law enforcement. With this interpretation of equality as a principle, the active role of the state and the measures of affirmative action are understood, which is clearly defined in the subsequent international agreements.

Reading the text of the Universal Declaration of Human Rights, in its content no explicit right to a healthy environment will be found anywhere. This right implies Article 3 of the Declaration, because it is closely related to the right to life, freedom and security of the person. Hence, the rights of the environment, because environmental pollution directly endangers human life, health and safety. To protect the right to a healthy environment, access to justice is necessary for every citizen who has this right injured. Everyone has the right to recognition everywhere as a person before the law 6), and it is especially important that all are equal before the law and have the right, without any discrimination, equal protection before the law (Article 7). The last article allows them to all citizens whose right to a healthy environment has been violated or endangered may seek protection of this right in an institutional way, regardless of their property condition. Access to justice must be guaranteed for all, including people who are in a difficult financial situation. Prohibition of discrimination as a basis it takes into account, among other things, the property status which cannot be a condition for access to justice. Consequently, everyone has the right to be effectively tried by national courts protect against violation of fundamental rights recognized by the constitution and laws (Article 8 of Declaration). In our country, the fundamental right guaranteed by the Constitution and the laws, between others are the right to a healthy environment. Therefore, every citizen must have it enable and guarantee effective access to justice, in cases where this fundamental right is endangered or injured.

1.2.3.2 International Covenant on Civil and Political Rights and the International Covenant on Civil and Political Rights economic, social and cultural rights

Unlike the Universal Declaration of Human Rights, International Law UN documents are binding, ie the administrative and judicial authorities are obliged to apply them directly. The widest protection is provided by the International Civil and Political Rights Convention (1966) and the International Covenant on Economic, Social and Cultural Rights and cultural rights (1966). The International Covenant on Civil and Political Rights contains a set of multiple rights: the right to life (as the most basic human right), the right to liberty and security, the right to a fair trial, etc.

This document again emphasizes the principle of equality and the right to effective remedy in case of violation of rights. In Article 2 of the International Covenant civil and political rights (1966) guarantee the rights of all persons on the territory of the Member State, the observance of the rights recognized by this Covenant without given race, colour, gender, language, religion, political or other opinion, national or social background, property status, birth, or any other circumstance. Furthermore, everything regulates the right of every person to use an effective remedy and to ensure enforcement based on a remedy procedure. Article 3 regulates the equal rights of men and women, to enjoy all civil and political rights under this pact. That means actively the state's commitment to establishing the principle of equality of the parties before judicial and administrative bodies of the state, which will not be merely formal.

Article 6 of the International Covenant on Civil and Political Rights[12] recognizes and protects the right to life of all people. The right to life is crucial for both individuals and society as a whole. This right is the most precious and inherits every human being, because it is indivisible from the human person. Its effectiveness is also fundamental protection is a prerequisite for the enjoyment of all other human rights. The right to life is a right that it should not be interpreted narrowly, but in its broadest sense. Paragraph 1 of Article 6 of the Covenant provides that no one shall be arbitrarily deprived of his life nor denied the right to do so is protected by law. This is an obligation for states to respect and guarantee the right to life, through legislative and other measures, as well as to provide effective legal drugs and protection of this right.

General Note - Comment No. 32 of the Human Rights Committee in Part V: The Relationship of Article 6 with other articles of the Covenant and other legal regimes, in paragraph 62 states that:

12 International Covenant on Civil and Political Rights, UN, 1976, available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx [accessed 18 April 2017]

Environmental degradation, climate change and unsustainable development are some of them from the most serious threats to the enjoyment of the right to life of present and future generations.

It is the duty of the Member States to respect international environmental law as well as to respect and ensure the right to life of all in accordance with this legislation.

The implementation of the obligation to respect and guarantee the right to life, and in particular the life with dignity depends, inter alia, on the measures taken by the Member States for preserving the environment and protecting it from damage, pollution and climate changes caused by public and private entities. For these reasons, Member States should ensure sustainable use of natural resources, development and implementation of substantial environmental standards, conducting environmental impact assessments environment. There is a duty for states to consult with other relevant States activities that can have a significant impact on the environment, provide notification to other affected states of natural disasters and emergencies in which case mutual cooperation is necessary. They also provide adequate access to information for environmental hazards and pay due attention to the principle of caution.[13]

Article 26 of the International Covenant on Civil and Political Rights provides specifically right to equality before the law, equal protection before the law and non-discrimination in a view of the guaranteed rights and obligations of states. This provision applies all the rights that the state in its legislation recognizes to the individuals of its territory or under its jurisdiction, to which the individual may to refer to certain situations, ie rights that are not a direct subject of this convention, if they are found to be discriminatory.

International Covenant on Economic, Social and Cultural Rights (1966) in Article 2 paragraph 2 and Article 3 guarantee equal rights for men and women to enjoy all economic, social and cultural rights.

1.2.3.3. UN Principles and Guidelines for Access to Free Legal Aid

On December 20, 2012, the UN General Assembly adopted the first international a document relating to the provision of free legal aid or UN Principles and Guidelines for access to free legal aid , which covers global standards for free legal aid, for which the UN appeals to states to adopt and strengthen and promote the effectiveness of free legal aid. The first principle contained in the document of December 20, 2012, reads:

"Recognition of legal aid should be an essential element in functioning the legal system, based on the rule of law as the basis of everyone's enjoyment human rights, including the right to a fair trial. As an important security guard that will guarantee them basic fair conditions and public trust in the legal system, the state should guarantee the right to legal aid within the national legislative system of the highest possible level, including the Constitution - if necessary."

1.2.3.4. Convention on International Access to Justice

The Convention on International Access to Justice was signed on 25 October 1980. in The Hague, by the Member States[14] of the Hague Conference on International Private Law[15].

The Convention is the first international document to cover the issue in more detail the regulation of the right of access to justice and its judicial and other protection of world level, whereby it is protected as the right of all citizens or persons with regulation stay in the respective country, which is a signatory to the Convention, but also in any state- signatory to the Convention in

13 *General comment no. 36 (2018) for Article 6 of the International Covenant on Civil and Political Rights, for the right to life*, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf [accessed on 05.06.2019]

14 The Hague Conference on International Private Law has 68 member states from around the world, including and the Republic of North Macedonia, http://88.85.126.176/PregledNaZakon.aspx?id=15357 [accessed on May 6, 2019]

15 For more information on the Hague Conference on International Private Law and the Integral Text of The Convention on https://www.hcch.net/ [accessed 12.06.2019]

which the court proceedings will be initiated or initiated. So, the purpose of the Convention is not to harmonize national legislation, but to ensure that the status of a foreigner or lack of residence or stay in the country does not exist be the basis for discrimination in access to justice.

A citizen of any Contracting State, as well as persons with permanent residence in any of the Contracting States has the right to legal aid in a court proceeding refers to civil and commercial disputes in any of the Contracting States, under the same conditions as if they were citizens of that state. In countries where legal aid is provided in administrative, social and fiscal matters, the provisions of this Convention shall apply only to cases that existed before, before the appearance of the courts and tribunals responsible for such matters[16].

1.2.3.5 Human rights, access to justice and the environment

Climate change is one of our biggest human rights threats generation and pose a serious risk to basic rights to life, health, food and appropriate standard of living for individuals and communities around the world.

According to the United Nations High Commissioner for Human Rights and the Environment, there are three main dimensions to the connection between human rights and animal protection environment[17]:

The environment as a prerequisite for the enjoyment of human rights (human rights obligations States' rights should also include the obligation to provide a level of protection for the animal environment, which is necessary to enable full application of protected rights);

Certain human rights, especially access to information, participation in decision-making and access to justice in relation to environmental issues as fundamental to environmental decision-making (human rights must be enforced in order to provide environmental protection); and The right to a safe, healthy and environmentally balanced environment as a human right only by itself.

The Stockholm Declaration, and to a lesser extent the Rio Declaration, show that the relationship between human rights and dignity and the environment was significant highlighted in the early stages of the United Nations' efforts to address environmental issues problems.

There have been several calls from various UN bodies to address issues related to the issue human rights and the environment. Human Rights Commission (now transformed in the Human Rights Council) with Resolution 2005/60 requested by the High Commissioner and them called on UNEP, UNDP and other relevant bodies and organizations within their framework mandates and approved work programs and budgets: *"to continue to coordinate their own efforts in activities related to human rights and the environment in eradication Poverty, Post-Conflict Environmental Assessment and Rehabilitation, Prevention of disasters, assessment and rehabilitation after disasters, to take into account the relevant findings and recommendations of others in their work and to avoid duplication"* (paragraph 8).

16 Convention on International Access to Justice 1, https://assets.hcch.net/docs/a311a685-d6e7-41d4-8210-7c2b8c30429e.pdf [accessed on 05.06.2019]

17 Downloaded from the website of the UN Reporter on Human Rights and the Environment https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SRenvironmentIndex.aspx [downloaded April 10, 2019]

1.3. Development of regional policies and legislation

1.3.1. Policy and legislation within the Council of Europe

The Council of Europe[18] is the oldest international political organization and is a leader human rights organization in Europe. The main task of the Council of Europe is to create a common democratic and legal area across the continent, which will ensure respect for fundamental values: human rights, democracy and the rule of law the right. It was founded on May 4, 1949 by the Constitution, in London. The Council has 47 member states 1 candidate country - Belarus and 5 observer countries. Of the signatory countries, 28 are members of the European Union.

With the London Agreement of 1949, two main bodies of the Council were established of Europe, one of which is of the parliamentary type (Parliamentary Assembly), and the other is of intergovernmental type (Committee of Ministers).[19]

The Parliamentary Assembly consists of 324 deputies from the 47 member states; Assembly elects the Secretary-General, the Commissioner for Human Rights and the judges of the European Court for human rights; provides a democratic forum for debate and monitors elections; his commissions play an important role in addressing current issues.[20]

The Committee of Ministers is the body responsible for decision-making in the Council of Europe. Its role and functions are broadly defined in Chapter IV of the Statute. It is made up of Ministers of Foreign Affairs of the Member States. The committee meets in ministerial level once a year and at the level of deputies (permanent representatives of the Council of Europe) per week. Conducting meetings is regulated by the Statute and the Rules of Procedure. Deputy Ministers are assisted by the Bureau, reporting groups, thematic coordinators and ad hoc working groups.[21]

The Human Rights Committee (CDDH) is a body that reports to the Committee of Ministers. of the Council of Europe. The Human Rights Committee (CDDH) is composed of experts representing the 49 member states of the Council of Europe. Other experts, in particular civil society representatives also attend these meetings. Under the jurisdiction of the Committee of Ministers and taking into account the legal standards of the Council of Europe, as and the relevant case law of the European Court of Human Rights, CDDH Council of Europe intergovernmental work in the area of human rights, advises and provides legal expertise of the Committee of Ministers on all matters within its competence.[22]

1.3.1.1 Convention for the Protection of Human Rights and Fundamental Freedoms

Convention for the Protection of Human Rights and Fundamental Freedoms (adopted in Rome, 4) November 1950) is the cornerstone of the human rights and freedoms system European Convention on Human Rights. It follows the Universal the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948, in order to impose to the governments of all countries, with the same aspirations and common inheritance of ideals and political traditions, respect for freedom and the rule of the right to resolutely take the first steps to guarantee certain rights set out in the Universal Declaration. The Convention is an international agreement, with an unprecedented scope with which Council of Europe member

18 The Council of Europe is a different institution from the Council of the European Union or the European Council because these are institutions of the European Union.

19 Jean-Claude Gautron, Public Law Institutions of Roman Law Reciprocated in Today's Legal Systems, European Law, Skopje 2006, http://eprints.ugd.edu.mk/9927/1/Magisterska%20teza.pdf [accessed at: June 21, 2019]

20 Council of Europe, https://www.coe.int/en/web/about-us/structure [accessed 07.05.2019]

21 Council of Europe, Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, Lugano, 21/06/1993 - Treaty open for signature by the Member States, the non-member States which have participated in its elaboration and by the European Union, and for accession by other non-member States: https://www.coe.int/en/web/cm [accessed 28.05.2019]

22 Council of Europe, Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, Lugano, 21/06/1993 - Treaty open for signature by the member States, the non-member States which have participated in its elaboration and by the European Union, and for accession by other non-member States: https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/human-rights-development-cddh [accessed on 22.04.25.04]

states promise to guarantee the basic civil and political rights, not only of their citizens, but also as well as to anyone who falls under their jurisdiction.

Part I of the Convention (Articles 2-19) provides a list of human rights and freedoms, compliance is finally ensured by the European Court of Human Rights.

The Convention guarantees in particular: the right to life, the right to a fair trial, the right to respect for private and family life, freedom of opinion, conscience and religion, freedom of expression, freedom of assembly and association and the protection of property. In addition, special protection is provided by: torture and inhuman and degrading treatment or punishment, slavery and forced labour, the death penalty, arbitrary and illegal detention and discrimination in the enjoyment of the rights and freedoms established with the Convention.

From the point of view of the right to a healthy environment, although it is not explicitly stated in the Declaration, the same could be seen through certain articles of the same, in view of the following aspects: Pursuant to Part 1 entitled "Freedoms and Rights" in Article 2 paragraph 1 of the Convention explicitly states that the right to life of every human being is protected by law. In our country, the right to life is a constitutionally guaranteed right. On the other side, in environmental disorders there is a risk to human health, but also to his life. The stated article of the Declaration is relevant and, among other things, covers it environment, albeit indirectly. On the other hand, Article 6 paragraph 1 of the Declaration, also constitutionally guaranteed in our country, guarantees the right to a fair trial procedure in such a way that:

"Everyone has the right to a fair and public hearing and to an independent and fair hearing impartial by law established court to be considered and established his civil rights and obligations or the merits of any criminal charges against him."

The verdict is made public, and journalists and audiences can be excluded in time of the whole or part of the procedure in the interest of morality, public order or national security in a democratic society, when it is in the interests of a minor or the protection of the private life of the parties to the dispute, or when the court deems it necessary because in special circumstances publicity could harm them the interests of justice.

Hence, every citizen who has been deprived, disturbed, obstructed or otherwise violated the right to a healthy environment has the right, inter alia, to seek jurisdiction protection of his right before an independent and impartial court established by law.

Article 8 of the Declaration guarantees the right of every person to respect his own private and family life, home and correspondence. Public authority must not be influenced the exercise of this right, except in cases where the impact is provided by law and if it is a measure that is in the interest of state and public security, economic welfare of the country, protection of order and prevention of crimes, the protection of health and morals, or the protection of the rights and freedoms of others, in one democratic society.

Articles 13 and 14 are also relevant and applicable to animal issues environment, so any person whose rights and freedoms recognized by this Convention have been violated, has the right to appeal to the national authorities, even when the violation of these rights and freedoms were exercised by persons in the performance of official duties. Article 14 prohibits it Discrimination: "The enjoyment of the rights and freedoms recognized by the Convention should provide without any discrimination based on sex, race, skin colour, language, religion, political or any other opinion, national or social origin, affiliation of a national minority, material position, origin after birth or any other status".[23]

23 Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4 November 1950 Article 14, https://www.echr.coe.int/Documents/Convention_MKD.pdf [accessed 13.05.2019]

ARTICLE 2[24]

Right to life

1. The right to life of every human being is protected by law. No one can do it on purpose to be deprived of life, except by the death penalty, imposed by a court verdict found guilty of a criminal offense which, according to the law is punishable by such a penalty.
1. It is considered that the provisions of this article are not violated if death occurred as a result of the absolutely necessary use of force:
   a. in defence of any individual from illegal violence;
   b. when arrested under law or prevented from escaping a person arrested on basis of law;
   c. in the legal prevention of unrest or rebellion.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life. home and correspondence.
2. The public authority must not interfere in the exercise of this right unless: that interference is provided by law and if it is a measure of interest of state and public security, the country's economic well-being, protection of order and prevention of crimes, protection of health and morals, or the protection of the rights and freedoms of others, in a democratic society.

The Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms has been adopted in Paris, March 20, 1952, to take measures to secure the collective guaranteeing those rights and freedoms not listed in Section I of the Convention. In Article 1 guarantees the protection of property: "Every natural or legal person has the right of the peaceful enjoyment of his possessions. No one can be deprived of his property except in public interest and under the conditions provided by law and the general principles of international law.

Previous provisions do not include the right of states to enact laws consider it necessary to regulate the use of the property in accordance with the general interest or for secure tax payments, other contributions and fines."[25]

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 2000) Article 1 1 1 defines a general prohibition of discrimination:

"Enjoyment of any right provided by law will be ensured without discrimination on any basis such as gender, race, colour, language, religion, political or other opinion, national or social origin, connection with national minority, property, birth or other status. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation grounds set out in paragraph 1."[26]

So, the European Convention on Human Rights also establishes a mechanism for implementation of the obligations accepted by the Contracting States.

24 ibis

25 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms Paris, 20 March 1952 year, Article 1, https://www.echr.coe.int/Documents/Convention_MKD.pdf [accessed on 06.05.2019]

26 Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4 November 2000, Article 1, https://www.echr.coe.int/Documents/Convention_MKD.pdf [accessed 14.05.2019 year]

1.3.1.2 Convention on the Immunity of Jurisdiction

Of particular interest is the 1972 Convention on the Immunity of Jurisdiction, Protection of the environment, as well as in the agreements in the area of humanitarian law. Especially the European Social Charter of 1961 as well as the European Law should be emphasized for social protection since 1964. The Council of Europe's legislative action has led and to the creation of European Regional Law.[27]

1.3.1.3 European Social Charter

The European Social Charter, adopted in 1961, guarantees human social security and economic rights: the right to work; the right to equal working conditions; right to protection at work; the right to fair earnings; trade union rights; collective right negotiating; the right of children and youth to protection; the right to protection of employees women? the right to professional orientation; the right to professional training; right of health protection; right to social security; right to social and health help; the right to assistance from social care services; right to professional education and the professional and social rehabilitation of persons with physical or mental disability; the right to social, legal and material protection of families; right of social and material protection of mother and child; right to engage in profitable occupation of the territory of other States Parties and the right to protection and assistance migrant workers and their families. By signing the Charter, the Contracting Parties accept two obligations its consistent observance and realization.

The revised European Social Charter (adopted by the Council of Europe) contains: detailed list of economic and social rights, such as the right to work, the right to equal working conditions, the right to a fair wage, the right to organize workers, the right to professional training, etc. Article E of Part 5 provides for the obligation of states to ensure enjoyment of the rights of the Charter without discrimination.

1.3.2. Council of Europe and Environmental Protection

The Council of Europe puts sustainable development at the top of its agenda. Her policy is that economic progress must not compromise the key resources of humanity:

environmental and landscape quality, human rights and social equality, cultural diversity and democracy. The Council of Europe considers climate change changes as the most serious environmental problem facing the world today, recognizes them human rights implications and is active on two fronts: preserving the natural resources and biodiversity, but also protection of diversity and vitality of the many cultures in the world. Therefore, the cultural pillar of sustainable development requires parallels efforts to develop a culture of sustainability and to protect cultural diversity.

The Committee of Ministers of the Council of Europe of the Steering Committee on Human Rights and entrusts the task of working on human rights and the environment. Following the work of the Parliamentary Assembly of the Council of Europe and the case law of the European Court of Justice

human rights, a clear commitment to environmental issues and believes that it is not just a fundamental right of citizens to live a healthy life environment, but an obligation of society as a whole and each individual, in particular to convey a healthy and sustainable environment for future generations. Furthermore, it is emphasized that part from resources unfortunately, are irreparable and that environmental degradation often is irreversible.

However, the Parliamentary Assembly notes and regrets that despite all the policies, it is legal initiatives that have been taken, both internationally and nationally, protection the environment is still very low. In this context, the Council of Europe has adopted a significant number of

27 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms Paris, 20 March 1952 year, Article 1, https://www.echr.coe.int/Documents/Convention_MKD.pdf [accessed on 06.05.2019]

conventions, directives, prerogatives, recommendations, etc. These include the 1979 Wildlife Conservation Convention and Natural Resources (Berne Convention, ETS No. 104), Convention of 1993 Civil Liability for damage resulting from activities that are dangerous to the environment (ETS No. 150) and The Convention on the Protection of the Environment through Criminal Law since 1998 (ETS no. 172).

The Parliamentary Assembly also adopted Recommendation 1614 (2003) on Animals Environment and Human Rights and Recommendation 1431 (1999) on future activities to take over the Council of Europe in the area of environmental protection, which already proposed the addition of an environmental component to the European Convention on human rights.

In Recommendation 1431 (1999), the Parliamentary Assembly of the Council of Europe proposed that The ECHR added, calling for a *"healthy and sustainable environment as a basic human endeavour. "right"*. Similarly, in Recommendation 1614 (2003)[28] on Environment and Human Rights, The Parliamentary Assembly advocated the need for *"recognition of human rights." of a healthy, sustainable and decent environment that includes an objective commitment to states to protect the environment, in national laws, preferably constitutionally level."* In Recommendation 1614, the Parliamentary Assembly also proposed drafting of the ECHR Protocol on Environmental Protection, including procedural ones rights based on the Aarhus Convention.

These proposals, however, were rejected by the Council of Europe's Committee of Ministers. due to the fact that the ECHR already provides environmental protection through human first and second generation rights. Recommendation 1883 (2009) on the challenges associated with climate change has again sparked a debate over the preparation of an additional one Protocol to the ECHR on the right to a healthy environment. In this regard, Recommendation 1885 (2009)[29] warns not only the basic right of citizens to live in a healthy environment, but also an obligation of society as a whole and each individual, especially to pass on a healthy and sustainable environment to future generations.[30]

The Parliamentary Assembly in Recommendation 1885 (2009) notes the practice in the area of the environment developed by the European Court of Human Rights and welcomes it the issuance of the Human Rights Handbook and the environmental principles arising from the case law of the European Court of Human Rights, published by the Council of Europe in 2006 year. The principles in the manual derive from court practice from 1980 to November 2005 and hopes that this manual will be updated regularly. This court practice provided protection of the right to a healthy environment through a "blow" based on of respect for individual rights in Articles 2 and 8 of the European Convention on human rights.

Through its activities, the Council of Europe has helped to establish a proper legal framework environment in Europe for the benefit of biodiversity, spatial planning and landscape management and sustainable territorial development based on the integrated use of cultural and natural resources.

The Republic of North Macedonia became the 38th member of the Council of Europe on 9 November 1995.[31] Since then, it has been actively cooperating with all CoE bodies (Prevention Committee) torture, the Venice Commission, ECRI, the Commissioner for Human Rights, etc.) and intensively fulfils its obligations arising from membership in the Council of Europe and Council of Europe conventions to which it has acceded. Within the 18-year-old active cooperation of the Republic of Macedonia with the Council of Europe, representatives of the government institutions regularly and actively participate in the work of administrative, ad hoc committees

28 Recommendation 1614 (2003), Parliamentary Assembly of the Council of Europe, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?Fileid=17131&lang=en [accessed 22.04.2019]

29 Recommendation 1885 (2009), Parliamentary Assembly of the Council of Europe, http://assembly.coe.int/nw/xml/XRef/Xref-DocDetailsEN.asp?Fileid=24830&lang=EN&search=cmNvbW1lbmRhdGlvbiAxODg1 [accessed on 11.04.2019]

30 Otatio Quirico and Mould Boumourgar, *Climate Change and Human Rights: Perspectives on International and comparative law*, p. 303

31 Posted on the official website of the Council of Europe, https://www.coe.int/mk/web/skopje/the-council-of-europe [accessed on 08.04.2019]

and the Council of Europe's Committee of Experts, whose meetings are in the process of being implemented the intergovernmental program of activities and harmonization of European policies in all spheres other than defence.[32]

From May to November 2010, the Republic of Macedonia for the first time chaired the Committee of Council of Europe ministers. As part of his six-month presidency, the state has made its maximum contribution to the promotion of values and standards of the organization, as well as to improve its political relevance to the international scene. The priorities of the Macedonian chairmanship of the Organization were aimed at: strengthening human rights protection, strengthening integration with respect for diversity and the promotion of youth cooperation.[33]

1.3.3. Council of Europe Conventions on Environmental Protection

1.3.3.1 Convention for the Conservation of Wildlife and Natural Resources (Bern convention)

Wildlife Conservation and Natural Resources Convention (Bern Convention) was adopted in Bern, Switzerland in 1979 and entered into force in 1982. Bern Convention is a binding international legal instrument in the area of protection of nature, covering most of the natural heritage of the European continent, including some African countries. The main objectives of the Convention are to ensure conservation and protection of wild and plant species and their natural habitats (to be listed in Appendices I and II of the Convention), to increase cooperation between contracting parties and to regulate the exploitation of those species (including migratory species) listed in Appendix III. To this end, the Convention requires legal obligations to contracting parties, protecting more than 500 wild plant species and more of 1,000 wild animals.

1.3.3.2 Civil liability for damages arising from activities that are dangerous on the environment (ETS No. 150)[34]

The purpose of the Convention is to ensure adequate compensation for the damage that results from activities that are dangerous to the environment, and funds are also provided for prevention and return. The Convention itself states that the problems with the appropriate compensation for emissions that are emitted from one country and cause damage to another country is also international.

The Convention system is based on objective accountability the "polluter pays" principle. However, special rules are given regarding the error of the victim, the cause, the joint responsibility of the installation operators or the places for damage and the mandatory financial security scheme to cover liability under the Convention.

The Convention stipulates that interested persons have the right to access information owned by publicly responsible bodies for the environment.

The Convention establishes a standing committee responsible for interpretation and implementation of the Convention. The committee may make recommendations regarding the implementation of Convention and to propose any necessary amendments to the Convention.

1.3.3.3 The Convention on the Protection of the Environment through Criminal Law 1998 year (ETS No. 172)

The convention is aimed at improving European environmental protection level using the ultimate solution - criminal law, in order to deter and to prevent the behaviour that is most harmful to him. It is also trying to reconcile it national legislation in this area.

32 Posted on MFA, http://mfa.gov.mk/index.php?option=com_content&view=article&id=124&Itemid=403&lang=mk
33 Ibis
34 Convention on Civil Liability for Damage as a result of activities dangerous to the environment, Details of the agreement no.150, Council of Europe, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/150 [accessed 22.04.2019]

This legal instrument obliges States Parties to introduce specific provisions in their criminal law or to modify existing provisions in this area. She determines as criminal offenses a large number of offenses committed intentionally or through negligence where they cause or may cause permanent damage to the quality of air, soil, water, animals or plants either result in death or serious injury to any person. The Convention defines the concept of criminal liability of natural and legal persons, lists the measures that states should adopt to enable them to confiscate property and define the powers available to the authorities and provides international cooperation.

Sanctions must include prison sentences and fines and may include refunds of the environment in its original state. Another important provision concerns the possibility environmental associations to participate in criminal proceedings in regarding the violations provided for in the Convention.

Considering the impact of international trade agreements and the need for addressing potentially unequal spread of potential aggregate benefits, The Parliamentary Assembly of the Council of Europe adopts Resolution 2152 (2017)[35] of January 27, 2017, citing the 2015 Paris Climate Change Agreement.

Resolution 2152 (2017) refers to the "New Generation" trade agreements, emphasizing that no agreement should minimize public policy environmental protection, food safety, public health and social rights.

Contracts should not include authorizations for investors to minimize (overcome) imperatives in ecology, democracy and human rights. Parliamentary Assembly calls on EU negotiators to remain firm in their stance determination to protect and promote the interests of European citizens and to commit much attention to precise wording of environmental regulations, food safety, public health, human rights and consumer protection.

With this resolution, the Council of Europe is once again promoting animal sustainability environment, human rights and the rule of democratic law, fascinating them the benefits of international trade.

1.4. European Union

The European Union (EU) has 28 member states and seven institutions that perform the tasks of The Union. Article 13 of the Treaty on European Union divides them into:

Political institutions: European Parliament, European Council, Council of Europe Union (Council), European Commission, Non-political institutions: The Court of Justice of the European Union, the European Central Bank and the Court of Auditors.

The European Union is constituted by international agreements - Treaty is a formal agreement concluded between states in order to define (or modify) their interrelationships duties and responsibilities. The European Union is committed to achieving sustainable development, not only in the context of creating environmental policies, but also in the context of all political decisions: both economic and social and environmental.

The European Union (EU) and its institutions (the European Commission, the Council of Ministers and The European Parliament), have environmental protection as an object of action since the founding of the Union. In the Treaty establishing the European Economic Area Community or the Treaty of Rome (signed on 25 May 1957) states that: The *Community will have for its task promoting ... a high level of protection and improving the quality of the environment*.

It entered into force on the Preamble of the Treaty on European Union (February 7, 1992) November 1, 1993) or popularly called the Maastricht Treaty, states:

35 Resolution 2152 (2017), 27 January 2017, Parliamentary Assembly of the Council of Europe http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23489&lang=en [accessed on 09.05.2019]

The community is determined to promote economic and social progress for its own citizens, taking into account the principle of sustainable development ....

With the Treaty of Amsterdam[36] supplementing the Treaty on European Union, the treaties for the formation of European communities and related acts, the obligation to "Achieving balanced and sustainable development" (Article B) and stating that financial Union instruments will work, simultaneously and in the long run, to ensure economic security growth, social cohesion and environmental protection. The Treaty of Amsterdam introduces sustainable development as a Core Objective of the European Union, as referred to in Articles 2, 3 and 6 of the Agreement. Thus, Article 6 states that: *Requirements which sets the environmental protection must be integrated at defining and implementing the policies and activities of the Union .... with a special emphasis on promoting sustainable development*.

With the Treaty of Nice (signed on February 26, 2001, and entered into force on February 1, 2003) The commitment of the European Union to use all opportunities is reaffirmed The Treaty establishing the European Union for the Protection of the Environment, including and the use of market-oriented facilitations and instruments to promote sustainable development.

The draft Treaty on the Establishment of the Constitution of Europe has been drafted in order to replace them all existing agreements with a single text. Adopted on 17 and 18 June 2004 by the Heads of State and Government of the European Council of Brussels, signed in Rome, on 29 October 2004 by 25 member states of the Union. However, the Constitution did not enter into force, as further proceedings required ratification by each Member State, in compliance with their constitutional arrangements (in parliamentary procedure or by referendum), but France and the Netherlands rejected his text in 2005.

The International Lisbon Treaty was created to replace the Constitutional Treaty An agreement signed by the leaders of the 27 member states of the Union on 13 December 2007. To enter into force, it had to be ratified by each state member in accordance with its constitutive and legal conditions. By signing the instrument of ratification on 3 November 2009 by the Czech President, The Lisbon Treaty entered into force on 1 December 2009.

The Lisbon Treaty complements the European Union Treaty and the Treaty of formation of the European Community. In the section General provisions, in Article 2, paragraph 3, it is stated that: The *Union will establish an internal market. It will work on the sustainable development of Europe based on balanced economic growth and price stability, highly competitive social market economy, aimed at full employment*

Furthermore, in the same Article 2, paragraph 5, it is stated that: The *Union, in its relations with the world, will supports and promotes its values and interests and will contribute to the protection of its own citizens. It will contribute to peace, security, sustainable development of the Earth, solidarity and mutual respect between people, free and fair trade, eradication of poverty and protection of human rights, especially the rights of children, as well as strict monitoring and the development of international law, including respect for the principles of the Charter The United Nations*.

In the General Provisions of the Union, in the section entitled External Relations of the Union, Article 10 And paragraph 2 states: The *Union will define and implement common policies and actions, and will work towards a higher level of cooperation in all areas of international relations with purpose, among other things ... to assist in the development of international conservation measures and improving the quality of the environment and sustainable management of global natural resources to ensure sustainable development.*

Apart from those mentioned in many other documents of the European Union, its definition is defined position towards sustainable development in its overall development efforts, which implies and specific commitments and steps it needs to take.

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36 Signed on 2 October 1997, entered into force on 1 May 1999. *and social progress, and high degree of protection and improvement of environmental quality*.

In May 2005, the European Commission adopted the "Draft Declaration on Leading Principles for sustainable development ", which states: The *European Union is firmly committed to sustainable development. That is the key principle of all policies and activities ... The declaration confirms it long-term vision for sustainability, identifies the main objectives of policies and describes the activities of the Union and describes how the Union wants to achieve those goals. These guiding principles correspond to the core values of dynamic European model of society ... Sustainable development is a key goal of all European policies community.*

To achieve this, the European Union and its member states are committed to respecting them key goals (environmental protection, social equality and cohesion, economic prosperity and fulfilment of international obligations) and policy-making principles (promotion and protection of fundamental rights, intra- and inter-generational equality, openly and democratic society, citizen involvement, business and social involvement partners, policy coherence and management / (hand) management, policy integration, using the best available knowledge, the principle of caution and implementation of the polluter principle pays).

1.4.1. European Union Human Rights System

The European Union's human rights system includes the Charter of Fundamental Rights (Charter), as well as non-discrimination directives. The Charter, (signed in 2000), proclaims a number of civil, political, economic and social rights for European citizens and all persons residing in the EU on the basis of recognized fundamental rights and freedoms with the European Convention on Human Rights, the constitutional traditions of the EU member states, Council of Europe Social Charter, Community Charter for Basic Social workers' rights and other international conventions to which the EU or its member states are signatories. The Charter goes beyond the scope of human rights protection which is also dedicated to special contemporary issues such as bioethics and personal protection data.

The charter, in accordance with the Lisbon Treaty, has been legally binding since December 2009 year. It is applicable by EU institutions and Member States in the application of Union law. The charter prohibits discrimination based on any grounds such as: gender, race, skin colour, ethnic or racial background, genetic characteristics, language, religion or persuasion, political or any attitude, belonging to a national minority, property, birth, disability, age or sexual orientation. This has expanded the competence of the EU in the area of equality over what constitutes gender-based discrimination and citizenship, as an expression of the fundamental principles of equality and non-discrimination, which are part of the principles on which the European Union is based.

Article 13 of the Treaty establishing the European Community is the legal basis for adoption of measures by the Union to Combat Discrimination. Member States the EU must apply the principle of equality in their domestic legislation.

National courts when faced with domestic legislation, which conflicts with this principle does not have to apply, but must guarantee the general principle of equality and ensure that it is effective.

The European Parliament is engaged in the process of adopting other directives in the area to prevent discrimination. The European Commission's main task is to propose new laws, as well as to implement existing European law and to enforce related policies. The European Court of Justice (ECHR) has interpreted EU law.

The EU has the power to pass laws and take other actions in certain areas, including and to prevent discrimination. Those laws take precedence over domestic laws in framework of the given area of competence. This "supremacy" of EU law implies that national courts must give priority to EU law over inconsistent domestic provisions. Hence, the EU legal system has a 'supranational' character. That means that unlike the European Convention on Human Rights, for example, anti-EU discriminatory law does not differ from domestic law, but it does an integral part of it, and under certain conditions there is direct applicability. Not only that that national courts can refer to EU law, but they have an obligation to do so applied. Individuals may claim their rights

granted by EU law before domestic courts, if the provision to which they are invoked has direct applicability.

In Directive 2008/52 / EC[37] of the European Parliament and of the Council of the European Union are: the goal is to provide **better access to justice** as part of the policy The European Union should establish a framework for freedom, security and justice access to litigation and out-of-court dispute resolution methods. In this regard, this directive should contribute to the proper functioning of the internal market, especially since affects the availability of mediation services.

The directive aims to improve fundamental rights and takes into account the principles from the Charter of Fundamental Rights of the European Union. Creating alternatives out-of-court proceedings, according to the EU Directive, contribute to access to justice as a fundamental human right.

Mediation, according to the Directive, can be financially viable and out of court resolving disputes over civil and commercial issues through a process adapted to the needs of the parties. It is more likely that the agreements arising from mediation will be implemented on a voluntary basis and will result in a friendly and sustainable relationship between the parties. These benefits are even more pronounced in situations where they exist cross-border elements.

As a procedure oriented towards finding effective market solutions, in the Directive it is emphasized that mediation should not be considered a worse alternative to the judiciary procedure, in the sense that compliance with the agreements arising from mediation would depend on the goodwill of the parties. Confidentiality is important in the mediation process, so this directive should provide a minimum degree of comparability of civil procedure regulations in relation on how to protect the confidentiality of mediation in all further civil and commercial litigation or arbitration.

Mediators and those involved in the administration of the mediation process should not be forced to disclose evidence in civil and commercial litigation or arbitration in relation to information arising from or in connection with the mediation process.

The mediation set out in this Directive should be a voluntary process in sense that the parties themselves are responsible for the process and can organize it anyway as they wish and finish it at any time. However, under national law, everything says in the Directive, courts should be able to set deadlines for the process mediation. In addition, the courts should present to the parties the possibility of mediation whenever appropriate.

The Directive also emphasizes the importance of creating a predictable legal framework and legislation that specifically addresses key aspects of mediation and, in that direction, the civil procedure.

1.4.2. European Union and the Aarhus Convention

With the ratification of the Aarhus Convention in February 2005, the EU pledged to guarantees broad access to justice for environmental issues such as nationally and at EU level.

According to the decision of the Court of Justice of the European Union in the case of *Etang de Berre*[38] , with itself accession of the Union, the Aarhus Convention and the rights and obligations arising therefrom from there, they become part of the *acquis communittaire* and bind the institutions of the Union and Member States. Regardless of the direct applicability, the European Union has adopted directives governing the rights and obligations of the Convention.

In 2006, the EU adopted a special Regulation (EC), no. 1367/2006 of the European Parliament and The Council of 6 September 2006 on the application of the provisions of the Aarhus Convention

37 Published on Akademik.mk 17.01.2017, https://akademik.mk/alternativnite-vonsudski-postapki-i-pristapot-do-pravda-evropskiot-parlamentar-i-sovetot-na-eu-za-medijatsijata-vo-graganskite-i-trgovskite-sporovi/ [accessed 06.05.2019]

38 Case C - 239/03, Commission v. French Republic,https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?Uri=CELEX:62003CJ0239_SUM&from=FR [accessed 12.06.2019]

on access to information, public participation in decision-making and access to justice the environment in the institutions and bodies of the Community.

A novelty in this act is that it allows: *Any civic association that fulfils them the criteria from Article 11 to have the right to request an internal audit from an institution or body of the Community [Union] which has adopted an administrative act of the legislation of the environment..*

The internal audit allows the competent authorities to reconsider whether they have adopted it a correct decision when they have adopted a certain legal act in case they receive opposing views from civil society organizations.

1.4.3 Environmental EU Directives

Unlike international agreements, where the right to the environment is regulated one general way and it is not segmented in terms of protection areas, within of the European Union each segment is specially processed and regulated. In that direction, the EU has adopted several Directives that can be divided into three major subgroups:

- Environmental directives;
- Pollution and waste directives;
- Directives on wildlife and nature protection.

EU-level environmental law covers several relevant sectors and areas of life environment or those affected by environmental regulations such as: regulation of air quality, water, biodiversity protection, noise protection, regulation of the use of chemicals, genetic modification of organisms, organic production, transport, forests, energy and climate change, etc. The provisions of environmental laws directly or indirectly affect other social and legal areas.

EU legislation on air quality protection and promotion is composed of over 20 normative acts. This legal norm, although extensive and complex, is a coherent regulatory network that fully regulates human interactions activities and air as an environment medium. Such regulation includes stationary and mobile sources of pollution.

Water is one of the first sectors covered by European environmental policies Union. However, despite numerous regulations, the EU level lacked adequate coordination a system that will effectively address the transnational problem of water pollution. With Directive 2000/60 / EC of the European Parliament and of the Council of October 23, 2000 created a framework for the action of the Community in the area of water policy.

Waste in the European Union is regulated by a network of hierarchically related directives with in order to reduce the negative impact on humans and the environment and to encourage them energy and resource efficient economy. In this regulatory network, the most important role have the Waste Framework Directive and the Packaging and Packaging Waste Directive.[39]

1.4.3.1 Council Directive 96/61 / EC on Integrated Prevention and Control pollutio

Considering the need for optimal and preventive environmental protection, integrated approach to pollution control and uniformity of national rules of the EU Member States, in 1996 the Directive[40] integrated prevention was adopted and Integrated Pollution Prevention or Integrated Pollution Prevention and Control- IPPC). The IPPC Directive is a basic and key normative act regulating industrial activities in Europe.

The purpose of the Directive is to prevent or minimize air pollution. water and soil, as well as to reduce the amounts of waste obtained from industrial and agricultural installations.

The directive requires the introduction of a procedure for authorizing polluting activities through an integrated system of activity permits for thirty industrial sectors, listed in a separate Annex

39 List of adopted Directives by areas are given in Appendix 1

40 An integrated approach involves simultaneously taking into account and regulating all emissions in air, water and soil through the IPPC procedure.

to the Directive, and control of emissions through the implementation of "The best available techniques".

1.4.3.2 Directive 2010/75 / EC on industrial emissions

In order to improve the regulation regarding the emissions from the industry, in November 2010 The European Commission has adopted a new Industrial Emission Directive (IED). This Directive rationalizes environmental legislation, i.e. the previous IPPC Directive is incorporated together with six other directives in the area of industrial emissions.

This Directive implements an integrated approach aimed at preventing and combating it reduce pollution of all environmental media by major industrial stops in the EU.

The new Directive, starting from 7.1.2014, replaced the following directives:

1. Council Directive 96/61 / EC on Integrated Prevention and Control pollution;
2. Directive on volatile organic solvent compounds (1999/13 / EC), supplemented by Regulation (EC) 1882/2003 and Directive 2004/42 / EC;
3. Directive 2000/76 / EC of the European Parliament and of 4 December 2000 for waste incineration.
4. Council Directive 78/176 / EEC on titanium dioxide industrial waste;
5. Council Directive 82/883 / EEC on the procedures for the supervision and monitoring of environment affected by waste from the titanium dioxide industry;
6. Council Directive 92/112 / EEC on the procedures for harmonization of pro-grams to reduce and ultimately remove pollution caused waste from the waste from the titanium dioxide industry.

From 01.01.2016, IED also replaced the Directive on large combustion plants 2001/80 / EC.

1.4.3.3 Framework Directive on Waste (Directive 2008/98 / EC of the European Parliament and of the Waste Council)

This Directive provides for the scope of existing directives and other documents that are refer to waste management in the member states of the European Union, so with this Directive is replaced by Directive 2006/12 / EC on Waste, Directive 91/689 / EEC on hazardous waste, as well as Directive 75/439 / EEC on waste oils[41].

With the adoption of this Directive, the European Union aims to establish a legal framework which will have a comprehensive approach to the issue of waste management in order to be effective and effective environmental protection and above all, the health of the people living in member states of the European Union. The directive establishes the so-called waste hierarchy which refers to the priority of the measures to be taken for better protection of environment.

The directive stipulates the obligation of each waste generator to take care of the treatment or the same to provide it by hiring other companies or individuals. This obligation of the creator waste is in fact one of the foundations for efficient and effective waste management.

In addition, the Directive provides for special treatment of hazardous waste in order to avoid any environmental risks, as well as human life and health and ban on mixing hazardous waste with other hazardous waste. The directive itself provides obligation for constant supervision of hazardous waste, ie to be packed and marked in accordance with the rules of the European Union.

This Directive contains provisions governing both the area of licensing and registration. Namely, these provisions stipulate that every company or other a legal entity dealing with waste management must have a management license with waste, issued by a competent authority,

41 Posted on the European Commission website, http://ec.europa.eu/environment/waste/legislation/a.htm [accessed on June 18, 2019]

which must determine the quantities and type of waste, as well as the manner of management, ie treatment, monitoring and control of the overall system of activities undertaken during waste management.

Considering the basics of this Directive, it is clear that the European Union is increasingly pursuing it recognizes the right to a healthy and clean environment as one of the human corps rights.

1.4.3.4 Directive 2003/4 / EC on public access to environmental information

The right to access environmental information in the European Union is for the first time introduced in 1990 by Council Directive 90/313 / EEC on free access to environmental information. This Directive establishes the basis for the right of access to information environment and an open process of change in the way the competent authorities approach this issue. In order to harmonize European legislation with the Aarhus Convention, in 2003 Directive 2003/4 / EC of the European Parliament and of the Council on Public Access was adopted to environmental information and to repeal Council Directive 90/313 / EEC.

The objectives of this Directive are:

a. Citizens should have access to all the environmental information they provide own state bodies; and

b. in an appropriate way, electronically whenever possible, to make environmental information available to the public in order to achieve disseminating environmental information to the public.

This directive provides definitions for the following terms:

"Environmental Information" is all information in writing, visual, audio, electronic or any other material form relating to:

a. the state of the media and environmental resources, such as air-hot and atmosphere, water, soil, soil, landscape and natural rich-including wetlands, coastal and marine areas, and biological diversity;

b. factors that create noise, radiation, or waste, including radioactive waste that affects or could adversely affect the environment;

c. measures (including administrative measures), such as policies, legislation, plans, programs, environmental agreements and activities that are designed to protect the environment;

d. reports on the implementation of legislative measures regulating the sector environment;

e. the state of health and safety of man, cultural sites and pri-native areas specifically protected by law. Access to environmental information on request:

Member States guarantee that public authorities, whenever required, agree with the provisions of the directive, they will provide the available environmental information that possess them at the request of any interested person.

In accordance with the directive, environmental information is available:

a. as soon as possible, but no later than one month after the submission of the request, or

b. within two months of receipt of the request, if due to the scope and syllabus The required information cannot be submitted. and in a shorter time. In these cases, applicants will be notified as soon as possible and in any case before the expiration of that one-month period for extension of the deadline for submission of information and the reasons for that.

As for access to justice, Member States guarantee that any applicant who considers that his request for information has been ignored, incorrectly rejected (completely or partially), or is inappropriately answered, has the right to access the procedure after grounds for omissions made by the public body, in which procedure the case from by the same or another public authority, or the case will be considered and acting on an independent and impartial body established by law. Any such procedure it must be expedient and free or cheap.

In addition to the audit procedure, Member States will ensure that the applicant has access to audit procedure before a court or other independent and impartial body established by law, in which the acts or omissions of the affected public body may be considered and whose decisions can become final. States may provide that third parties incriminated by the disclosure of information may also have access to legal regression.

Final decisions are binding on the public authority that holds the information. Reasons for refusal to provide information will be listed in writing, in all cases when certain information is requested from the public body, and the request of the interested party a person is rejected.[42]

In order to incorporate the rights and obligations under the Archive Convention into legislation of the Union, the European Parliament and the Council of 26 May 2003 adopt and Directive 2003/35 / EC on the implementation of public participation in terms of adoption certain environmental-related plans and programs of public participation and access to justice in Council Directives 85/337 / EEC and 96/61 / EC. The Directive incorporates the provisions of the Second Pillar of the Aarhus Convention which provides for the involvement of the public in decision-making on specific activities (Article 6 from the Convention), in the adoption of plans, programs and policies (Article 7) and in environmental regulations (Article 8 of the Convention) by doing so regulates the right of the public to participate in specific other directives: The Directive on Integrated Pollution Prevention and Control (IPPC) and the Evaluation Directive environmental impact (EIA). This Directive also harmonizes the right of the public to participate in the adoption of programs and plans in accordance with the following Directives:

- Directive 75/442 / EEC on waste;
- Directive 91/157 / EEC on batteries and accumulators;
- Directive 91/676 / EEC on nitrate pollution;
- Directive 91/689 / EEC on hazardous waste;
- Directive 94/62 / EC on packaging; and
- Directive 96/62 / EC on air quality.

The Directive on Public Participation should ensure that the competent authorities in the countries- EU members will promptly notify the public of the adoption or amendment procedure of plans and programs that may have an impact on the environment. All public comments must be taken seriously at the end of the proceedings, the competent authorities should inform the public of the decision made and the reasons for it its adoption.

In response to the numerous environmental disasters, the widespread creation of "hot environmental points" and the alarming loss of biodiversity, the European Parliament and the Council adopt Directive 2004/35/EC of 21 April 2004 on liability for life environment in terms of prevention and remediation of environmental damage (DEO).

The directive has two main objectives:

a. ensure that the operators whose activities have caused environmental damage will be financially responsible for the remediation of the damage done; and
b. ensure that operators whose activities pose an immediate threat to the environment is responsible for taking preventive measures at their expense.

42 Directive 2003/4 / EC of the European Parliament and of the Council of 28 January 2003 on access to the public to environmental information and to repeal Council Directive 90/313 / EEC, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:00:0026:0032:EN:PDF [accessed 31.05.2019]

To apply the provisions of the Directive, there must be one or more pollutants which can be identified (identification criterion); the damage should be specific and the possibility of its quantification (criterion of measurable damage); and there is a causal link between the damage and the specific operator (criterion of cause- consequential relationship).

Proper implementation of the Directive should ensure a higher level of protection environment, and for the implementation of the Directive, appropriate transposition is needed of the provisions in the legislation of the Member States..

1.4.4. Implement EU environmental laws

1.4.4.1 European Union Environment Council (ENVI)

The Environment Council is responsible for EU environmental policy, including environmental protection, modest use of resources and protection of human health. It also deals with international environmental issues, especially in the area of climate change.

In its role as policy maker, the Council is responsible for adopting together with the European Parliament, ambitious environmental protection legislation which protects natural habitats, maintains clean air and water, provides proper waste disposal, improves knowledge of toxic chemicals and helps businesses to move towards a sustainable economy.

The Council also ensures that environmental aspects are properly integrated into others EU policies such as industry, agriculture, transport, energy and services.

Internationally, the EU and its member states are striving to meet EU environmental standards are reflected in international environmental and climate change agreements.[43]

1.4.4.2 European Environment Agency

The European Environment Agency (EEA) is an agency of the European Union. Its purpose is to support sustainable development and help achieve significant and measurable Europe's environmental improvements by providing timely, targeted, relevant and reliable information for policy makers and the public.

The European Environment Agency provides stable, independent information on environment for those involved in development, adoption, implementation and environmental policy assessment, as well as the general public.

In close cooperation with the European Network for Information and Animal Surveillance Environment (ENIASE) and its 33 Member States, the European Environment Agency collects data and produces estimates for a wide range of animal-related topics environment.[44]

1.4.4.3 THEMIS

Themis is an informal regional network of national bodies responsible for management and protection of natural resources, as well as development, implementation and enforcement of laws for the environment, especially for nature conservation, in candidate countries in the EU, potential candidates and countries with the EU Association Agreements: Albania, Bosnia and Herzegovina, Kosovo*, the Republic of North Macedonia, Moldova, Montenegro and Serbia.

Croatia is a member of the network as an observer and provides expertise and experience in the area with the EU accession process.

The mission of the network is to protect the environment by improving capacity to its members to implement and enforce natural resource legislation and forestry and the fight against environmental crime.

43 Environmental Council Configuration (ENVI), https://www.consilium.europa.eu/en/council-eu/configurations/env/ [accessed on 17.06.2019]

44 European Environment Agency (EEA), https://www.eea.europa.eu/about-us [accessed on 23.04.2019]

Themis Network was founded in November 2010. Its official launch was marked by the issuance of a joint declaration by the participating countries and approval of the first multi-year work program (MAP) in the context of a conference for illegal logging and environmental crimes in Budapest, Hungary. Activities that are implemented within the work programs for 2012-2014 and 2014-2017 are funded by the Austrian Development Cooperation.[45]

1.4.4.4 IMPEL[46] (IMPEL)

The European Union's Environmental Law Enforcement and Implementation Network (IMPEL) is an international non-profit association of environmental authorities Member States of the European Union, accession and candidate countries for EU accession and countries members of EEA and EFTA.

The association is registered in Brussels, where its legal headquarters are located. IMPEL is established in 1992 as an informal European Network of Bodies and Regulatory Bodies affected by the application and implementation of environmental laws. The purpose of the Network is to create an incentive in the EU to improve and achieve more efficient implementation of environmental legislation. IMPEL currently has 48 members from 34 countries, here include all EU member states, Turkey, Albania, Iceland, Switzerland, Norway and RN Macedonia.

1.5. Neighbourhood legal framework

Environmental legislation in the countries of the former Yugoslavia is relatively good developed. This is primarily due to the aspiration of the countries of the SEE[47] region to join to the family of the European Union.

In almost all countries in the SEE region, their legislation includes the right to healthy environment.

In Bosnia and Herzegovina, this right is not guaranteed in the Constitution. In Kosovo, the protection of the environment is one of the basic constitutional values, the Constitution itself has not recognized this as a human right, but rather applies the concept of obligation, stating that protection the environment, nature and biodiversity is everyone's responsibility. This last concept is also applied by the Constitution of the Republic of North Macedonia, where everything is also includes the obligation of the authorities to provide conditions for citizens to live and promote healthy environment. The Republic of Montenegro declares the country in its Constitution "Ecological" state. In R. Serbia, the right to life is combined, the responsibility of the state and its autonomous provinces is to protect the environment, that is, it has an obligation to protect everyone's environment.

The right to access justice (access to information, participation in decision-making and access to justice for environmental issues) is different, but still in most countries in the region are also regulated by the Constitution.

In R. Montenegro, the right to access justice, and the right to access information about environment are included in the Constitution itself. As for participation, the Constitution of Kosovo and Montenegro acknowledge that the public should be involved in the adoption process decisions. Access to justice in Bosnia and Herzegovina is regulated as a human right having a fair trial.

45 Themis Network Europe, Article published on themisnetwork.eu, Published on themisnetwork.eu, http://www.themisnetwork.eu/about-themis.html [accessed 17.04.2019]

46 Website of the State Environmental Inspectorate: http://www.sei.gov.mk/projects_page_mk.asp?ID=5 European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), Laws for the European Union Environment (IMPEL): https://www.impel.eu/about-impel/ [accessed 09.05.2019]

47 Access to justice in relation to the environment: standing, costs and available medicines Convention on Access to Information, Public Participation in Decision Making and Access to Justice in the environment of south-eastern Europe, author Xaba Kis

The list of general and sectoral legislation in the area of environmental of the countries is long from the SEE region. The Law on Environmental Protection was adopted in Albania in 2011, Bosnia and Herzegovina (subject of the Federation of Bosnia and Herzegovina 2003 Republic of Republika Srpska 2002), Kosovo 2005, Montenegro 2008 Serbia, 2004 and the Republic of North Macedonia 2005. In these countries the main issues are covered by special laws, such as air, water, waste, natural conservation, fishing, mining, assessment of the impact on the animal environment (EIA), integrated pollution prevention and control (IPPC), strategic environmental assessment (SEA) and the like.

1.5.1 Croatia

The Constitution of the Republic of Croatia contains several provisions that mention the protection of environment. Article 3 of the Constitution which, inter alia, states that conservation of nature and the human environment are the highest values of the constitutional order of The Republic of Croatia and the basis for interpreting the Constitution. Article 69 also provides that everyone has the right to a healthy life and will be bound, within the limits of his authority and activities, to pay special attention to the protection of human health, nature and the human environment. The Aarhus Convention was indirectly introduced into domestic law system, by transposing relevant EU legislation. The basic act that regulates environmental protection is the Law on Environmental Protection. In Croatia has the right to access environmental information, together with the appropriate the right of access to the courts is regulated by the Law on Environmental Protection and The law on the right of access to information.

Administrative decisions on environmental protection are made from the first instance by central or regional / state bodies or other public bodies, depending from the issue being edited. Generally, there is a possibility to file a complaint to the higher administrative body, unless the appeal is excluded by law, or does not exist higher body (the decision, for example, is made by the Ministry). The procedure for an administrative appeal is regulated by the Law on Administrative Procedure. However, the authorities authorities as well as appellate bodies in each specific situation appoint who special law regulates the issue.

Administrative courts are reviewing cases against public authorities, which they do important courts in the area of environmental protection.

The right to a judicial review against individual administrative decisions is guaranteed by The Constitution of Croatia (Article 19/2). The right of access to information held by public authorities is guaranteed The Croatian Constitution. Access to environmental information is regulated by a large number of laws.

Beneficiaries of the right to information are exempted from paying administrative costs and fees in proceedings before the public authorities, which also apply to the appeal procedure.

Associations have sufficient legal interest in the procedures regulated by the Law on environmental protection, which provides for the participation of the affected public, if any meet the following requirements: (a) if they are registered in accordance with special regulations regulated by associations and (b) if environmental protection, including protection of human health and protection or rational use of natural resources, is set as a goal in the Statute.

Individuals have the right to appeal if they can prove their injury right because of the location and / or nature and impact of the project and whether they participated in the procedure as the affected public.

Administrative courts are responsible for handling and adjudicating administrative disputes. They assess the legality of the administrative decisions by which public authorities decide on rights, the obligations and legal interests of the party in administrative matters and the legality of other acts that violated the law, the obligation or the legal interest of the party.

According to the constitutional case law of the Administrative Court of the Republic of Croatia, citizens living or working in an area where it is possible or likely to occur adverse effects on the

environment and whose interest in preserving the quality of environment can be affected by a project, have the right to participate in the procedure for assessing the impact on the environment, also individually or organized as registered associations, groups of persons or settlements[48]. Also, they have the right to initiate an administrative dispute before the administrative court against the decision taken in environmental impact assessment in order to protect their rights or direct personal interests under the law[49].

Anyone who considers that his or her rights or legal interests have been violated has the right to challenge the administrative decision, based on the Law on Administrative Disputes.

The 2007 Environmental Protection Act restricted the right to challenge it the administrative decision only for those persons who participated in the procedure as affected public and who may prove their right violated due to location and / or nature and the impact of the project (both conditions must be met). Therefore, the general rules of the Law on Administrative Disputes are more favourable than the rules of the Law on Protection of Animals environment. The criteria for NGOs are the same as described for the administrative review.

Court proceedings in cases related to environmental protection are urgent. However, that prescribes that urgency applies only to proceedings initiated in accordance with the Law on Protection of environment. If the lawsuit is, for example, filed under the Protection Act of nature, the principle of urgency does not apply, even when the lawsuit is filed for the purpose for environmental protection.

The law does not stipulate deadlines in which the court has to decide on the case, so the interpretation of the term "urgent" in the proceedings initiated in accordance with the Law on Protection of environment, usually remains the discretion of the court. The courts should have clear instructions regarding the importance of the principle of urgency. They would include setting up on deadlines for: issuing a preliminary ban, scheduling hearings, and so on passing judgment.

1.5.2 Kosovo

Kosovo's Environmental Law[50] is based on three sources: The Constitution, the laws passed by the Assembly and bylaws adopted on issues related to animals environment.

The constitution, adopted in 2008, defines environmental protection as one of basic fundamental values. The Constitution itself does not guarantee the right to a healthy life environment, but Article 52 (Environmental Responsibility) provides that the protection of nature and biodiversity, the environment and national heritage are a responsibility to everyone, which presupposes the public interest. In addition, Article 52 of the Constitution of Kosovo gives everyone the right to *"be heard by public institutions and review them their opinions on issues that affect the environment in which they live, "* which therefore, the principle of public participation in the Constitutional Convention at the constitutional level is used.

The Constitution obliges Article 45 paragraph 3 that state institutions allow *"every person to participates in public activities",* by enabling all people to affect the decisions of public bodies.

The Constitution itself, Article 22, explicitly states the direct application of some key international human rights treaties, which prevail over domestic law. There exists a number of important environmental laws in force. Secondary legislation in the area of environmental law is usually issued after explicit authorization with legal provision for the implementation of legal provisions.

48 National Report on the Implementation of the Aarhus Convention, 2017, Cases: Us1149/97, Us-89/01 https://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2017&wf_Countries=MK&wf_Q=QA&Quer_ID=&LngIDg=EN&YearIDg=2017 [accessed on 08.05.2019]

49 National Report on the Implementation of the Archive Convention, 2017, Case: Us-7555/2004-5 https://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2017&wf_Countries=MK&wf_Q=QA&Quer_ID=&LngIDg=EN&YearIDg=2017 [accessed on 08.05.2019]

50 United Nations Administrative Region, Security Council Resolution 1244 (1999)

The Ministry of Environment and Physical Planning is responsible for its implementation of environmental law. The Ministry is responsible for coordinating activities in the area of environmental protection in order to promote coherent development of environmental protection policies.

Kosovo has not yet ratified the Aarhus Convention and that is why it does not applie directly during court proceedings. So far, only the Constitutional Court has made one recommendation for the Aarhus Convention in the case, *Hoxha et.al v. Municipal Assembly in Prizren*, a case in which the Municipality did not consult with the citizens in the audit of the Municipal urban plan.

Environmental disputes can be disputes in administrative or civil law, so they will be cases that can be referred to under the Mediation Law. As for making decisions about animal issues environment and administrative review, sectoral environmental laws do not ensure the right of the public (individuals, groups of individuals, NGOs, other entities) to challenge the substantive and / or procedural legality of administrative decisions related to the environment.

The Law on Environmental Protection gives only the right to submit a request to the competent court or the public body requesting the appropriate implementation of the Law or bylaw normative act. Prerequisite is all natural and legal persons, as well as the public, yes suffer material damage or be under serious threat of suffering for the occurrence of material damage, which can be attributed to a certain activity or source of pollution which are contrary to the Law or a bylaw. However, the law did not provide a section for the protection of the right to health and a healthy environment. Because of that, the person (citizen or other natural or legal person, their groups, associations and organizations), which proves that there is a legitimate interest and the person who due to the location of the project and / or due to the nature and / or impact of the project, can prove in accordance with the law that his rights were permanently violated, he has the right to challenge it procedural and material legality of public decisions, acts or omissions authorities before the competent authority and / or the competent court.

The public (individuals, groups of individuals, NGOs, other entities) is entitled in an administrative procedure to challenge the acts / omissions by private persons and public bodies that are contrary to the provisions of the law relating to animals environment (Article 9, paragraph 3 of the Aarhus Convention). Citizens are allowed to fulfil this role in a way that they can file an administrative complaint to the administrative body / agency, e.g. the environmental inspectorate requests from the competent administrative body to perform its special statutory tasks in order to address the actions / omissions by private persons, which are contrary to the provisions of the Law on environment[51].

Environmental disputes are complex and may involve individuals, the general public, more regulatory competencies and special interests. In the case of a judicial review of the administrative act related to the environment, the competence belongs to the Administrative Department of The Basic Court in Pristina.

There are three types of litigation that can be initiated when a complaint is lodged with the environment, ie: (1) The administrative court procedure before the Basic Court in Pristina; (2) The civil court procedure before the Basic Court (processing procedure the environment); (3) The procedure of the Constitutional Court on the basis of the individual constitutional lawsuit for access to environmental information or alleged breach of the right of public participation.

Judges are not sufficiently familiar with and experienced in animal law environment. There are no Supreme Court advisory opinions on issues related to environment, and at the same time it is not possible to involve even skilled persons (with expertise) in court proceedings as members of the judicial bench in relation to the cases relating the environment. The courts have no responsibility to investigate the details of the cases, the burden of proof is on the parties.

51 Access to justice in relation to the environment: Standing, costs and available medicines with the Convention on Access to Information, Public Participation in Decision Making and Access to environmental justice in south-eastern Europe, author Xaba Kis http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/AnalyticalStudies/SEE_Access2Justice_Study_Final_logos.pdf [accessed 13.06.2018]

The basic law no. 03 / L-215 for access to official documents guarantees the right to every natural and legal person to have access, without discrimination on any grounds, on prior request, to official documents that retain, prepare or receive public institutions. The law applies to all institutions at central and local level, including the courts. The right of access to information is also provided for by The Law on Environmental Protection.

The Law itself in Article 54 stipulates that all natural and legal persons have the right to be informed about the state of the environment and participate in the adoption process decisions. Under the law, environmental information is all information in written, visual, electronic or other form on the condition of the elements of the animal environment, measures, reports, cost-benefit analysis and health status of people.

The Law on Access to Information does not provide rules regarding available legal drugs in case of rejection of a request for environmental information. Accordingly The Law on Administrative Procedure , *"any interested party has the right to appeal against an administrative act or against an illegal refusal to issue an administrative act".*

The lack of legal awareness to seek administrative or judicial review is perhaps the main cause of the rejection of requests for access to information about environment. Other reasons are a lack of legal formulation skills administrative complaints, lack of financial resources to hire a legal entity representative as well as inadequate and insufficient free legal aid at appropriate centers for to assist those who are willing to challenge the decisions of administrative bodies regarding access to environmental information.

As far as the costs of the procedure are concerned, there are no financial implications / costs related to the administrative complaint on environmental issues. Tariffs for legal counselling are determined by the Kosovo Bar Association. Legal representation in the administrative appeal procedure is not mandatory. The cost of litigation is such that the economic framework for the cost system has a significant impact on decisions to potential parties as to whether to sue and how to resolve the dispute.

It can be concluded that the main practical challenges associated with processing environmental issues are:

- Lack of legal awareness among individuals and NGOs about the possibility for appealing administrative decisions;
- Lack of free legal aid mechanisms to support stakeholders individuals or NGOs to file administrative complaints in compliance with applicable law;
- Lack of competent lawyers / legal specialists to deal with administrative environmental complaints;
- Lack of specialized courses in the area of environmental law at the level of higher education to develop students' legal skills.

It should be noted that there are a small number of cases when the NGO in the capacity of the plaintiff filed a lawsuit before the court in the name of the public interest. Some of the challenges include the risk of recurrence of environmental damage when the judgment of the court cannot be enforced..

1.5.3 Bosnia and Herzegovina

Higher and lower levels of government in Bosnia and Herzegovina work together interdependently. At the state level are the legislature, the executive and the judiciary, while the lower levels of government operate within separate administrative units - the two entities in the Federation of Bosnia and Herzegovina and Republika Srpska, as well as in the Brcko district of Bosnia and Herzegovina. The state remains administratively divided on ten cantons and Republika Srpska. Local self-government units are identical to those at the state level, composed of cities, municipalities and local communities.

Environmental protection is made possible through various types of legal protection, including administrative law, in particular the Aarhus Convention and the Law on Protection the environment, as well as criminal law, the Law on Misdemeanour s and Civil Law.

Implementation of the Aarhus Convention and the Freedom of Information Act is mandatory from the date of ratification by Bosnia and Herzegovina.

The right to free access to information allows anyone to have access to it to information controlled by public authorities, to the highest possible degree in accordance with public interest, given that they represent the public good and that access to the public to information promotes greater transparency and accountability of these bodies with respect to the Aarhus Convention and the laws of the environment.

The greatest attention in environmental protection regulations is paid to the right for access to information and because almost all collected judgments of the courts in BiH in 2012 refer to the implementation of the Law on Free Access to information, useful and necessary to discuss the use of remedies for access to decisions for informing the competent authorities.

Finally, the Aarhus Convention in its third pillar provides for the right of access to justice through procedures for challenging actions and omissions by private individuals and public bodies that are contrary to the provisions of its national legislation in relation to the environment. Legal instruments regarding this provision are given in the laws on civil procedure adopted in BiH, as well as the Law on Contractual Relations.

It is also important to note that the Republika Srpska Civil Procedure Code in its amendments from 2013 introduced the idea of a lawsuit to protect the common / public interest.

Associations, institutions or other organizations that protect the legally prescribed collective of the interests and rights of citizens, can file a lawsuit for protection of the common / public interest, when the body with a certain non / activity seriously violates them or endangers common interests and rights.

1.5.4 Albania

The Constitution of the Republic of Albania and a number of laws regulate issues related to the environmental protection. Since the signing of the Aarhus Convention in Albania in 1998, until ratification in 2001, many measures were taken intensifying the implementation of the envisaged requirements.

Individuals, groups and NGOs have the right to appeal directly to the court only if it is so provided by law.

There is no fundamental difference between the conditions for the legal position of individuals and for NGOs. The public has the right to challenge the substantive and procedural legality of decisions in administrative proceedings. There is no guaranteed *actio popularis* in national legislation.

The bodies for consideration in the administrative procedure can undertake the following activities: a) confirmation of the validity of the act and rejection of the appeal; b) repeal of the act and approval of the appeal; c) change of the administrative act.

There are a number of shortcomings in Albanian legislation that indirectly affect preventing the public from acting on them. Among them are:

- Lack of appropriate information for the public (individuals and NGOs organizations) in relation to the right to appeal environmental decisions and the limited knowledge of rights;
- Lack of free legal aid provided by the state (except in criminal cases);
- Lack of lawyers for representing cases of public interest;

- Lack of ecological training modules for students / young lawyers.

From a legal point of view, legal remedies in cases of challenging decisions / acts in court and other bodies are appropriate. The main obstacles that limit the application of court bans on environmental issues are at the discretion of judges who do not adequate knowledge of environmental law, lack of judicial independence, improper enforcement of court bans, etc. As for the financial costs associated with an administrative complaint (in terms of cases covered by Article 9, para. 1, 2 and 3), Albanian legislation does not provide for any costs in relation to an administrative complaint on environmental issues.

Legal representation in the administrative appeal procedure is not mandatory. Typical non-administrative and out-of-court costs (outside any procedure) for environmental cases, in the process of preparing an administrative appeal procedure are:

- Representative;
- Scientific expertise (including the cost of laboratory analysis as well as for preparation of an expert report, ie expertise);
- Cost of collecting evidence (including transport costs / accommodation, recording of damage caused to the environment, etc.).

As for court fees and other costs associated with reviewing the case in court proceedings, they are calculated in order to guarantee the lawsuit. The amount of costs does not depend on whether the plaintiff is a individual, a group of individuals, a non-governmental organization or other entity, or of the type of case (private interest, public interest); or of the type of court proceedings. The amount of costs depends on the so-called case value.

Court costs associated with gathering evidence or the participation of experts and witnesses in during the review of the case, they were attached by the party requesting evidence. Without no matter who is the applicant for the case, an individual or a non-governmental organization, there is no difference in determining the amount of costs.

There is no free legal aid mechanism in Albania. There are lawyers and organizations working in the area of environment, but they do not provide free legal help with environmental issues. There is no such possibility for individuals to receive free legal aid on environmental issues by NGOs, lawyers or law firms. Environmental NGOs do not receive funding from the budget they can use for litigation.

The main obstacles to access to justice in Albania's environment include:

- High court costs;
- High fees for plaintiffs;
- Lack of financial means to cover the costs for lawyers and experts;
- Lack of free legal aid provided by the state (except in criminal cases);
- Lack of awareness and knowledge of the Aarhus Convention in the judiciary;
- Lack of lawyers who will represent the public interest;
- Absence of sanction in the legislation in cases when information is not provided;
- Absence of clear legal procedures in case of administrative lawsuits;
- Absence of qualified personnel in government institutions in the area of the environment;
- Absence of time limit on environmental permits.

1.5.5 Aarhus Convention in the region

Republic of North Macedonia, Albania, Bosnia and Herzegovina, Croatia, Montenegro and Serbia have ratified the Aarhus Convention. State authorities do not apply it directly, most often due to the need to harmonize national legislation with implementation (Albania, Montenegro), but also for dubious interpretation of the constitutional provisions on the direct applicability of

international conventions. In Bosnia and Herzegovina and the Republic of North Macedonia, international law is considered superior in relation domestic law, which is why the public authorities are in a position to apply it directly the convention. However, there are not many examples in practice. In Serbia, international norms are, also an integral part of the domestic legal system and as such are directly applicable.

In Albania, there is a special law on issuing environmental permits, dividing activities in 3 categories and the assignment of appropriate types of permits, such as A, B and B. Albania is the only country in the region that has a National Licensing Centre where they are submit all permit requests. In Serbia and Macedonia, such permits can be issued by the Ministry / Environment Agency, autonomous provinces and units of local self-government.

1.6 Introduction - development of Macedonian policies and legislation

International and regional norms are complementary and require national implementation to be effective. National norms should be in line with international ones and regional standards. International and regional mechanisms provide legal protection when all national remedies / opportunities are exhausted.

The Republic of North Macedonia, as a member state of the UN and the Council of Europe, has them ratified international documents (*Appendix 2 - list of ratified instruments*) and they, in accordance with Article 118 of the Constitution, are an integral part of the domestic legal system. With ratification of international documents, the state undertakes to respect, protection and guarantee of human rights incorporated in domestic legislation.

This obligation requires the state to take appropriate legal, administrative, budgetary, judicial and other measures towards the full realization of human rights:

Respecting the right means that the state refrains from influencing the enjoyment of rights. To protect the law means that the state adopts and applies laws that create mechanisms, institutions and procedures that prevent the violation of the rights of state authorities or other entities. This protection should be provided equally for all. To guarantee the right means for the state to take active measures and provide resources (coordination, promotion and provision of all conditions for fulfilment) in order to allow citizens to enjoy their rights.

1.6.1 Compliance with *aquius communitaree* in the area of environment and access to justice

In the latest report of the European Commission for North Macedonia for 2019 for **Chapter 27: Environment and Climate Change,** states:

The country is at a certain level of preparation in this area. Limited progress has been made in the further harmonization of policies and legislation with the acquis in the sectors for water, nature protection and waste. Implementation and implementation are lagging behind. In next year the country especially needs:

- Implement measures to improve air quality by providing of effective coordination between central and local authorities and the distribution of sufficient financial resources;
- Implement and implement the adopted regional waste management plans integrated regional waste management system;
- Implementation of the Paris Agreement by developing a comprehensive strategy for climate-related action, in line with the EU 2030 framework and the launch of the process of drafting a National Energy and Climate Plan, in accordance with the obligation of the Energy Community.

Regarding the environment, it is stated that: The administrative capacity of the central and locally remains weak and insufficient. ... It is necessary to improve the implementation of the

process of environmental impact assessment and public consultation locally level. There is no progress regarding the adoption of the Law on Animal Inspection Environment and Environmental Responsibility Directives, INSPIRE and Directive on environmental crime has not yet been fully harmonized and implemented.

Regarding the harmonization of the legal framework for climate change with the *acquis,* the country is still in its early stages. Technical, institutional and administrative facilities remain weak and need to be strengthened at all levels regarding fundamental rights, it states: ... corruption is widespread in many areas and remains a matter of concern. The legal and political framework for fundamental rights has generally been established and the Ombudsman has received additional obligations. Efforts have been made to further improve the situation human rights in practice but requires a significant allocation of funds and strongly leadership to ensure the implementation and sustainability of the measures taken.

With regard to fundamental rights, it is necessary to implement the recommendations of the European ones and international human rights bodies, which need to be systematically disseminated. Same thus, the implementation of the new Law on Prevention and Protection against Discrimination is needed and compliance with other laws.

Regarding the functioning of the legal system, it is stated: The judicial system achieves a certain degree of readiness/is moderately prepared. Good progress has been made regarding the "Urgent Reform Priorities" and the recommendations of the Venice Commission and The High Expert Group on Systemic Rules of the Rule of Law. The Venetian The commission praised the authorities' continued efforts to comply with the rules regulates the judicial system in accordance with international standards and practices.

Regarding the quality of justice: ... Efforts are needed to improve the use of alternative dispute resolution. Arbitration is not yet considered a sustainable tool for to ensure justice, either by the parties or by the courts. The effects of the implementation of the new mediation law, passed in 2013, still needs to be assessed.

It is obvious that greater efforts are needed in the area of environment, in particular with regard to the implementation of the provisions of the Aarhus Convention and its harmonization with international standards, but also in the area of access to justice in the process before EU accession.

1.6.2 The Constitution of RNM and the environment

The right to a healthy environment in the legal system of the Republic of N Macedonia is provided as one of the fundamental values of the country's constitutional order. According to Article 8, in fundamental values of the constitutional order are stated "basic human rights and freedoms and the citizen recognized by international law and determined by the Constitution" and " the regulation and the humanization of space and the protection and promotion of the environment and the nature and observance of generally accepted norms of international law."

According to the Constitution, the right to appeal against decisions taken in the first instance is guaranteed degree before the court. The right to appeal or other type of legal protection against individual legal acts adopted in a first instance procedure before a body of the state administration or organization and another body exercising public authority is regulated by law.

Freedom of conviction, conscience, thought and public expression are also guaranteed thought, freedom of speech, public speaking, public information and free establishment of public information institutions, free access to information, freedom of receiving and transmitting information. Although every citizen is guaranteed respect and protection of the privacy of his personal and family life, of dignity and reputation, however, the Constitution also protects the public interest, which must not conflict with private interest that is, the public is above private interest.

In the Constitution of the Republic of N Macedonia, in addition to establishing the right to a healthy environment, in Chapter II - Fundamental Freedoms and Rights of Man and Citizen Subheading 2 - Economic, social and cultural rights, environmental law is further regulated. Namely, in Article 43 Paragraph1 stipulates that "Everyone has the right to a healthy environment. Everyone it is obliged to promote and protect the environment and nature." Hence, it is clear that the basis of the right to a healthy environment lies, in fact, in the obligation citizens to protect the environment. This right is the only right in which everyone has an obligation to is closely related to its enjoyment.

In addition, in the same Article 43, paragraph 2, it is provided that "The Republic provides conditions for exercising the right of citizens to a healthy environment ", with which in fact guarantees that the state will provide the conditions for exercising the right to environment of citizens.

It is this step that further guarantees the right to protection and promotion of human nature is in step with the global trend of promoting and advocating the so-called "Third generation" rights in accordance with which the human environment is one of basic needs, hence the protection of the same is one of the basic human rights.

In addition to the direct guarantee of the right to a healthy environment, the Constitution in Article 55 provides that "Market freedom and entrepreneurship may be restricted by law only for the defence of the Republic, the preservation of nature, of life environment or human health." This article indirectly guarantees the protection of the environment, ie restrictions on the freedom of the market and entrepreneurship, so that their development is not a risk to a healthy environment of people.

1.6.2.1 Public participation in policy making

The Aarhus Convention as an international agreement is one of the most important instruments for protection of the right of citizens to a healthy environment. The public is right and should be informed to participate in decision-making on animal protection issues environment and have free access to it.

The implementation of the Aarhus Convention[52] enables improved access to information, increasing public participation in the decision-making process with which the quality of decisions is improved, and all this will result in improved quality the environment. The implementation of the Aarhus Convention contributes to protection the right of all citizens to live in an environment conducive to their health and well-being and provide them with the right to access information, public participation in decision-making and access to justice, for issues related to animal protection environment, and in accordance with the Law on Environment.

In addition to the general regulations and policies, the items that cause certain influences on the environment and the health and well-being of the citizens are also defined by special legal acts, which more closely regulate a certain economic activity. Part of the legal solutions include the right of the public to participate in the proceedings and in a timely manner informing.

In addition, the rules for public participation are applicable whenever the competent authorities will make changes to any of the permissions associated with the activities listed in Annex I from the Aarhus Convention. On the other hand, whenever changes are made to projects that fall under the rules of Environmental Impact Assessment, the authorities decide whether the changes will result in environmental impacts, regardless of whether it was mandatory to develop an Impact Assessment on the main project environment. If the competent authorities determine that there are no changes to the project

52 National Report on the Implementation of the Aarhus Convention, 2017 https://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2017&wf_Countries=MK&wf_Q=QA&Quer_ID=&LngIDg=EN&YearIDg=2017 [accessed on April 10, 2019]

to result in environmental impacts - Ministry of Environment has some discretion in these cases, the public only has to the right to challenge this decision (there is no room for comment or any other right of participation in the procedure).

The Integrated Pollution Prevention and Control Procedure is initiated by the operator (the company) by submitting an application for an integrated environmental permit to the MoEPP (or local government, if it is a smaller polluter that is regulated by B-integrated environmental permit). In the period of 7 days after the submission of the full request, the Ministry the environment is required to publish the application in at least one national newspaper circulation on their own website, and make them available to the public information related to the request she needs to form an opinion. The corresponding the municipality is obliged to give an opinion within 30 days from the day of receipt of the request by MoEPP. The mayor of the respective municipality has the right to organize a public hearing at this stage. The public has the right to comment within 14 days of the publication of the request by the MoEPP and has the right to request from the investor to organize a public hearing.

In the explanation attached to the integrated environmental permit the Ministry of the environment undertakes to explain which public comments are taken into account, a which comments are rejected. The environmental permit may be amended ex officio or upon request of the operator. In both cases, it is clearly defined that the same provisions apply as pri the issuance of a new permit, including the procedure for public participation.[53]

According to Art. 108 of the Law on Environment, the Ministry of Environment adopts a decision issuing an A-integrated environmental permit. Against the decision affected the public and civil society organizations in the area of the environment can submit appeal within 15 days of the announcement of the decision. If he is not satisfied with the decision of The State Commission (or the Commission did not make a decision within the legal deadline), the applicant may also initiate an administrative dispute (within 30 days of the adoption of the challenged act).

The Ministry of Environment within 8 days from the receipt of the Decision on implementation or non-implementation of Strategic Environmental Assessment on the environment, in terms of a given urban plan, has the right to annul the decision and to obliged the relevant municipality to conduct a Strategic Assessment of the Impacts on Animals environment, if it considers that the plan can have significant impacts on the animal environment or human health. The public also has the right to challenge the decision within 15 days from the date of its publication on the website of the respective municipality.[54]

With its decision, the Ministry of Environment defines the scope of the strategy evaluates it and publishes it on its website, and the affected public has the right to challenge this decision before the relevant second instance State Commission.[55] The Strategic Procedure Environmental impact assessment provides for at least 1 (one) public hearing and publishing the draft documentation for a period of at least 30 days, in which the public has the right to submit comments and suggestions. After this step, the appropriate municipality prepares a report on the strategic environmental impact assessment in which they are added and submits comments from the public to the MoEPP, which must approve it.

The ministry may hire external experts to review the report for strategic environmental assessment and to assess its quality – assessment is published on the website of the Ministry in a period of 5 days after the adoption of the decision. The body responsible for adopting the plan is obliged to take it into account The report and the assessment by the MoEPP, after which it adopts the

53 For example, see Art. 115, p. 5 of the Law on Environment which determines the following: "amendments to A-integrated environmental permit ... are performed according to the procedure for issuing a new A-integrated environmental permit." Also, see Art. 117 of the same Law. [accessed on 01.04.2019]

54 Art. 65, pg. 11 of the Law on Environment: "Against the decision [for implementation or non-implementation of the SEAE], the public has the right to appeal within 15 days from the day of its publication on the web the foreign body of the body preparing the planning document ... to the State Commission for Decision-Making in administrative procedure and employment procedure in the second instance ..." [accessed on 04.04.2019]

55 Art. 65, pg. 17 of the Law on Environment: "Against the decision [which determines the scope of the SEAE the study] the affected public ... has the right to appeal to the State Commission ..." [accessed on 23.04.2019 year]

plan and publishes it on its website together with a Statement summarizing how environmental impacts are integrated into the plan, how the public comments are taken into account and why it is defended the appropriate alternative, as well as measures to monitor environmental impacts which will cause the realization of the plan. For Strategic Assessment Procedures environmental impacts can be said to be the right of public participation is strongly guaranteed because there is a special bylaw that regulates it in detail public participation in these processes.[56]

The construction projects that are subject to the preparation of the EIA end with a Decision of side of the MoEPP for approval or rejection of the project based on the assessment of environmental impacts. The affected public has the right to challenge the substantive and the procedural legality of the decision within 15 days of the announcement of the decision before the Second Instance State Commission. If the decision is not published according to the regulations of the Law on Environment (at least in 1 national newspaper and on the website of MoEPP), the affected public may challenge the decision within 15 days of learning of the same. If he is not satisfied with the decision of the State Commission (or if the Commission does not make a decision within the legal deadline), the applicant may initiate an administrative procedure.

At the end of this procedure, the Law on Construction (Art. 62-a) stipulates "*obligation to inform to the neighbours.*" More precisely, the competent authority that carries the building permit is committed "*Within three days of the adoption of the building permit to notify the immediate neighbours of the construction plot for which the approval is adopted, for the issued approval for construction and that within 15 days from the date of issuance of the building permit can inspect the documentation.* "In the same period, the right to a final one is provided (first instance) appeal. The building permit is valid only after the expiration of this period. For Unfortunately, this rule does not apply to projects in technological industrial development zones established by the Government.

Given that the affected public has the right to participate in the procedure of issuing permits, it may initiate an administrative dispute / lawsuit against the exploitation permit of mineral resources (because the Law on Mineral Resources does not provide for the right to appeal in the second degree). Namely, in accordance with Art. 8, st. 2 of the Law on Administrative Disputes (Official) newspaper no. 62/2006 and 150/2010), "an *administrative dispute may be initiated against a first instance administrative dispute as well act, when legal protection is not provided in a second instance administrative procedure*". The study for the EIA is mandatory for the permit applicant for the exploitation of mineral resources and therefore, the affected public has the right to challenge the decision to approve the study for EIA in accordance with the Law on Environment.

There is a possibility for *actio popularis* to challenge the essential and the procedural legality of urban plans (as "general acts") before the Constitutional Court.[57] There is a significant amount of case law before the Constitutional Court regarding the revision of the disputed urban plans from the perspective of "transparency and public participation".[58]

1.6.3. Other relevant laws and bylaws

The core of the country's environmental legislation is made up of its Constitution guarantees the right to a healthy environment, the Aarhus Convention (ratified by The Assembly on 01.07.1999) and the Law on Environment (September 2005) in force). In addition, standard sectoral laws and bylaws, as well as provisions related to environmental protection embedded in urban legislation

56 Decree on public participation during the preparation of regulations and other acts, as well as plans and programs in the area of environment (Official Gazette No. 147/2008 and 45/2011). In Article 1 of this Decree it is clearly defined that the public has the right to participate early in the process when all options are open and that this Decree is also applicable when amendments are made to the relevant document.

57 Rules of Procedure of the Constitutional Court of RNM: "Anyone can submit an initiative to the Constitutional Court initiating a procedure for assessing the constitutionality of a law or the constitutionality and legality of another regulation ...", Art. 12

58 The Rules of Procedure of the Constitutional Court of RNM the execution of individual acts adopted on the basis of an urban plan that is repealed by a decision of the Constitutional Court cannot be allowed or applied, a if the enforcement is ongoing, it will be terminated, Art. 80

planning, transportation, agriculture, energy and other areas that have an impact on environment, are part of the national environmental legislation and in general are in line with EU legislation.

Opportunities for access to justice in relation to the environment Macedonian legislation guarantees them through the existence of several mechanisms that suit the citizen available. This right of access to justice is defined in the third pillar of the Aarhus Convention whose provisions are integrated into the letter and spirit of the Environmental Law.

Among the tools available to citizens is the complaint, which can most often be submit it within 14 to 30 days of the publication of a decision before the appropriate one public body, and if this mechanism does not work, they can initiate an administrative dispute.

Under the Law on General Administrative Procedure, the parties have the right to challenge any administrative action (or omission) or administrative act.[59]

The complaint should be submitted to the first instance authority (which adopted the disputed act) within a general period of 15 days from the day of the announcement of the administrative act. Formally, the Law on General Administrative Procedure recognizes the principle of legal medicine, i.e. stakeholders have the right to challenge any administrative action (or omission) that is, an administrative act (first degree - before the same body that passed the act; second degree – before the independent State Commission; third degree - Administrative Court). This is confirmed by Article 104 of the same Law, which clearly states that "the *party has the right to a remedy against any administrative action or omission, if it considers that it violates its rights or the legal one interest "(* environmental associations are considered parties with legal interest in environmental disputes).

Except in special cases, such as a state of emergency, the affected public[60] is entitled to challenge the substantive and procedural legality of certain decisions environmental activities, while having the right to challenge and the decision of the MoEPP not to conduct an EIA procedure for a particular project. Given that the hierarchy of courts, in which case the affected public must first appeal the decision before the competent second instance State Commission. If the appeal does not pass before The State Commission, the affected public has the right to challenge the decision before the Administrative court. The affected public has the right to initiate an administrative dispute directly, if not legally first-degree appeal.

All activities listed in Annex I of the Aarhus Convention[61] must be assessed of environmental impacts or an Integrated Prevention and Control procedure of pollution (IPCP). Only in special cases, at the suggestion of the Ministry of Life environment, it may be decided not to partially or completely assess the impact of the environmental project. In these cases, however, there is

59 The Law on General Administrative Procedure, under "administrative action" includes "adoption of administrative acts, concluding administrative agreements, protecting the users of public services and services of general interest, as well as taking other administrative actions in the administrative affairs in accordance with the law "; while the "administrative act" represents "an individual act of a public body adopted on the basis of a law deciding on rights, the obligations and legal interests of the parties. Administrative acts can be titled as a solution, decision, order, license, permit, prohibition, approval or others.", Art. 4, page 1, al. 6 and 7.
The law is in line with the Aarhus Convention in the sense that it provides legal protection for all administrative matters. This is confirmed in Art. 104, Pg. 1 of this Law where it is clearly defined that "The party has the right to legal protection against any administrative action or omission of administrative action, if it claims that by that action or omission its rights or legal rights have been violated interests. Pg. 4 of the same Article confirms that "when the appeal, ie the objection is not guaranteed with law, the party has the right to initiate an administrative dispute."

60 The Law on the Environment defines the "affected public" as follows "the public which, in the moment, is affected and / or in the future may be affected or has an interest in making decision on the environment with which he is in a special relationship with a certain procedure. The affected public it also includes citizens' associations established for the protection and promotion of the environment, such as: and a individual who is more likely to feel the effects of the decision." Art. 5, pg. 1, al. 26

61 The Decision on determining the projects and the criteria on the basis of which the need for conducting an environmental impact assessment procedure (Official Gazette no. 74/2005;109/2009 and 164/2012) and the Decree on determining the activities of the installations for which it is issued integrated environmental permit or permit for compliance with the operational plan and time schedule for submitting an application for a permit for compliance with an operational plan, (Official Gazette no.89/2005), transmits Annex I of the Aarhus Convention into National Legislation.

(limited) room for participation to the public. In addition, if it is decided that a particular project does not affect the animal environment, the public (this includes civic associations in the area of environment) has the right to challenge the decision before the State Commission.[62]

Affected individuals or civic associations in the area of the environment can to challenge an act or omission of the public body that is contrary to the laws of the area of the environment and may request compensation and / or litigation ban[63] a civil lawsuit may be initiated by landowners whose property or person suffers damage as a result of harmful emissions (if the damage exceeds the limits prescribed in the polluter's permit). In addition, the Law on Obligation relations provide for the right of every member of the public to initiate a dispute against an operator who owns a "source of danger" that could potentially cause it significant damage to an unspecified number of persons (ie potential damage threat to the public interest).

Anyone can report a breach of environmental laws before supervisory authorities, ie The State Environmental Inspectorate, which is obliged to act upon application. If the Inspectorate finds that there is a violation of the laws of the environmental area, may issue an order or ban on the activity, or yes initiate a misdemeanour procedure. In addition, anyone can report (potentially) a crime act against the environment by public authorities or individuals before the public prosecutor. Anyone can appeal to the Ombudsman, if he deems it appropriate his / her rights to a clean environment are violated by the public organs. Furthermore, Art. 12 of the Rules of Procedure of the Constitutional Court of RNM stipulates that everyone may submit an initiative for assessment of the constitutionality of a law or assessment of the constitutionality and the legality of a particular regulation or other general act before the Constitutional Court.

The Law on Acting on Complaints and Proposals[64] provides for a general right for citizens to submit free complaints for the protection and exercise of their rights and interests, but also the protection of the public interest. Public authorities are obliged to answer for " *justification."* and the results of the proceedings" within 15 days / 30 days for more complex cases.

If it is determined that the public interest is endangered, the public body is obliged to submit request to the competent authority to take the necessary measures to eliminate the misdemeanour and the damage caused. In contrast, it is not entirely clear whether this mechanism is "indirect." civil enforcement "of the right in the area of environment can be used to protect the environment as a "public good" and remains to be seen in the future proceedings of public bodies and the judiciary.

Chapter XX of the Criminal Code regulates crimes against the environment and nature. Namely, in Article 218, criminal offenses against environmental pollution and nature, accurately state the heights of prison sentences for crimes committed acts for individuals, ie a fine for legal entities that will commit a crime

Contamination of drinking water, Production of harmful drugs for livestock treatment or poultry, Endangering the environment and nature with waste, Unauthorized procurement and the availability of nuclear materials.

62 Law on Environment, Official Gazette no. 147/2008 and 45/2011, Decree on public participation during the preparation of regulations and other acts, as well as plans and programs in the area of animal life environment, art. 81, paragraph 6 http://www.slvesnik.com.mk/besplatni-izdanija.nspx [accessed 29.05.2019]

63 For example, the Law on Obligations requires that anyone else be asked to do so remove the source of the hazard that may cause significant damage to the applicant or indefinitely number of persons. The court, at the request of the person concerned, determines the measures that must be taken in order to prevent damage or disruption, or to eliminate the source of the danger, ("Official Gazette of RNM "no. 18 of 03/2001, 09/2001, 25/2001, 17/2002, 01/2003, 07/2008, 06/2009, 12/2009), Art. 143 from http://pravo.org.mk/documentDetail.php?id=33 [accessed 29.05.2019]

64 The Law on Acting on Complaints and Proposals (Official Gazette No. 82/2008 ... 193/2015) regulates the procedures to be taken upon complaints and proposals submitted by citizens to the public organs, http://www.adsdp.mk/adsdpmk/images/DRang/zakoni/ID_na_Zakonot_za_postapuvanje_po_pretstavki_i_predlozi_193_06112015.pdf [accessed on 05.04.2019]

The Law on Obligations ensures the right to claim damages, a in some cases it can be used to protect against pollution or other activities harmful to the environment. In that case, civil proceedings can be initiated against legal entities that cause danger..

1.6.3.1 Environmental Law

The Law on Environment regulates the rights and duties of the Republic of Macedonia, on the municipalities, the city of Skopje and the municipalities of the city of Skopje, as well as the rights and duties of legal entities and individuals, in providing conditions for protection and promotion of the environment, in order to exercise the right of citizens to a healthy life environment. The Law on General Administrative Procedure applies to the procedures determined by this Law procedure, unless otherwise provided by this Law, while the procedures for performing the provisions of the Law on Inspection Supervision apply to the inspection, unless otherwise provided by this Law.

The protection and promotion of the quality and condition of the animal's media environment: soil, water, air; of environmental areas, of biological diversity and other natural resources, as well as the protection of the ozone layer and protection from the negative impact of man on the climate system, in addition to the provisions The provisions of the laws on certain media and areas of environment (hereinafter: special laws). Media protection and certain areas of the environment are achieved through measures and activities

relating to protection from the harmful effects established by this and special laws from: performing various activities, pollutants and technologies, waste, noise and vibration and ionizing and non-ionizing radiation. All measures, standards and objectives of the environment, established by this or another law and the regulations adopted on the basis of them, are applied as minimum requirements.

Measures and activities for environmental protection and promotion are of public interest. The Government of the Republic of Macedonia is obliged to provide financial support from the Budget of the Republic of Macedonia means for protection and improvement of the environment. The municipality, the city of Skopje and the municipalities in the city of Skopje are obliged, from the budget of the municipality, the budget of the city of Skopje and the budgets of the municipalities in the city of Skopje, to provide financial means for protection and environmental improvement.

The objectives of the Law on Environment are: preservation, protection, renewal and promotion the quality of the environment; protection of life and health; protection of biological diversity; rational and sustainable use of natural resources and implementing and advancing measures to address regional and global issues environmental problems.

The goals are achieved especially with:

1. Anticipation, monitoring, prevention, restriction and removal of care-environmental impacts;
2. Protection and arrangement of environmental areas;
3. Preserving a clean environment and repairing damaged parts environment;
4. Prevention of environmental risk and hazards;
5. Encouraging the use of renewable natural energy sources;
6. Encourage the use of products and cleaner production and use - cleaning clean technologies that are most conducive to the environment;
7. Integrated approach to environmental protection and economic development;
8. Establishment of a system of protection planning, promotion and management environmental protection;
9. Providing funds for financing protection measures and activities and for environmental improvement;
10. Control of activities that endanger the environment;

11. Developing awareness of the need for environmental protection in education- the process of promoting and protecting the environment;
12. Alignment of economic and other interests with the requirements for protection and to improve the environment;
13. Informing the public and the relevant institutions about the living conditions- the environment and their involvement in its protection;
14. Connecting the system of environmental protection and the institutions of the Republic of Macedonia in the area of environmental protection with international institutions;
15. Stabilizing the concentrations of the gases that cause it the greenhouse effect in the atmosphere; and
16. Dealing with desertification and mitigating the effects of drought.

The environment is the space with all living organisms and natural resources, ie natural and created values, their interrelationships and the total space in which man lives and in which the settlements are located, the goods in general use, the industrial and other facilities, including media and environmental areas.

Environmental protection and promotion is a system of measures and activities (social, political, social, economic, technical, educational, etc.) provided support and creation of conditions for protection against pollution, degradation and impact on / on the media and certain areas of the environment (protection from impoverishment ozone layer, prevention of harmful noise and vibration, protection from ionizing and non-ionizing radiation, protection against unpleasant odours and the use and disposal of waste and other types of environmental protection).

Environmental pollution is the emission of pollutants and substances, that is the result of human activity, in the air, water, or soil, which may be harmful to the quality of the environment, human life and health or emissions pollutants and substances from which property damage may arise or which impairs or affects biological and landscape diversity and other ways of use of the environment.

Article 51 Access to information

1. Everyone has the right, without having to prove his interest, by the authorities and legal and individuals specified in Article 52 paragraph (1) of this Law, yes requires validated information and data relating to the animal environment. Environmental information may or may not be available are possessed for the bodies and legal and individuals referred to in Article 52 paragraph (1) of this law.
2. The right to access environmental information is exercised in relation to all information in writing, visual, audio, electronic or on any other way available form, which relate to: 1. The condition of media and environmental areas, such as air and the atmosphere ferns, water, soil, soil, biological and landscape diversity, including genetically modified organisms as well as mutual in- traction of these elements; 2. Factors such as matter, energy, nuclear fuels and nuclear energy, noise, radiation or waste including radioactive waste, emissions and other forms of is- environmental releases that affect or could affect the media the minds and areas of the environment and human life and health;
3. Measures, including administrative, such as policy, legally- the government, the plans, the programs, the agreements that address the issues related to the environment, as well as activities that can - directly or indirectly - to influence the media, areas and factors of life - the environment, as well as the measures or activities for protection of those elements; 4. Reports on the implementation of laws and other regulations and acts that are refer to the environment; 5. Cost and benefit analysis and other financial and economic analyses and assumptions used

in within the undertaken measures and activities for protection and promotion of the environment from item 3 of this paragraph and 6. The living conditions health and safety of people, food safety products including the impact of pollution on the food chain, living conditions of people, places of importance for culture and built facilities, to the extent that they are affected or could be under influence of the media and environmental areas or through influences- of those media and areas on any of the states of the specified element- you and factors.

Article 52 defines which entities that possess environmental information:

1. Bodies and legal entities and individuals (hereinafter: entities) who own- or for which environmental information is available are: Government of the Republic of Macedonia and the state administration bodies; municipal bodies, on the city of Skopje and the municipalities in the city of Skopje; legal and individuals of who, in accordance with the law, have been entrusted with public authority, including special duties, activities and services in the area of environment and / or - legal and individuals who, on the basis of law or agreement, perform activity or service of public interest in the area of environment, under- of the bodies or persons referred to in paragraphs 1, 2 and 3 of this paragraph.
2. The Government of the Republic of Macedonia, upon the proposal of the body of the state administration, the competent woman for environmental affairs, publishes and maintains a list of entities that own or hold information environmental. The list also determines the information they provide owns each of the listed entities.
3. The entities referred to in paragraph (1) of this Article shall be obliged to appoint an authorized person who will be responsible for exercising the right to access information for the environment, as well as to provide a room in which applicants may review or inspect the requested information for life the environment
4. The entities referred to in paragraph (1) of this Article shall be obliged to request the required information and information. environmental issues to make them available or make them available to persons who requested access to information in accordance with Article 51 of this Law.

Article 53 Conditions related to the request for information

1. The request for environmental information may be submitted to anyone from entities that own or own information about the environment, determined in accordance with Article 52 of this Law.
2. The entities referred to in Article 52 of this Law that own or are owned environmental information, are required to provide access to environmental information: 1) as soon as possible, but not better from one month from the day of receipt of the request or 2) no later than two months upon receipt of the request, if the scope and complexity of the information are such that a period of one month is not sufficient to complete the do- mentation. In such a case, the entity referred to in Article 52 of this Law shall notify it the requester of the information, as soon as possible, and before the expiration of the period of one month, for the need to extend the period with an explanation for the reasons that the extension is required.

1.6.3.2 Rulebook on providing access to information about the environment

Pursuant to Article 53, paragraph 4 of the Law on Environment, the Ministry of Environment and Physical Planning has adopted a Rulebook on the manner and procedure of providing access to environmental information[65].

65 Published in the "Official Gazette of RNM" No. 93 of 26.07.2007, [accessed on 29.05.2019]

The right to access environmental information belongs to all applicants for the same way and under equal conditions and they are equal in their realization.

The requirements for access to environmental information are answered in order of the received requests, in accordance with the time period required for the preparation of answers to requests.

Subjects are required to publish in order to provide easier access to information regularly post information on their websites, as well as make the request available for access to environmental information in a visible place (Article 4 of the Rules of Procedure).

The applicant asserts the right to access information by submitting a request for access to environmental information to the subjects orally, in writing or electronically.

The content of the request for access to environmental information should contain them elements in accordance with the Law on Free Access to Public Information (Article) 5 of the Rules of procedure). Entities in order to ensure the right of access to information about environment determine an official who is obliged to update the data, to give assistance to the applicants and keep records of the submitted requests (Article 6 of the Rules of Procedure).

1.6.3.3 Law on Ambient Air Quality[66]

Basic legal act that regulates the protection and promotion of air quality is the Law on Ambient Air Quality, which was adopted on October 4, 2004. Accordingly with Article 4 of the Law, the objectives of the legal regulation of this sector are:

- Avoidance, prevention and reduction of harmful effects on human health and the environment as a whole, including biodiversity, natural wealth and historical and cultural heritage;
- Providing appropriate information on ambient air quality;
- Preventing and reducing pollution that causes climate change;
- Maintain the ambient air quality where it is good and improvement in other cases.

This law regulates the measures for avoiding, preventing or reducing the harmful effects of ambient air pollution on human health as well as on environment as a whole. This is achieved by setting boundary and target values for ambient air quality and alert and information thresholds, borderline and target emission values, forming a single monitoring and control system on ambient air quality and monitoring of emission sources (comprehensive system for the management of ambient air quality and emission sources – informative system). Other measures for protection against certain activities of the legal and individuals who have a direct or indirect impact on the quality of the environment air. The provisions of this law apply to ambient air other than pollution of ambient air caused by radioactive substances, noise and elementary disasters and air pollution in the work environment.

1.6.3.4 Law on Nature Protection[67].

This law regulates the protection of nature through the protection of biological and landscape diversity and protection of natural heritage, in protected areas and outside protected areas, as well as the protection of natural rarities (hereinafter: protection of nature). On the use of natural resources for economic purposes, in addition to the provisions the provisions of the special laws also apply to this law. On the protection of nature, the Law on Environment is also applied, unless otherwise provided by this Law. The protection of nature also applies to the provisions of

66 Law on Ambient Air Quality, "Official Gazette of RNM No. 47/2011" dated 31.07.2011, http://www.moepp.gov.mk/wpcontent/uploads/2014/09/Zakon%20za%20kvalitet%20na%20Vozduh%20-%20precisten% 20tekst% 20za% 20informativni%20celi.pdf [accessed on 02.04.2019]

67 Law on Nature Protection ("Official Gazette of RNM" No. 67/2004, 14/2006; 84/2007; 35/2010; 47/2011; 148/2011, 59/2012 and 13/2013), http://www.slvesnik.com.mk/Issues/04b3bc15a44f14b3392180ebcc7b584768.pdf [accessed 12.06.2019]

other applicable laws of nature protection. The Law on general administrative procedure, unless otherwise provided by this Law.

Nature conservation is an activity of public interest. Biological protection diversity is achieved through the establishment and implementation of a system of measures and wildlife conservation activities, including their genetic material, habitats and ecosystems in order to ensure the sustainable use of the components of biodiversity and maintaining natural balance.

The protection of the landscape diversity is achieved through the establishment and implementation a system of measures and activities to preserve and maintain characteristic values of the landscape arising from its natural configuration and / or the type of human activity.

The protection of natural heritage is achieved through the establishment of a system that determines the measures, procedures and methods for acquiring the status of natural heritage and implementation of its protection.

The protection of natural rarities is achieved through the establishment of a system that determines them measures, procedure and methods for declaring natural rarity and implementing its protection.

The objectives of the law are:

1. Determining and monitoring the state of nature;
2. Preservation and restoration of the existing biological and landscape diversity in a state of natural balance;
3. Establishment of a network of protected areas due to permanent protection of properties on the basis of which they have acquired the status of natural heritage;
4. Ensuring the sustainable use of natural resources in the interest of current and future development, without significant damage to parts of nature- date and with the least disturbances of the natural balance;
5. Prevention of harmful activities of natural and legal persons and disorders in nature as a consequence of technological development and execution of actions conditions, ie providing the most favourable conditions for protection and development of nature; and
6. Ensuring the right of citizens to a healthy environment.

1.6.3.5 Other environmental laws

Regarding the special legal acts that regulate the aspects of the animal sector environment for certain activities, for construction projects, the investor must submit a basic project that must include an environmental impact assessment study (SOVES) approved by the Ministry of Environment and Physical Planning (MoEPP), if the project is under Annex I of the Aarhus Convention[68]. The building permit cannot be issued without the approval of the MoEPP. The MoEPP is responsible for carrying out the procedure for Environmental Impact Assessment, which includes the right of public participation.

Control over environmental media emissions is mainly done through the procedure for Integrated Pollution Prevention and Control (IPPC) and the main one regulatory tool - integrated environmental permits (A: environmental permits for larger installations; B: environmental permits for smaller installations).[69]

68 The Law on Construction: "The *basic design contains an EIA study of the project ... if the provisions in the environment provides for the preparation of a study for that type of construction.* « According to "The regulation for determining the projects and the criteria on the basis of which the need is determined for the implementation of the environmental impact assessment procedure "construction projects are generally defined projects for which the need for an EIA procedure is determined case by case, Art. 47, Pg.4 http://pravo.org.mk/documentDetail.php?id=4694 [accessed 22.04.2019]

69 Decree on public participation during the preparation of regulations and other acts, as well as plans and programs in the area of environment Official Gazette no. 147/2008 and 45/2011, Chapter XII of the Law on Environment, http://www.slvesnik.com.mk/besplatni-izdanija.nspx [accessed on 21.06.2019]

The Law on Protection from Noise in the Environment regulates the rights and duties of legal entities and individuals in relation to environmental noise management and environmental noise protection.

The Law on Waste Management regulates waste management; principles and goals waste management; waste management plans and programs; rights and obligations of legal and individuals in relation to waste management; the requirements and obligations of legal entities and individuals producing products and packaging and which at the end of the life cycle burdens the environment; the manner and conditions under which it may to collect, transport, treat, store, process and remove waste; import, export and transit of waste; monitoring; information system; waste management financing and oversight.

Urban planning procedures are regulated by the Law on Spatial and Urban Planning (Official Gazette no. 199/2014 ... 163/2016). The law (Article 7) defines two main types of plans depending on the space planned: a) Spatial plan of the Republic Macedonia, which is adopted by the Assembly and is the main strategic document for spatial planning; and b) urban plans which include the general urban plan, detailed urban plan, urban plan for villages and urban plan for outside settlements.

The plans are hierarchically linked, which means that the general urban plan is prepares on the basis of data from the spatial plan, the detailed urban plan are prepares for areas included in the general urban plan, etc. According to the appropriate Decree[70], urban planning documents (and their changes) must go through strategic environmental impact assessment. In addition, the Law on Spatial and urban planning (Article 28) refers to the Law on Environment and imposes that the relevant municipality is obliged to make a decision on implementation or a decision on non-implementation of a strategic impact assessment in which the reasons for the implementation or non-implementation and submit it to the Ministry of Life environment.

The explanation should contain the reasons for the implementation / non-implementation according to the criteria stated in the "Decree on the criteria on the basis of which they are adopted on whether certain planning documents could have a significant impact on the environment and human health." (Official Gazette No. 144/2007).

In the procedure for issuing a Permit for exploitation of mineral resources last phase is the concession and the issuance of a permit for the exploitation of mineral resources (part III of the Law). The interested company must obtain a Research Permit mineral resources from the Ministry of Economy with a validity period which cannot be longer than the validity of the concession (max. 60 years, ie 30 years with the possibility of extension for another 30 years). The procedure is initiated by the concessionaire by submission at the request of the Ministry of Economy. The request, among other things, contains approval of the Environmental Impact Assessment Study by the Ministry of environment and spatial planning, so in others and in this case, participation the public in the EIA process is characterized by the same rights and restrictions as in other procedures.[71] The draft permit for the exploitation of mineral resources is also published on the website of the Ministry of Economy and the affected public can comment of the same in a period of 15 days.

Breeding, protection and hunting of animals and wildlife are regulated by the Law on Hunting (Official Gazette No. 26/2009 ... 193/2015). The hunting grounds are determined by the Government in accordance with The Republic Spatial Plan (Article 28) and they are given to the management of legal entities that perform activities of public interest in the area of forestry, hunting and animal protection environment, or of public bodies governing national parks. The permits for hunting of wildlife/animals are given under concession to legal entities, mainly

70 The Decree on Strategies, Plans and Programs, including Changes to those Strategies, Plans and programs, for which a procedure for assessing their impact on the environment and on the life and health of the people is mandatory (Official Gazette no. 153/2007 and 45/2011). 3, Pg. 13

71 Law on Mineral Resources, (Official Gazette No. 136/12, 25/13, 93 / 13.44 / 14,160 / 14, 195 / 15,192 / 15,39 / 16,53 / 16,120 / 16,189 / 16), Article 55, paragraph 2, al.4 http://www.economy.gov.mk/Upload/Documents/Zakon%20za%20mineralni%20surovini%20-%20Precisten%20tekst%20(Rabotna% 20verzija).pdf [accessed on 13.06.2019]

hunting organizations that are responsible for issuing hunting licenses to interested parties. The concept of issuance of concessions is the same as in the previously explained procedure for mineral exploitation raw materials. There is no public participation in these proceedings.

With regard to the Law on Genetically Modified Organisms, although the participation of the public in the decision-making process regarding the intentional release of genetics modified organisms, only the applicant / investor has the right to file a lawsuit against the decision of the MoEPP to reject the notification for intentional release of GMOs, i.e. the public has no right to challenge an already approved Permit for the intentional release of GMO. There are no provisions governing the procedure in the event of an update or modification in the terms of the Permit.

The registration of pesticides is regulated by the Law on Protection Products plants (Official Gazette No. 110/2007 ... 39/2016) and the Law on Food Safety (Official Gazette No. 157/2010 ... 39 2016). The main preventive idea behind the laws is that no product may be placed on the market and used unless previously available entered in the register of the Phytosanitary Administration within the Ministry of Agriculture, forestry and water management, based on a request submitted by the legal entity which is the owner of the product, ie in the register of food producers. No public participation in these proceedings is envisaged.

The issue of export / import of chemicals, including the export / import of certain hazardous chemicals is regulated by the Law on Chemicals (Official Gazette No. 145/2010 ... 37/2016).

The export / import of chemicals can be performed by a legal entity only with the permission of export / import issued by the Ministry of Health (Article 69). In terms of exports / import of certain hazardous chemicals (industrial chemicals and pesticides), the concept applies from the Rotterdam Convention for prior consent. Not anticipated public participation in these proceedings.

1.6.3.6 Law on Free Legal Aid

The Assembly of the Republic of N Macedonia on May 16, 2019 adopted the new Law on Free Legal Aid (LFLA), published in the "Official Gazette of RNM" No. 101 of 22.05.2019, and it's application started on October 1, 2019. It is legal to provide equal access of citizens and other persons determined by this law to the institutions of the system, for introduction, realization and provision of effective legal aid, in accordance with the principle of equal access to justice. (Article 2 of the LFLA).

The adoption of the new Law on Free Legal Aid harmonizes with DIRECTIVE 2002/8 / EC OF THE COUNCIL of 27 January 2003 for improvement access to justice in cross-border disputes by establishing a minimum common ground rules relating to legal aid for such disputes.

According to the law, the regional offices of the Ministry provide free legal aid for justice of the Republic of Macedonia, authorized associations of citizens registered as providers of BPP, legal clinics registered at the Faculty of Law, and are registered in the register of the Ministry of Justice and lawyers registered in the register for the provision of secondary legal assistance at the Ministry of Justice. Free legal aid is provided persons who meet certain criteria and it is realized as the primary legal assistance and secondary legal aid.

All individuals who have a residence or have the right to primary legal aid residence on the territory of the Republic of Macedonia.

Primary legal aid is a type of free legal aid provided by authorized official of the Ministry, authorized association and legal clinic.

The authorized association is one that, in accordance with the provisions of this Law, meets the requirements for providing primary legal assistance and on the basis of a decision of the Ministry is authorized for providing primary legal aid and is registered in the Register of Authorized Associations to provide primary legal assistance.[72]

72 Law on Free Legal Aid, Official Gazette of RNM "No. 101 of 22.05.2019, Article 3, paragraph 6, http://www.pravda.gov.mk/Upload/Documents/Zakon%20za%20besplatna%20pravna%20pomos.pdf [accessed on 13.06.2019]

A legal clinic is an organizational unit of a law school at a university established in accordance with the Law on Higher Education and the purpose of which is the realization of practical classes students.[73]

Primary legal aid includes general legal information and general first advice, initial legal advice on the right to use legal aid, assistance at completing a request for secondary legal aid, assistance in filling out forms, forms issued by an administrative body in an administrative procedure for social protection and protection of children's rights; pension, disability and health insurance; protection of victims of gender-based violence and domestic violence; registry procedure of born; acquiring documents for personal identification and citizenship; compiling of complaints to the Commission for Protection against Discrimination and to the Ombudsman and requests for protection of freedoms and rights to the Constitutional Court of the Republic of North Macedonia.

Secondary legal aid is provided by lawyers in court proceedings, a state body, the Fund of the pension and disability insurance of the Republic of Macedonia, the Health Fund insurance of the Republic of Macedonia and persons exercising public authorizations in accordance with the provisions of The Law on Free Legal Aid.

Secondary legal aid is granted to a person in need of professional legal assistance from a lawyer for a specific legal work and who is unable to pay the costs of the proceedings due to his financial situation and whose claim is justified.[74] Secondary legal assistance includes representation in court proceedings, a state authority, the Pension Fund and disability insurance of the Republic of Macedonia, the Health Insurance Fund of the Republic of Macedonia and persons exercising public authority in accordance with Article 14 of the Law on Free legal aid, as well as exemption from costs in accordance with the provisions of this and another law.[75]

The Ministry of Justice is cooperating on the procedure for secondary legal aid with the Bar Association of the Republic of Macedonia, the judicial authorities, as well as with the Centre for social work, state bodies and other competent institutions.

The Law on Free Legal Aid regulates the right to free legal aid assistance, the procedure in which it is performed, the users, the conditions and the manner of its implementation exercise, free legal aid providers, decision-making bodies, protection of the right to free legal aid, funding and supervision over his conducting, organizing days of free legal advice, free legal aid in cross-border disputes, as well as supervision over the application of the provisions of this Law.

The purpose of the law is to provide equal access to citizens and other persons determined by this law to the institutions of the system, for acquaintance, realization and enabling effective legal aid, in accordance with the principle of equal access to justice.

The procedure for secondary legal aid is urgent and it is explicitly stated in the Law.

Free legal aid is provided by the Ministry of Justice, lawyers and authorized citizens' associations, and the means for approving the free legal aid are provided from the Budget of the Ministry of Justice as a separate program proposed by the Minister, approved by the Government of the Republic of Macedonia, as well as by donations and other revenues in accordance with the law.

In the Law on Free Legal Aid, the funds for compensation for the provision of primary legal aid is granted by authorized associations and legal clinics basis of public competition[76], which is published by the Ministry of Justice on its website in the first quarter of the current year. The announcement and implementation of the public competition as well as checking the submitted documents, the method of scoring during the evaluation the Minister shall prescribe the control of the spending of the funds on the applications for justice.

Associations and legal clinics that are not funded in accordance with Article 11 of the Law on free legal aid, are entitled to compensation for the given primary legal aid for each case separately for

73 ibis, Article 3, paragraph 7
74 ibis Article 13, paragraph 1
75 ibis, Article 13, paragraph 2
76 ibis, Article 11, paragraph 1

which a request for secondary legal aid has been approved. In the section on the compensation of the providers of secondary legal aid, ie the lawyers sewn in the register of lawyers for providing free assistance to the Ministry of Justice of the Republic of Macedonia, they will be paid a percentage of the lawyer's fee as well as costs, in accordance with the Tariff for reward and compensation of labour costs of lawyers adopted by the Bar Association.

The new Law on Free Legal Aid provides greater benefits and protection for the citizens: first of all, the conditions that the citizens have to meet in order to get it are facilitated free legal aid, which provides equal access to justice for all, in particular for the poorest and most marginalized citizens.

At the same time, free legal aid, with certain exceptions, will be provided in all legal areas, which increases the coverage of vulnerable and vulnerable people, and thus the possibility of greater protection of citizens' rights. What is important to note is that with the new There are no other costs associated with the procedure (eg court fees, expert fees) to be already borne by the citizens, but they will be covered by the free legal help.[77]

The individuals have the right to free legal aid in a manner and under conditions determined by the law.

The difference in legal aid providers for prior legal aid and assistance in court and administrative disputes consist in the fact that previous legal aid is granted by an authorized person official in the regional offices of the Ministry of Justice and by authorized citizens' associations, and legal aid is provided by lawyers.

Under the new law, secondary legal aid includes representation before court, state body, Pension and Disability Insurance Fund of the Republic of Macedonia, Fund for health insurance of the Republic of Macedonia and persons exercising public authorizations, as well as exemption from costs in accordance with the provisions of this and other law.

According to the above, the Law on Free Legal Aid does not mention the rights of the environment (in fact, the right to a healthy environment is guaranteed and with the highest act in the country - the Constitution). These rights could in part be subordinated to protection of victims of criminal offenses, but only in part, because the Penal Code recognizes acts against the environment when they are committed on a larger scale, in a larger area, on a large number of people, ie animal and plant world.

Under the Aarhus Convention, access to justice for environmental issues must to be enabled to every citizen, which is his right guaranteed by the Constitution of RNM.

In RNM, especially in larger cities, citizens are aware of air pollution and the environment, but to date there has been no concrete action (out-of-court and judicial) in cases where due to environmental pollution directly life and health are endangered. State institutions are still in this area do not have sufficient capacity to handle environmental conservation and protection, as well as take appropriate measures to take care of it. The question arises how well the courts are prepared to deal with environmental disputes, given the very small number of proceedings before the courts in this area, lack of case law and mistrust in the judicial system, as well as high costs to which the parties are exposed when exercising this right of the citizens in the cases when they are endangered or injured.

Starting from the importance of the environment emphasized in the Convention Law, in Article 8 of the Constitution of the Republic of Macedonia, the environment is set as a value and a right that must be protected and promoted. Landscaping and humanization of space and protection and the promotion of the environment and nature are a fundamental value of the constitution order of the Republic of Macedonia "Everyone has the right to a healthy environment. Everyone is obliged to promote and protect the environment and nature. The Republic provides conditions for exercising the right of the citizens to a healthy environment ", it is prescribed in Article 43 of the Constitution of RNM.

77 Published on 22.05.2019 on pravdiko.mk, https://www.pravdiko.mk/noviot-zakon-za-besplatna-pravna-pomosh-so-podobreni-reshenija-za-pristap-do-pravda/ [accessed on 28.05.2019]

The purpose is, in accordance with the Aarhus Convention, to provide access to justice of every citizen in RNM regardless of his financial and property rights and receive free legal aid in environmental disputes. Reason is that it is not just a violation of the personal right of the endangered citizen or violated, but also for violation of rights of public interest.

The right to apply for secondary legal aid has:

- A citizen of the Republic of North Macedonia with permanent residence in Republic of North Macedonia,
- Foreign citizen with a temporary or permanent residence permit in the Republic North Macedonia or a stateless person legally residing in the Republic North Macedonia,
- A person entitled to legal aid provided by the Republic of North Macedonia in accordance with international agreements ratified in accordance with the Constitution of Republic of North Macedonia and
- Asylum seekers.

The SLA mechanism should also give access to justice to those who do not own it personal documentation. The same applies to stateless persons who have not been regulated residence but are located on the territory of R. N. Macedonia.

The financial situation of the applicant and his family members is considered to be endangered by the costs of the proceedings, if:[78] the monthly income of the applicant living alone does not exceed the amount of the minimum net salary in the Republic of North Macedonia, determined by the regulations in the area of minimum salary, the monthly income of the applicant living in a joint household with its members family does not exceed the amount of the minimum net salary from paragraph (1) line 1 of this member and the monthly income of each subsequent family member does not exceed the amount of 20% of the minimum net salary determined by the regulations in the area of the minimum wage. According to the new Law on Free Legal Aid, Article 18, paragraph 2 enumerates what is considered and what is not considered income when analysing the request for free legal aid, that is, social transfers and other benefits gained on it are not considered income basis of a certain status (for example, a student).

Under the new FLA law, a claimant who lives alone and has a monthly income not greater from the minimum net salary in RNM, ie an applicant who lives in a joint household with members of his family who have a monthly income not exceeding the minimum net salary in RNM, and each subsequent member of the joint household has income not exceeding 20% of the average net salary in RNM in accordance with the Law on Minimum Wage.

1.6.4 Out-of-court and court practice in Macedonia in the area of environment and access to justice

This chapter provides an overview of domestic and international opportunities for use environmental protection mechanisms, which can be used when endangering the life and health of citizens, as well as the possibility of (free) legal aid and conditions for its use. The possibility of using *actio popularis* for is also presented environmental issues.

Extrajudicial proceedings may be instituted before the Ombudsman and other bodies protection of human rights..

1.6.4.1 Ombudsman

The Law on the Establishment of the Ombudsman (Official Gazette of the Republic of Macedonia No. 60/03) in Articles 11-18 provide for relief, with the applicant exempt from the tax for the procedure initiated before the Ombudsman institution. Help and the intervention of the Ombudsman may be requested by any citizen and foreigner (in person or through his attorney)

78 Law on Free Legal Aid, "Official Gazette of RNM" No. 101 of 22.05.2019, Article 11, paragraph 1 http://www.pravda.gov.mk/Upload/Documents/Zakon%20za%20besplatna%20pravna%20pomos.pdf [accessed on June 19, 2019]

when he assesses that some of his constitutional and legal rights are his injured by acts or actions of state administration bodies and other bodies and organizations who have public authority. Protection of the right before the Ombudsman is requested after the citizen has previously addressed (submitted a request, request, asked for help, intervention or other action) to the competent authority or organization, and that authority or the organization has adopted or has not adopted an act, has undertaken, ie has not taken appropriate action.

The procedure before the Ombudsman is initiated by filing a complaint (complaint, appeal) which can be submitted in person at the Ombudsman's office, by mail, verbally in the presence of the Ombudsman, by telephone or electronically by email. The Ombudsman may initiate a procedure on his own initiative, but in order to continue the procedure, the consent of the citizen who has been injured is required constitutionaly or by a legal law.

When certain injuries are found, the Ombudsman may:

- Give recommendations for removal of the ascertained injuries;
- Propose a repetition of the court procedure (reopening of the procedure);
- Initiate an initiation of disciplinary proceedings against an official or a responsible person; and / or
- Submit a request to the competent public prosecutor for initiating a criminal case procedure.

Recognizing Article 44 of the Constitution of the Republic of N Macedonia which guarantees the citizens the right in a healthy environment, the Ombudsman institution takes into account and complaints concerning the violation of this right.

It should be noted that as a mechanism for protecting the rights of citizens, the People's an ombudsman has a mandate only if the injury occurred by a public authority. In the past 16 years, both ex officio and at the initiative of citizens, there have been interventions by of the institution, especially in relation to pollution, but this has not been observed in the latter available report from 2018. The Ombudsman's activities were guidelines for intervention in environmental protection, by introducing the necessary environmental standards of major pollutants, ie the introduction of integrated environmental permits.

1.6.4.2 Mediation

Mediation, as one of the alternative ways of resolving disputes, in the Republic of N Macedonia was promoted with the adoption of the Law on Mediation in 2006, prepared in accordance with the Strategy for Reform of the Judicial System 2004-2008, with The primary purpose is to relieve the courts of a huge number of cases, as well as the determination of the Republic of Macedonia for integration into European flows.

The mediation procedure is a special type of procedure that is voluntary in nature, efficient, fast and cheaper than court proceedings. Mediation can be applied in civil, commercial, labour, consumer and other disputes between individuals and legal persons in which the parties are free to dispose of their claims in accordance with the law, and can be applied in family and criminal disputes if it corresponds to the nature of disputed relations or if its application is not excluded by a special law.

The advantages of mediation are expressed through the informality and flexibility of the procedure, given that mediation takes into account the interests of the parties to reach an agreement that will be voluntarily respected by the parties.

Environmental disputes are disputes that can be mediated and as such can achieve access to justice through the mediation process.

To date, there have been no mediation cases related to environmental disputes.

1.6.4.3 Aarhus Appeal Mechanism

Mention should also be made of the possibility of appealing against the Aarhus Convention. The mechanism for compliance with the Aarhus Convention is one of the few international environmental protection instruments, which allows members of the public to express their concern directly to a board of independent experts. The committee Compensation Committee has a mandate to investigate allegations of a case, may make recommendations to the Meeting of the parties (MOP) directly to the affected party.

The Committee may also consider matters of its own accord initiative and make recommendations; prepares reports on compliance or implementation the provisions of the Convention; provide advice or facilitate individual assistance.

So far, there are no cases before the Committee from our country.

1.6.4.4 Convention for the Protection of Wild Plant and Animal World and Natural Habitats in Europe (Bern Convention))

Another international mechanism is the Wildlife and Animal Welfare Convention world and natural habitats in Europe (Bern), ratified in 1997 which are refers to the protection of wildlife, flora and fauna and natural habitats in Europe. The Balkan lynx (Lynx *lynx balcanicus*) is included in Annex 2 to the Bern Convention, which is a great recognition and a step forward in protecting this critically endangered an animal that lives only in the Balkans.

In 2013, an independent expert at the European Bank's Appeals Mechanism renewal and development that financially supports this project published findings confirming it that the ecological study of Boskov Most is not complete because it lacks significant data. The expert confirmed that when deciding on the financial support for the project, the bank violated its environmental procedures. The constant Committee of the Bern Convention for the Protection of Wildlife and Animals and natural habitats in Europe asked the Government of the Republic of Macedonia to urgently suspends construction of small hydropower plants in Mavrovo National Park, published by environmental civil society organizations from Macedonia.

At the same time, there is an initiative to suspend HEC Ribnichka, Jadovska and Zirovnichka I and II, for which concessions were approved in 2015 for which construction has not yet begun.

So far, four have been built on the territory of NP Mavrovo from 2010 to 2017 new small hydropower plants on the rivers Tresonechka, Galichka, Kakachka and Belichica.

1.6.5. Court procedures

The jurisdiction of the courts covers the protection of citizens from individual illegalities acts of the state administration and other institutions that exercise public authority (administrative) disputes). Courts have general jurisdiction over human rights.

1.6.5.1 Constitutional Court of the Republic of Macedonia

According to Article 9 of the Constitution, citizens are equal in freedoms and rights regardless of gender, race, skin colour, national and social origin, political and religious persuasion; property and social status. Citizens before the Constitution and the laws are equal.

Article 108 of the Constitution stipulates that the Constitutional Court is a body of the Republic that protects constitutionality and legality. Through the exercise of its powers, the Constitutional Court is concerns for the preservation of constitutional principles, including the principle of equality of citizens as a fundamental constitutional principle. The competence of

the Constitutional Court is determined in Article 110 of the Constitution according to which the Constitutional Court *inter alia* decides on the compliance of laws with the Constitution. It protects the freedoms and rights of man and citizen freedom of belief, conscience, thought and public expression of thought, political association and action and the prohibition of discrimination against citizens on the basis of gender, race, religion, nationality, social and political affiliation.

The Constitutional Court fulfils its role in this domain in two ways:

- Through constitutional revision, ie assessment of the compliance of laws and bylaws acts with the constitutional principle of equality; and
- Through concrete disputes over the individual requests of the citizens, ie through direct protection of certain rights and freedoms contained in the Constitution.

The procedure for immediate constitutional and judicial protection of freedoms and rights, including protection against discrimination is regulated by the Rules of Procedure of the Constitutional Court. According to Article 51 of The Rules of Procedure, any citizen who considers that he has been injured by an individual act or action the right or freedom established by Article 110 of the Constitution may require protection by the Constitutional Court within 2 months from the day of delivery of the final or final individual act, that is, from the day of finding out about the action taken by the injury, but not later than 5 years from the date of its receipt. In doing so, they need to be listed the reasons for which protection is sought, the acts or actions by which they are injured, the facts and the evidence on which the claim is based, as well as other data necessary to decide The Constitutional Court.

The Rules of Procedure provide for short deadlines for handling requests / procedures in which they are decides on the freedoms and rights of the citizen, thus ensuring priority and urgency in resolving these cases. Pursuant to Article 56 of the Rules of Procedure, with the decision for protection of freedoms and rights The Constitutional Court will determine whether there is a violation of them and depending on it will annul the individual act, prohibit the act by which the injury was committed or will reject the request.

Pursuant to Article 57 of the Rules of Procedure, during the procedure the Constitutional Court may rule decision to stop the execution of the individual act or action until the adoption final decision.

Citizens can directly address the assessment of the constitutionality and legality of certain acts, as well as protection of their freedoms and rights by initiating an initiative.

Every citizen can submit an initiative to initiate a procedure before the Constitutional Court to assess the constitutionality of a law or the constitutionality and legality of another regulation[79], as well as the constitutionality of the programs and statutes of political parties and citizens' associations.

The submission of initiatives is not related to the existence of a legal interest of the applicant. It is only necessary for the initiative to be composed in an appropriate form, ie precisely to determine the disputed act, the reasons for which the act is disputed, which constitutional or legal provisions are violated by the disputed act and who is the initiator.

The court materially discusses and decides on the initiatives if the disputed act is general character and if valid. If there are grounds for suspicion, the Court shall take the first instance procedure, and in the second stage it bites (cancels or cancels). The court may initiate proceedings to assess constitutionality and legality and on their own initiative, either within the existing initiative or by launching its own initiative in its entirety.

The procedure for protection of human and civil liberties and rights is initiated with a request (constitutional appeal) from anyone who considers that some of the stated freedoms and rights are injured by a final or final act or effect. The request should be made in an appropriate form, ie the act or effect with which they are to be determined in it violate freedoms and rights, facts and evidence, the reasons for which they are sought protection and other relevant data.

79 Rules of Procedure of the Constitutional Court of RNM, Article 12

Despite the fact that this type of jurisdiction is limited in its scope, it has two others main features. First, not only administrative but also court decisions and acts of the holders of public authority may be challenged. Second, the submission of such a request does not require prior exhaustion of all legal remedies against a final or final act. Otherwise, the procedure is considered initiated by the very submission of the request, so it remains to the court to only rule on the claim. After all, to protect freedoms and the rights of the Constitutional Court decide on the basis of a public hearing, at which The Ombudsman mandatory is also invited. For the protection of freedoms and rights, the Court may to annul the individual act, to prohibit the action by which the violation was committed or to reject the request. This procedure is based on the principles of priority and urgency.

There is a possibility for *actio popularis* to challenge the substantive and procedural legality of urban plans (as "general acts") before the Constitutional Court.[80] If by modifying the individual act cannot remove the consequences of the application of the law, the regulation or a general act annulled by a decision of the Constitutional Court, the Court may order the consequences to be removed by returning to the previous state, with compensation or otherwise. The execution of the final individual acts adopted on the basis of law, regulation or other general act, which by a decision of the Constitutional Court is annulled, cannot be allowed, nor to implement, and if the execution is started it will be stopped[81].

There is considerable case law before the Constitutional Court regarding the revision of the disputed urban plans from the perspective of "transparency and public participation".[82] One such case is the abolition of the Detailed Urban Plan (DUP) for Taftalidze 1, adopted on January 5, 2016. The Constitutional Court ruled that the Municipality of Karpos did not respected the constitutional and legal provisions in the adoption of the disputed detailed urban plan covers the move from Partizanski Odredi Boulevard, Moskovska Street, Macedonia Boulevard and 8 September Boulevard, which envisions new buildings sprouting in the greenery.

The detailed urban plan for Taftalidze 1 and Karpos 4 was adopted on Christmas Eve in 2016, during the term of ex-mayor Stevco Jakimovski. Civil initiatives We are Karposh 4 and Zeleno Taftalidze after this decision organized protests several times and marched demanding an end to the concreting of the municipality and it appealed the Constitutional Court's plan. Non-disclosure of the Decision for non-implementation of strategic assessment (No. 34-3079 / 17 of 06.07.2015) in the manner and procedure prescribed with the Law on Environment, means that the procedure for adoption of the detailed urban plan provided by the Law on Spatial Planning and urban planning, for Taftalidze 1, leading to a violation of the principle of the rule of law, as a fundamental value of the constitutional order of the Republic of N Macedonia, therefore, the Constitutional Court finds that the impugned decision is not in accordance with Article 8, paragraph 1 lines 3 and 10 of the Constitution of the Republic of N Macedonia, with Article 15-c of the Law on Spatial Planning and urban planning and Article 65 of the Law on Environment.

In another case, the Court considered the constitutionality and legality of the detailed urban plan for industrial zone in the municipality of Kicevo, gave the following opinion "... from the available evidence, the Court finds that it may not be necessary to confirm that the public was informed about giving public insight into the Draft Detailed Urban Plan in accordance with Article 18 of the Law on Spatial and Urban Planning, so the legality of this part of the proceedings may be called into question. Although from the public inspection report apparently contained a citizen-filled comment, however, the question remains whether and

80 Rules of Procedure of the Constitutional Court of RNM: "*Anyone can submit an initiative to the Constitutional Court initiating a procedure for assessing the constitutionality of a law or the constitutionality and legality of another regulation ...*", Art. 12

81 The Rules of Procedure of the Constitutional Court of RNM, Art. 81

82 The Rules of Procedure of the Constitutional Court of RNM, from the execution of individual acts adopted on the basis of an urban plan that is repealed by a decision of the Constitutional Court cannot be allowed or applied, a if the enforcement is ongoing, it will be terminated, Art. 80

how citizens are informed about organizing public insight into the draft plan". The court said the victim should be identified publicly and to be invited.

In this case, the Court ruled on the legality and constitutionality of the detailed urban plan area plan in the municipality of Kicevo and to revoke the decision to adopt this urban plan, it is clearly stated that not taking into account the comments by of the public is a significant violation of the legally prescribed procedure for adoption detailed urban plans.

1.6.5.2 Civil Procedure

In case of violation of the right to a healthy environment, civil may be initiate proceedings against legal entities that cause danger. In that case, it is necessary is to prove the active identification of the same, and the plaintiffs should be persons who directly suffer the harmful effects of the source of the danger. During the civic procedure, CSOs can act as intermediaries. In that case you can to request removal of the danger (in accordance with Article 143 of the Law on Obligations-LO), and individuals may request in accordance with Article 144 of the LO from the court to order factories to stop and violate their personal rights remove the consequences of these actions. The initiation of civil proceedings, in this case it is directly related to the protection of human health, and therefore they appear as private plaintiffs, leading to criminal proceedings. It must be noted that conducting civil proceedings requires expertise to prove it the causal link between the plaintiff and the source of the danger.

It is the need to prove that a certain impact has been made on the environment through expertise is the main obstacle in this process, ie the high price that citizens have to bear at their own expense.

1.6.5.3 Criminal proceedings

Chapter XX of the Criminal Code itself regulates crimes against the environment and nature. Namely, in Article 218, criminal offenses against environmental pollution and the nature of the prison sentences for the crimes committed for individuals. For crimes committed under Chapter 22, money is provided for legal entities punishment for:

1. One who does not comply with the regulations for protection and promotion of the animal environment will pollute air, soil, water, water surface or water flow on a larger scale or in a wider area and thus endanger life or health of humans or the destruction of the animal or plant world on a larger scale will be sentenced to four to ten years in prison.
2. Official or responsible person in a legal entity that by non-compliance with Environmentalist regulations will fail to install treatment plants or will allow construction, commissioning, or use of a polluting plant environment or otherwise fail to take preventive measures or preventing air, soil, water, water or water pollution flow exceeding the allowable limit or to prevent noise significantly exceeds the allowable limit and thus endangers life or human health or the destruction of wildlife scales, shall be punishable by imprisonment of at least five years.
3. If the crime is committed through negligence, the perpetrator shall be punished with a fine or with imprisonment for up to three years.
4. When pronouncing a conditional sentence, the court may the perpetrator of the crime from items 1 and 2 to impose a condition on him to take the prescribed protection measures within a certain deadline and environmental improvement.
5. If the crime from this article is committed by a legal entity, it shall be punished with a fine.

The Criminal Code also provides for prison sentences for all individuals, ie fines punishment for legal entities that will commit the crime of contamination of drinking water, agricultural production of harmful means to treat livestock or poultry, endangering the environment and the nature of waste, unauthorized acquisition and disposal of nuclear materials. In Article

234 provides for heavier prison sentences for perpetrators of serious offenses acts against the environment and nature, ie if he acts with the undertaken actions severe bodily injury or severe damage to the health of several persons, death occurred on one or more persons or changes from pollution cannot be removed for a long time, large-scale property damage occurred. If due to the acts of this chapter, it occurred significant deterioration of living conditions within a protected area by law.

The manner of initiating criminal proceedings and the consequences of initiating the procedure is regulated by the Law on Criminal Procedure, in Article 19 " *Criminal procedure begins with the issuance of an order to conduct an investigation, or with the first taken investigative action before an investigation order is issued procedure, by determining the main hearing on an indictment or private lawsuit, with a proposal for issuing a penalty order or with a proposal for determining a measure of security. When it is prescribed that the initiation of criminal proceedings has consequences restriction of certain rights, they act with the approval of the indictment."*

Courts across the country, from 2012 to date, have handed down a total of 401 verdicts in connection with crimes against the environment. Most of them (157) refer to usurpation of real estate. Persons who occupied public space in nature and used it for their needs were punished conditionally or with fines.

The second offense according to the number of verdicts is illegal fishing, for which there are a total of 90 court cases decisions. For fishing without a permit, they were determined from daily fines to prison sentences after a few months. The same goes for the crooks, for which he has brought in this period 61 judgment according to the chapter on the environment in the Criminal Code.

But the big polluters of nature and in the few lawsuits that have been filed against they were not only fined, but also those appeals were upheld. courts.

There are cases that have been resolved in favour of the plaintiff related to the environment. Some of them are:

A supermarket in Gevgelija emitted an unpleasant odour and a lot of noise ventilation pipes and thus endangered the inhabitants of three houses. This is the only one a crime where an air pollutant has been convicted from 2012 to the present. This overdict was handed down by the Gevgelija court in 2014 and is the only one that can found in the online court archive in the last seven years, as far as environmental pollution by non-compliance with regulations. The company was fined with 130,000 thousand denars, and the manager with 61,500 denars.

Mine in the eastern part of the country, due to unsupported installations for control of barrenness, polluted local rivers by three categories, from second to fifth. Local court sentenced the company to a fine of 300,000 denars, the manager to 61,500 denars, and the competent manager for 49,200 denars. All in all, just under € 6,700 in fines for a large international mining company. However, they also appealed to the Court of Appeals rejected the verdict of the basic, with the explanation that it referred to pollution both soil and water, and measurement results were only from water.

In 2016, a resident of Skopje was sentenced to three months' probation for endangering the environment with waste, which is another crime of the head for the environment. There has been a total of three judgments on this ground, but only one has passed with punishment. He was a collector of plastic packaging, which he stored in his backyard Skopje. The court found that he was in charge of waste management without proper possession permission for that, and with the accumulation of packaging in the yard he endangered the environment around his property. He was given a suspended sentence because he was poor but had to pay a lump sum of 1,000 denars for court costs.

A resident of Prilep was sentenced to one year in prison for the same crime, because although he had a registered enterprise for the collection and trading of non-hazardous waste, he took it waste directly from citizens and sold to other companies, and the funds (about 100

thousand euros) put them on a personal account. The verdict states that he was convicted of endangering waste environment.

In the court archives there are verdicts against public enterprises in two municipalities because they endangered the environment with waste. One is against JKP Tetovo and the director Xhelal Ceca in 2016. The Basic Court in Tetovo sentenced the company to pay a fine of 100,000 denars, and the Court of Appeals in Gostivar, upon the appeal of the prosecution, ja increased the fine to 200,000 denars.

The Skopje Court of Appeals overturned the verdict of the Veles court against the public enterprise of one of the surrounding municipalities, which was sentenced to pay 100,000 denars due water pollution in a village. The explanation was that they were not accurate data on the period during which the pollution occurred.

The Public Prosecutor's Office in Skopje opened a procedure for pollution of the environment and the nature of the crime Environmental pollution and the nature of Article 218 of the Criminal Code. In order to establish the facts, the competent public prosecutor sent a request to the Ministry of Environment and spatial planning for obtaining the necessary data regarding the performance performed so far control over the operation of the landfill DRISLA - SKOPJE DOO, as well as if control whether compliance with the combustion protocols of medical waste by landfill and other information.

The Ministry of Interior filed criminal charges against ELEM for environmental pollution and nature, as well as against five former directors and managers of REK "Bitola ", Suspected of complicity in this crime. According to the bulletin of the Ministry of Interior suspected of complicity in environmental and nature pollution are I.K. (63) from Gostivar, former director of the subsidiary REK Bitola, J.K. (67) from Bitola, director of the branch REK Bitola, OZ (54) from Bitola, director of REK Bitola, Z.M. (44) from Bitola, head of the Branch REK Bitola and against S.A. (63) from Bitola, head of the REK Bitola Branch. Namely, after a previous application to REK Bitola and the Basic Public Prosecutor's Office in Bitola, a series of checks were made during it was concluded that the reported individuals, by non-compliance with the regulations to protect and improve the environment, they failed to reconstruct them existing or install new dust filters. Allowed through the work of REK to release harmful particles more than 50 milligrams per meter cubic. The reported individuals also allowed the ascension of the landfill, where airborne ash vortices were often created. On the way caused an increase in the statistical indicator of air pollution in city of Bitola, which is a danger to human health.

1.6.5.4 Administrative procedure

The administrative procedure is initiated at the request of a party or by a public body ex officio duty, when it is explicitly determined by law and when the public body finds out the facts about it require administrative proceedings in order to protect the public interest.

The administrative procedure is initiated by the competent body ex officio or upon request by the party. The procedure for initiating an administrative dispute is regulated by the Law on General administrative procedure, in Chapter IX, Article 51 and Article 52. For cases which according to the Law or their nature requires a request from the party, the competent authority may initiate and to conduct the proceedings only if such a request exists. Once the procedure is initiated, the competent authority should determine all the facts and circumstances relevant to bringing it a solution and to enable the parties to exercise and protect their rights interests. These actions can be performed in a shortened procedure or in a special exam procedure.

Formally, the Law on General Administrative Procedure recognizes the principle of legal remedy, i.e. stakeholders have the right to challenge any administrative action (or omission) that is, an administrative act (first degree - before the same body that passed the act; second degree – before the independent State Commission; third degree - Administrative Court). This is confirmed

by Article 104 of the same Law, which clearly states that "the *party has the right to a remedy against any administrative action or omission, if it considers that it violates its rights or the legal one interest "(*environmental associations are considered parties with legal interest in environmental disputes).

The Administrative Court annulled the decision of the State Commission for deciding in administrative matters a procedure rejecting the appeal against the issued environmental permit for the project, on appeal against a decision filed by the citizens' association Front 21/42. Issued

the environmental permit for the Boskov Most project issued by the Ministry of Life environment in 2012 returns to action.

" *There is no evidence for the court that in issuing an environmental permit for HPP" Boskov Most "the procedure was fully observed in accordance with the Law on Environment. The court confirmed that the facts were incompletely and incorrectly established and that they were not in the proceedings took into account the rules of procedure. With that in mind, the court overturned it the decision of the State Commission regarding the appeal filed against the decision with which is issued an environmental permit for the project HPP "Boskov Most" and returned the case to act again*"

The Boskov Most project envisioned the construction of a 68 MW hydropower plant in Mavrovo National Park. Environmental permit for this project Ministry of the environment issued it in 2012. The decision was appealed to the state Commission for deciding in administrative procedure and employment procedure in the second instance with the explanation that the environmental study for this project on the basis of which it was issued the permit is incomplete. This means that the Ministry has issued the environmental permit contrary to the Law on Environment.

In 2013, the State Commission for Decision-Making in Administrative Procedure issued a decision rejecting the appeal and upholding the decision of the Ministry of Environment.

Since 2013, this case has been before the Administrative Court.

" *It is unclear to the Administrative Court how the state commission accepted the first instance a decision was made in accordance with the law and that before the adoption was preceded by a full and a detailed procedure and that all the evidence was obtained* ," the court ruling said. The court found that the Ministry of Environment should have made a decision for environmental permit based on a complete study to assess the impact on environment, report on the adequacy of this study and the outcome of the consultation with the public. That did not happen. In addition, the ministry should have included them in the decision state specific measures to prevent, limit, mitigate or reduce harmful effects, as well as measures to increase the beneficial effects on the animal environment as a result of project implementation.

Another administrative procedure is being conducted for the ecological permit for Boskov Most. Namely, contrary to the Law on Environment, the validity of the disputed solution for the project Boskov Most was extended in 2014 by the Ministry of Animal Husbandry environment. In June 2015, another appeal was filed for this violation procedure before the state commission.

The HPP "Boskov Most" project was also before the Bern Convention in 2015, when A recommendation to stop all planned projects in the National Park was adopted Mavrovo.

An additional fact that there is a violation of the Law on Environment is that before making a decision on HPP Boskov Most (that it meets the protection requirements of the environment), a letter was submitted by ELEM informing him The Ministry of Environment has yet to launch environmental activities project monitoring. The purpose of this monitoring was to determine the zero state of air, watercourses and ambient noise levels, as well as biological

status diversity in the area that will be affected by the construction and operation of HPP Boskov Most. This monitoring is necessary to determine measures that would reduce it the impact of the project. Such analyzes should be an integral part of the Study for assessment of the impact on the environment, not to occur after its preparation and approval.

Although the Basic Public Prosecutor's Office in Skopje opened a case after a voice was touched

for working in the landfill for the crime of environmental pollution and nature, in parallel with the current concessionaire of the landfill "Drisla" leads another battle before the Higher Administrative Court. The right to concession of FLC Ambiente from Italy are has been contesting since winning the tender in 2013.

The Administrative Court in its final judgment states that the company had none experience and was formed two days before the extension deadline for the tender.

Consortium partner Unieco, who founded the company, was actually involved construction and production of bricks and did not have the necessary turnover of funds.

The administrative court, according to the verdict, upheld the lawsuit of the German company Scholz I obliges the mayor of the city of Skopje to sign the joint agreement investing in a public enterprise. The city of Skopje owns 20 percent of the landfill..

1.6.5.5 Misdemeanour procedure

While criminal proceedings are being conducted against individual poachers, poachers, loggers, waste collectors and others, polluters receive mandatory fines or misdemeanour charges. The latest report published on the website of the State Inspectorate for the environment refers to 2014, when 366 decisions were made, with which it is ordered to correct some irregularities, 28 solutions for work ban, and were 72 Misdemeanour proceedings and no criminal proceedings were initiated.

Although the Law on Misdemeanour s is fully compliant with the Law on Animal Welfare environment, which makes it easier to file Misdemeanour charges than criminal, Skopje's environmental inspectors, meanwhile, according to their 2017 report, for the whole year they submitted a total of one request to initiate a Misdemeanour procedure and none for criminal, which may indicate a lack of capacity on the part of inspectors for more to go out on the area, conduct more surveillance and impose more penalties.

According to the Mayor of Skopje, Petre Shilegov at a session of the Council of the City of Skopje, the number of fines doubled compared to 2017. As he added, in September In 2018, 137 mandatory fines were imposed, and in October 220 warnings and 132 fines. They were penalized enterprises that did not comply with the conditions for the obtained B-integrated environmental permit, buildings, as well as persons who have acted inappropriately with waste.

For now, the fight for a cleaner environment continues to be waged by paying fines offenses, as well as criminal proceedings, which usually end in fines or with annulment of judgments.

1.6.5.6 Appeal against a decision or decision to the Government Commission

Among the tools available to citizens in accordance with the Law on Animals The appeal of a decision or decision to the Government Commission for resolving the case is also an environment administrative matters in the second instance, ie the Commission for deciding in the second instance upon appeals of decisions issued by the State Environmental Inspectorate. Within 14 to 30 days from the publication of a decision, it may appeal to the relevant public authority, a if this mechanism does not work, an administrative dispute can be initiated.

1.6.6. Regional mechanisms for judicial protection available to citizens in RNM

The European Court of Human Rights is a mechanism that can be used if exhausted all legal remedies in the home country and if the state has ratified it The Convention on Human Rights.

The Convention distinguishes between two types of complaints: individual, filed by a person, group of individuals, company or NGO and an inter-state appeal filed by one state against another. Since the founding of Court, almost all appeals are filed by individuals who have addressed their own cases directly to the Court, being considered victims of one or more violations of the Convention.

Complaints can be filed directly by individuals. Help by a lawyer is not necessary at the beginning of the proceedings. It is enough to be sent to the Court the correctly completed complaint form, as well as the necessary documents related to the complaint.

However, the registration of an appeal by the Court does not guarantee that the appeal will be admissible or the matter in question will be settled. The system of The Convention provides "easy" access to the Court, allowing each individual to file a complaint, even if he / she lives in a remote region of the Member State or if does not own any financial assets.

Having in mind the above, there are no costs for proceedings before the Court.

Complaints must meet a number of criteria so that they can be declared permitted by the Court. Otherwise, the appeals will not be considered at all.

The applicant must have been, personally and directly, a victim of the Convention's violations and must suffered significant damage. Complaints can only be filed against one or more States Parties to the Convention and not against any other State or individual, NGOs and states have the right to appeal. They by the President of the Court may be allowed to intervene in the proceedings as third party. The President of the Court may allow another person, other than the applicant, as well as to any State Party to the Convention, other than that against which the complaint was filed, to intervene in the procedure. This situation is called intervention on the third side. The person or state in question has the right to submit submissions and yes participates in public hearings.

When the Court receives a particular appeal, it may decide that the State against which it is has been submitted, it should take some temporary measures, while in the meantime the Court considers the case. These measures usually consist of a request to the state to refrain from taking certain actions.

Some complaints may be qualified as urgent and their resolution is priority. This is the case in cases where there are allegations by the applicant that he or she is in imminent danger of physical injury.

With regard to the case law of the European Court of Human Rights (ECtHR), where there is linking environmental protection to the right to life and other rights such as the right to protection of private and family life, the right to an effective remedy cases are:

L'Erabliere ASBL vs Belgium. Procedure of the non-governmental environmental organization which disputes the urban planning permit, rejected because it did not describe the facts of the case, but the court knew the facts from before litigation.

Locascia and Others v. Italy (no. 35648/10) initiated by 19 applicants living in the municipalities of Caserta and San Nicola La Strada under Article 2 and Article 8 of the Convention are complain about the risk to their health and to the obstruction of the enjoyment of private life and home due to the activities of the factory LO Utaro and the failure of the authorities to provide cleaning after the plant has closed. This case is ongoing.

Cordella and Others v. Italy (no. 54414/13) (52 applicants) and Ambrogi Melle and Others v. Italy (no. 54264/15) (130 applicants). These applicants, who live near Taranto, claim that the authorities failed to take appropriate measures to protect the animal environment and health of persons, and refer to the violation of Articles 2, 8 and 13 of the convention. This case is ongoing.

SECTION II: JUDICIAL PRACTICE IN EUROPE WITH THE FOCUS ON THE ENVIRONMENT AND THE FREE LEGAL AID

2.1 Introduction - development of case law

At the international level, ie within the UN, if a certain country violates it the right of their citizens, they can individually or collectively file complaints for violating their rights protected by the optional protocols of some of conventions to the Human Rights Committee guaranteed by the International Covenant on Civil and Political Rights civil and political rights; Committee on the Elimination of All Forms of Racial Discrimination for the rights guaranteed by the Convention on the Elimination of Racial Discrimination; The committee to eliminate discrimination against women for the rights guaranteed by the Convention on prohibition of all forms of discrimination against women; Committee against Torture for Rights guaranteed by the Convention against Torture; Committee on the Rights of the Child guaranteed by the Convention on the Rights of the Child, the Committee on the Rights of the Child with a disability under the Convention on the Rights of Persons with Disabilities and the like. In within the framework of the Aarhus Convention it is the Coordinating Committee or the so-called Aarhus's appeal committee. We can view these procedures as out-of-court mechanisms. On the other hand, there are two key regional judicial mechanisms that guarantee access to justice citizens of the member states of the European Union and the member states of the Council of Europe.

2.1.1 European Court of Justice

The Court of Justice of the European Union[83] (Court) is competent to monitor whether EU laws are equally interpreted and applied in each of the Member States, in other words, whether EU laws are identical for all parties and in all circumstances. For this purpose, the Court checks the legal side of the actions of the EU institutions, checks whether the member states fulfil their obligations and interpret EU laws at the request of national courts The court has the power to resolve legal disputes between member states, institutions of the EU, businesses and individuals. In order to deal with the thousands of cases it receives, The court is divided into two main bodies: the Court of Rights, which works on preliminary claims judgments obtained from national courts, certain acts of annulment and appeals; and A general court that rules on all acts of annulment initiated by individuals and companies, as well as some similar procedures initiated by Member States. The tribunal for the public administration, which is a special tribunal, judges in disputes between the EU and its own officials..

The court shall rule on the cases submitted to it. The four most common types of cases are:

1. *Preliminary judgment.* The courts in each EU member state are responsible for the proper conduct implementation of EU laws in that country. If a national court has what any doubt about the interpretation or validity of EU laws, he can, and sometimes does and must seek advice from the Court of Justice. This advice is given in the form of a binding "Preliminary verdict". These verdicts are an important channel for citizens to determine how much to some extent, through their national courts, EU laws affect their lives.
2. *Procedures for determining injury.* The Commission or (very rarely) a particular Member State, such a procedure may be initiated if they, for whatever reason, consider it certain a Member State shall not fulfil its obligations under EU law. The court is investigating them all findings

83 Description of the European Union - How the European Union works, publisher European Commission, 2012, European Commission official web side, European Neighborhood Policy And Enlargement Negotiations, European Commission - Enlargement - Europe agreement, https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/europe-agreement_en [accessed 4.05.2019]

and makes a judgment. If an injury is found, the defendant a Member State must correct things without delay in order to avoid penalties The court may apply them.

3. *Cancellation actions.* If any of the Member States, the Council, the Commission or (under certain conditions) Parliament considers that a certain EU law is illegal may request the Court to annul it. This "cancellation procedure" may it is also used by individuals who want the Court to repeal a particular law because it has direct negative consequences on them.

4. *Actions for inaction.* According to the Agreement, the European Parliament, the Council and The commission should make certain decisions under certain conditions. If you don't Member States, other EU institutions and (under certain conditions) individuals do so or companies, may file an appeal to the Court for official registration of the offense.

5. *Procedure.* The Court of Justice is composed of 28 judges, one from each member state, to ensure that it represents all national legal systems. To the Court eight "attorneys general" assist, giving opinions on the cases submitted to the Court. They must do so publicly and objectively. Judges and general ombudsmen are either former members of the highest national courts or legal experts who enjoy a high reputation and whose independence is beyond doubt. They are appointed by the governments of the member states by mutual agreement. Each of they are appointed for a term of six years. Judges in this court elect a President whose term is three years. The Court of Justice may be convened in its entirety, in large part a session of 13 judges or sessions of five or three judges, depending on the complexity and the importance of the case. About 60% of the cases are considered by the five-judge session 25% of them are considered by the three-judge session.

The General Court is also composed of 28 judges appointed by the Member States with six-year term. Judges in the General Court also elect a President from among themselves rows with a term of three years. This court shall meet within three or five sessions judges (sometimes just one judge) to conduct hearings. At the hearings for about 80% of the cases in the General Court are attended by three judges. The grand session of 13 judges or the full composition of 28 judges may sit together if the complexity and the importance of the case justifies that.

All cases are submitted to the Court Registry, and in each case, they assign a special judge and attorney general. Immediately after submission begins the trial, which takes place in two stages: written and oral. In the first stage all involved parties submit written statements, and the judge handling the case prepares a report which summarizes the statements and establishes the legal basis of the case. The court discusses the report at its general meeting and decides which court will hear the case and whether oral arguments are needed. Then comes the second stage - the public hearing, when lawyers present their case to judges and attorneys-general, who they can ask questions about them.

After the oral hearing, the general lawyers appointed for the given case prepare your opinion. According to this opinion, the judge prepares a draft judgment submits to other judges for consideration. Judges then discuss and make it its judgment. The court renders its verdicts by a majority vote and imposes them on public hearing. In most cases, the text of the judgment is translated into all official ones EU languages on the same day. Separate posts are not included.

Not all cases follow this procedure. For emergencies, there are simplifications and urgent proceedings enabling the Court to reach a judgment within about three years months.

2.1.1.1 Court of Justice and implementation of the Aarhus Convention

The analysis so far shows that access to justice at the European level is also environmentally friendly cases contain several major shortcomings especially at the level of national courts[84] which do not are always able to support the judicial protection system present at EU level for direct environmental activities.

Faced with the highly conservative approach of the EU courts regarding the requirements for admissibility, as suggested by several European researchers, would be the solution to amend Article 263 (4) of the EU Treaty in order to make it better access to justice in environmental cases at EU level.[85] In fact, with the adoption of the Aarhus Convention bypasses EU legislation in some way the difficult procedure for changing members of the EU Treaty, only to allow for a broader access to justice in environmental cases.

By refusing to use the Aarhus Convention as a reference criterion for A review of the legality of the Arhus Regulation, SPEU annulled the expectations of those who believed that EU judges would finally be ready to leave, according to expert public, outdated Plaumanov approach in environmental cases.

According to the expert public, the SPEU decided to ignore Article 9 (3)[86] of the Aarhus Convention, despite the explicit reference to the latest provision in the Aarhus Convention.

The indirect result of this is that it has limited the relevance of the Aarhus Regulation of decisions that are capable of influencing the interests of the recipients of those decisions, thereby the administrative audit for most of the EU acts in the area of environment.

Sharp critics argue that SPEU judgments should be classified as significant a step backwards for judicial protection in environmental issues at EU level.

It has been established that instead of addressing the current EU failures in terms of access to justice in environmental cases, the SPEU approach paves the way for another decade non-compliance by the EU in the area of access to justice in cases that affect it environment..

2.1.2. European Court of Human Rights

The European Court of Human Rights was established in 1959. He edits the individual or state claims for alleged violations of civil and political rights established in the ECHR. The court has been operating full-time since 1998 and can be reached directly to address individuals. In almost fifty years, the Court has handed down more than 10,000 judgments.

The rulings are binding on the countries concerned and have forced governments to change theirs legislation and administrative practice in a wide range of areas. The Court's practice makes the Convention a powerful tool for meeting new challenges and strengthening the rule of law and democracy in Europe. The court is based in Strasbourg court is monitoring the human rights of 800 million Europeans in 47 countries. Council of Europe members ratifying the Convention.[87]

Part II (Articles 19-51) of the ECHR regulates the Court of Human Rights, its structure, organization and jurisdiction. The court's rulebook is a special document that regulates the whole procedure in more detail. The ECtHR is an international tribunal established in 1959. The Court decides on appeals lodged by individuals (Article 34) or States (Article 33), in which there are appeals for violation of civil and political rights established by the convention. The judgments of the

84 EU Treaty, EU Courts are bound by international treaties concluded by the European Union Commission official web side, European Neighbourhood Policy and Enlargement Negotiations, **European Commission - Enlargement - Europe agreement,** Article 216, https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/europe-agreement_en [accessed 11.04.2019]

85 Hendrik Schukens, Access to Justice in Environmental Cases following Judgments of the Court of Justice, January 13, 2015, https://www.utrechtjournal.org/articles/10.5334/ujiel.di/ [accessed June 21, 2019]

86 The Aarhus Convention, "Each Party will take care of, the subjects of the public (which satisfy them the criteria set out in the national law, if they exist) to have access to administrative or judicial procedures for challenging acts and omissions by physical persons and public authorities, which are contrary to the provisions of the national law of that contracting party regarding the environment.", Art. 9, paragraph 3

87 European Convention on Human Rights, https://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf [accessed on 25.04.2019]

Court are binding on the States Parties and as a result those judgments, governments change legislation and administrative practice in more areas.

Article 35 sets out the eligibility criteria: The court may accept a case only after all domestic remedies have been exhausted, on the basis of general accepted principles of international law and within 6 months from the date on which the final internal decision was made. The court will not accept any individual appeal filed under Article 34, when (a) the appeal is anonymous; or, b) when in it is essentially the same as an appeal that the Court has previously considered or has already submitted to another international investigative or judicial instance and if it does not contain new facts. The court will not accept any individual complaint submitted under Article 34, if assessed that: a) the appeal is incompatible with the provisions of the Convention or its Protocols, if: is obviously unfounded or if it abuses the right to an individual appeal, or (b) the applicant has not suffered significant damages unless the rights have been respected defined in the Convention or its protocols requires consideration of the appeal according to the merits and provided that a case cannot be rejected on the grounds that it is not was duly reviewed by a domestic court. 4. The court will dismiss any appeal that considers it unacceptable on the basis of this article. That way the Court can act in any degree of procedure.[88]

The number of judges is equal to the number of States Parties to the Convention (currently 47). Judges have the status of a single judge and do not represent the country of origin selected. The term of office of judges is nine years without the possibility of re-election.

Judges review cases in four different formations:

1. An individual judge shall consider appeals which are obviously inadmissible (Article 27);
2. A commission composed of three judges may decide unanimously on admission. the nature and legal rights of the party in the case, which are already covered with the well-established case law of the European Court of Human Rights (Article 28);
3. A Council of Seven Judges shall decide by a majority vote on admissibility. the nature and legal rights of the party in the case (Article 29); and
4. in special cases, the Grand Judicial Council composed of 17 judges reviewing- cases referred to them or after the Judicial Council has relinquished jurisdiction (Article 30) or when a request for transfer of the subject to development was accepted. view before the Grand Judicial Council (Article 43).

Following the rulings of the European Court of Justice in which an injury was found, represents the task of the *Committee of Ministers*, which should ensure that States take general measures necessary to prevent further violation (change in legislation, case law, rules of conduct). Besides this ensures that the applicants are compensated the European Court of Human Rights and in some cases the taking over of others specific measures to ensure full compensation (reopening of the procedure, lifting of the ban or order to confiscate, granting permission for residence, etc.).

How to submit an application to the European Court of Human Rights[89]

The official languages of the European Court of Human Rights are English and French, but if it is easier for you, the party can apply in writing to the secretariat of an official the language of one of the States ratifying the Convention. The complaint form, fully completed and signed by the applicant and his / her representative, e necessary to initiate the procedure. If the complaint is filed by e-mail or fax, the paper application form should be delivered by mail. But first it is important to exhaust domestic remedies. Below are a few relevant cases from the Court.

88 Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4 November 1950, Art. 35 https://www.echr.coe.int/Documents/Convention_MKD.pdf [accessed 29.05.2019]

89 Handbook of European Law on Access to Justice, Agency of the European Union Fundamental Rights and Council of Europe, 2016 https://www.echr.coe.int/Documents/Handbook_access_justice_ENG.pdf [accessed 23.04.2019]

Hammer v. Belgium

European Court of Human Rights judgment of 27 November 2007 The applicant owned a house built by her parents on forest land where the building did not was allowed. A lawsuit was filed against her for building the house violation of relevant forest legislation and the courts found that it had to return the land to its previous condition. The house was violently demolished. The applicant claimed that her right to privacy had been violated.

For the first time, the Court held that, although not explicitly protected by the Convention, the environment is a value in which both society and public authorities have a strong interest.

Economic considerations, and even property rights, should not be a priority in terms of environmental concerns, especially when the state has laws in the area. As a result, public authorities had a responsibility to protect it environment.

In Hammer's case against Belgium, there was a situation where the applicant owned a house built by her parents. The house was located on a forest land where they were not permitted and permitted buildings of this kind. The applicant had to return the land to previous condition, ie in that condition in any building before the house is built.

Because she did not do so, the illegal house was violently demolished. The applicant appealed to the competent court arguing that her right to private life with such actions he was injured. The court was guided by the decision the following relevant facts: the right to property is a personal right and a private interest, while a healthy environment is an equally important value not only for public authorities, but also for the whole society.

Hence, the right to a healthy environment is a collective right, that is, a public right interest and priority over property rights.

Conclusion: Collective rights and the general public interest are always a priority and higher importance versus the individual rights of the individual. Although the environment is not explicitly protected by the Convention, it is a matter of public interest..

2.1.3 Committee on Compliance with the Aarhus Convention

The right of access to justice is a term that describes the third pillar of the Aarhus convention and implies the right to a remedy. This right applies to a possible review of decisions implemented by the relevant secondary bodies, through the use of legal drugs, in connection with the first two pillars of the Aarhus Convention - the right of access to information and the right of the public to participate in decision-making, but also in regarding procedures for reviewing offenses and omissions by private and public entities bodies that are contrary to the provisions of national animal law environment. The right of access to justice, in the sense of the Aarhus Convention, is indicated the right of access to available legal remedies before a court of law or other independent and an impartial body established by law.

In October 2002 at the first meeting of the signatory countries to the Aarhus Convention, held in Luca (Italy), the Decision I / 7 was adopted, which established a mechanism for overseeing the implementation of the provisions of the Convention - the Aarhus Appeal mechanism. The committee for harmonization of the Aarhus Convention was established for the purpose to meet the requirement of Article 15 of the Convention which constitutes the legal basis for establishment of the Aarhus Appeals Committee, a body of *"non-confrontational, non-judgmental and consultative nature, to consider compliance with the provisions of this Convention* . Such a definition of the Committee indicates that its purpose is not to resolve disputes against certain states, but to help identify deficiencies in transposing and enforcing the provisions of the Convention and making its own recommendations for their annulment.

The Convention has a single mechanism for verifying compliance, and it can be activated in four ways:

1. The Party (the country signatory to the Convention) shall submit a request for its own compliance with the Convention;
2. The Party (the country signatory to the Convention) shall submit a request concerning compliance on the other hand (country signatory to the Convention);
3. The Secretariat of the Convention refers to the Committee, ie submits a re-ferrate;
4. A member of the public may file a complaint against a signatory country- as in the Convention

The Aarhus Appeal Committee has 3 main functions:

a) review all complaints, reports or communications;

b) upon request of the Meeting of the Parties to prepare a report regarding transposing and implementing the Convention in certain countries signatories;

c) to observe, evaluate and assist in the transposition and implementation of Convention in the signatory countries. The legal power of the Aarhus Appeals Committee is that after the report and the recommendations of the Committee, the Meeting of the Parties may take appropriate measures to achieve this full compliance between the Convention and the national legal systems of the countries signatories.

The legal power of the Aarhus Appeals Committee is that after the report and the recommendations of the Committee, the Meeting of the Parties may take appropriate measures to achieve this full compliance between the Convention and the national legal systems of the countries signatories.

The measures taken by the Meeting of the Parties, as the highest body of the Convention, are most often in the form of advice, recommendations, warnings, etc. However, in accordance with Decision I / 7, the Meeting of the Parties may request the affected country signatory to submit a strategy, including a timetable, for achievement full compliance with the Convention and to submit regular reports on the implementation of the proposed strategy, or to declare a declaration of non-compliance with the Convention.

The strictest measure that the Meeting of the Parties can bring is the suspension of the special ones rights and privileges granted to the affected signatory country on the basis of That is, the Convention should be excluded from the system of the Aarhus Convention.

This harmonization mechanism is unique in international law for the protection of environment because it allows members of the public to communicate it its concern for the compliance of the signatories directly with the Committee of international legal experts, who in turn are authorized to investigate the circumstances of the case (Committee for Harmonization of the Aarhus Convention). However, the Compliance Committee does not may make binding decisions, but only recommendations until the final meeting on the Parties. However, practice has so far shown that the Parties regularly try to comply with the recommendations of the Coordinating Committee.

One of the ways in which proceedings can be instituted before the Aarhus Appeals Committee is submission of communication (complaint) by the public. This legal option is available for any natural or legal person, including civil society organizations.

The public can communicate on several grounds:

- *General institutional shortcoming - the* signatory country does not take the necessary steps legislative, regulatory or other measures required for the implementation of Convention in accordance with Article 3, paragraph 1;
- *Failure to meet the specific objectives of the Convention* - the signatory country undertakes certain legislative, regulatory or other measures to implement Convention that does not achieve its goals; and

- *Specific violation of a right or obligation under the Convention* - a signatory country takes concrete action that violates a specific provision of the Convention. The communication is recommended to be sent by e-mail to the Secretariat of the Convention..

Communication should be concise and not unnecessary information. In cases where the actual situation is complex, it is necessary to write a brief summary of the content of the communication at the outset. However, communication should contain the following information::

1. personal information about the entity that submitted the application;
2. listing the affected country;
3. description of the factual situation and the nature of the alleged discrepancy between Convention and National Legislation;
4. stating the violated provisions of the Convention;
5. description of the used domestic remedies;
6. submission of supporting documents (relevant national legislation, specific decisions / judgments, etc.);
7. a brief summary of the relevant facts;
8. signature; and
9. address.

Before submitting a communication, it is not necessary for the applicant to have one legal representative, he must be familiar with the basic criteria according to which he can to initiate a discussion before the Committee. This step is necessary so that it is not rejected communication due to certain formal shortcomings.

Consequently, the applicant should know that:

- equently, the applicant should know that:
- Communication can only be filed against a state that is a party to the Aarhus convention and only against actions taken after the affected state undertook to abide by the provisions of the Convention. According to Article 20 of The convention becomes binding on the 90th day after it is submitted the instrument for ratification, acceptance or approval by the country signatory;
- Communication can be filed against a state that has not been exempted from the competence of the Aarhus Appeals Committee for Public Communications;
- It is advisable to be exhausted all domestic remedies that can effectively cancel it or to compensate for the negative impact of the specific action;
- Communication can be filed for violation of an individual right that is guaranteed by the provisions of the Convention. However, communication is tolerable in order to improve the transposition and implementation of the Convention in the countries signatories, not for the protection of individual rights (indirectly achieved and this purpose);
- The Aarhus Appeal Committee is non-confrontational, non-court and consultative body. The committee has no intention of *"pointing the finger at the signatory countries." violate the Convention, but to identify and assess deficiencies in the signatory countries and, in a constructive atmosphere, to contribute to them exceeding*[90]*"*.

2.1.4. UNECE - UN Economic Commission for Europe

UNECE (United Nations Economic Commission for Europe) concerns about animal problems environment dating back to 1971, when a group of senior advisers was formed UNECE governments on environmental issues, which led to the formation of the Committee on Environmental Policy, which now meets once a year. The committee provides a collective political direction in the area of environment and sustainable development, prepares ministerial meetings, develops international

90 Snezana Misic, Guide to Implementing the Aarhus Convention, United Nations Economic Commission nations for Europe 2000, p.149, http://documents.rec.org/publications/PPTtoolkitMAC.pdf [accessed June 7, 2019]

environmental law and supports international initiatives in the region. The committee is working to support countries to improve their environmental management and cross-border cooperation, as well as to strengthen the implementation of regional environmental commitments UNESCO and to promote sustainable development in the region.

Its main goal is to assess countries' efforts to reduce the overall burden of pollution and to manage their natural resources, to integrate environmentally and socio-economic policies, to strengthen cooperation with the international community, to harmonize environmental conditions and policies throughout the region and encourage greater public involvement and discussions about the environment and adoption decisions.

The committee is the overall governing body of UNESCO's environmental activities.

The work of the Committee is based on several strategic pillars::

- Providing the Secretariat for the "Environment for Europe" process and participation in the regional promotion of Agenda 21;
- Development and implementation of the UNECE Environmental Assessment Guidelines in non-OECD UNECE countries;
- Monitoring UNECE activities for monitoring, evaluation and reporting environment;
- Increasing the overall effectiveness of multilateral animal contracts UNECE environment and facilitate the exchange of implementation experiences of Multilateral Environmental Agreements: Convention Espoo, Arhuska Convention, Convention on Transboundary Air Pollution at a Distance, Convention on the Protection and Use of Cross-Border Watercourses and International Lakes and the Convention on the Transboundary Consequences of Industrial Accidents.
- Participation and / or facilitation of the exchange of experiences in a number of inter-sectoral activities undertaken under the auspices of UNECE (for example, education for sustainable development, transport, health and the environment, green construction) or in partnership with other organizations (eg security initiative, European protection process environment and health).

2.1.5. Judicial practice by national courts in countries around the world and Europe

2.1.5.1 Judicial practice in Armenia

Teg**hout case 30 October 2009 and 1 April 2011**

Summary No. 1 (October 30, 2009)

Three NGOs - Transparency International Anti-Corruption Centre, Ecoera and the Helsinki Committee's office in Vanadzor - filed a case before The Administrative Court of Armenia to challenge the legality of administrative acts that allow the extraction of copper-molybdenum in the Teghout region. The Administrative Court rejected it the complaint, referring to Articles 3 and 79 of the Law on Administrative Procedure of Armenia.

The mentioned articles stipulated that legal entities and individuals have access to justice only in cases where administrative actions, omissions and actions violate or may directly infringe their rights and legitimate interests.

Dissatisfied with the court's decision, the NGO Transparency International and Ecoera have asked the Court of Cassation of Armenia to overturn the decision on the basis of Article 9 of the Aarhus Convention, which is an integral part of the legal system under Article 6 of the Constitution of Armenia. The Court of Cassation stated that the NGO Ecoera is an entity established in compliance with Armenian law on non-governmental organizations and meets the requirements of national legislation and promotes environmental protection on a case-by-case basis of the mission and the objectives set out in its statute. Thus, the Court found that the NGO Ecoera has the right of access to justice before the courts on related matters with the

environment. However, the Court found that the NGO Centre for Anti-Corruption Transparency International did not have enough interest in the case and therefore did not have the right of access to justice in the present case. Based on the above decision, The Administrative Court was required to consider the merits of the case..

Case Summary No. 2 (April 1, 2011)

In a judgment of 24 March 2010, the Administrative Court of Armenia upheld its conviction position on the situation of the NGO Ecoera, according to which individuals and legal entities cannot seek protection of "any or any abstract right" in court. The demand for ecological a non-governmental organization was once again rejected. Dissatisfied with this, NGO Ecoera re-appealed to the Court of Cassation of Armenia. However, the Court of Cassation in its Decision of 1 April 2011 stated: ".... In its decision no. 906, The Constitutional Court of Armenia, considering the constitutionality of the word "his / her" after the term "violated" Article 3 paragraph 1 of the Code of Administrative Procedure of Armenia provision be in accordance with the Armenian Constitution. From the logic of Armenian legislation, it follows that effective protection of the rights of the injured includes, inter alia, the rights to be exercised in a court of law for subjects whose rights have been directly violated the logic of Armenian legislation follows that effective protection of the injured rights include, inter alia, to apply to a court for entities whose rights are direct injured. Based on the conclusion of the Constitutional Court and regarding the relevant provisions of the Armenian Code of Administrative Procedure and the Armenian Code of Civil Procedure, The Court of Cassation rejected the appeal and upheld the judgment of the Administrative Court of Armenia from 24 March 2010[91].

Decision of the Constitutional Court of Armenia No. 906

The office of the NGO Helsinki Citizens' Council in Vanadzor has submitted a request to The Constitutional Court of Armenia to rule on the constitutionality of the words "his / her its", after the term "violated" in Article 3 of the Armenian Code of Administrative Procedure.

According to the applicant, the term "protection of his rights" provided for in Article 19 from the Armenian constitution has a broader meaning that includes the concept of protection of public interest. After reviewing the case, the Constitutional Court found Article 3 of the Law for administrative proceedings to be in accordance with the Constitution. Judgment of the Constitutional Court was based on the following principles: According to the logic of Article 19 of the Armenian Constitution, the entity may seek protection of its rights. Therefore, the applicant must be legitimate interest in the case. At the same time, Articles 18 and 19 of the Armenian Constitution and Article 6, paragraph 1 the European Convention on Human Rights and Fundamental Freedoms does not rule out the possibility to seek protection of violated rights on behalf of the public. In addition, the Constitutional Court stated the following:

1. Considering the role of NGOs in the development of the state and civil society and in order to increase the efficiency of their activities, the Constitutional Court found that the Armenian Code of Administrative Procedure could cover members of the affected non-governmental organizations (based on their statutes) to initiate them cases before the court to protect the interests of the public. Therefore, the current developments at the *actio popularis* institute in Europe need to be taken into account. This kind regulation will not only promote the protection of the rights of the injured and the legitimate interests but will also increase the role of NGOs as an essential part of civil society.

2. In all cases, the main approach is that actio popularis should be excluded except if there is no legal interest. The Constitutional Court concludes that in order to increase the effectiveness of social control over the state and local authorities and to guarantee the implementation of

91 Case Summary posted by the Task Force on Access to Justice, http://www.unece.org/fileadmin/DAM/env/pp/a.to.j / Jurisprudence_prj/ARMENIA/Armenia_2009_2011_Teghout.pdf [accessed 23.04.2019]

the main functions of non-governmental organizations, further the development of the law should take into account the stated legal position of the Court.

Note: The decision of the Constitutional Court was directed to the decision of the Court of Cassation of Armenia, following an appeal filed by the NGO Ekoera. The NGO challenged him denial of the situation, and when the Administrative Court of Armenia requested a review the legality of administrative acts that allow copper-molybdenum extraction in the Tegut region. The NGO Ecoera submitted a report (ACCC / C / 2012/62) to the Committee on harmonization of the Aarhus Convention, which is currently being considered.[92]

2.1.5.2 Court practice in Belgium

Lenaerts c.s. v. nv 's Heerenbosch, Nr. 70/2007

Context

The act of 12 January 1993 "determining the right to act to protect." the environment "enables the ecological organizations that satisfy them certain requirements to initiate a procedure for cessation of actions that are obvious for violations of environmental law or are serious threats to such Misdemeanour s before the President of the Court of First Instance (District Court). The law authorizes it the president of the first instance court to determine and, where appropriate, to order termination of obvious offenses or serious threats to such offenses or to order measures for prevention of environmental damage.

In addition to environmental protection organizations, administrative and municipal authorities can take measures to stop it. In addition, Article 271 the new municipal law allows one or more residents of a municipality to act on behalf of the municipality if the mayor and the elders do not do so.

It was soon accepted in court practice that this provision could be combined with the Act of 12 January 1993, so that individual citizens will be able to themselves adopt such a procedure in favour of a municipal body that meets the requirements which will take the place of the municipality that refuses to take such action. This court practice was approved by the Supreme Court (Hof van Cassatie, 14 February 2002, RW 2001-2002, 1504), when from the joint reading of the above two actions it was determined that if the mayor and the elders do not take action in those circumstances, one or more residents can take legal action on behalf of the municipality to protect the animal environment. Interest should not be demonstrated because the municipality is assumed to be there is interest. The Supreme Court also ruled that the termination procedure did not depend on the state of speed or urgency (Hof van Cassatie, March 5, 1998, TMR 1998, 161).

Case

Some residents of the municipality of Ostmal in connection with the stay, on behalf of that municipality have filed Misdemeanour procedure based on a construction permit from the same municipality which allegedly was granted illegally. The resident filed the lawsuit after the state council (Supreme Administrative Court) rejected the request for suspension of the permit. The President of The Antwerp Court of First Instance declared the act inadmissible, stating that Art. 271 of the new municipal act cannot be applied when the permit was submitted by the municipality in whose favour the residents took action. Upon appeal, the Appellate Court in Antwerp court issues constitutional question for preliminary ruling to Constitutional Court, asking the Court whether the said provisions violate Articles 10, 11 and 23 of the Constitution if are interpreted in such a way that the termination procedure is excluded when the municipality submitted the building or environmental permit.

92 Case Summary posted by the Task Force on Access to Justice, http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/ARMENIA/Armenia_2010_Helsinki_Citizen__s_Assembly.pdf [accessed 23.04.2019 year]

Judgment of the Court

The Constitutional Court has ruled that if these rules are interpreted in such a way that the right to "Action substitution" may not be used by individual citizens in cases in which (by hypotheses illegal) permission the same local authorities submitted for critical activity that harms the environment would create such an interpretation a difference in treatment between citizens that cannot be justified. Such an interpretation violated the principle of equality and non-discrimination contained in Articles 10 and 11 of the Constitution. Only the interpretation that allows citizens to introduce such an action is in accordance with the stated provisions of the Constitution. As a result, the action had to declared itself permissible.[93]

Ecological NGO VZW Milieufront Omer Wattez v. Provincial government of Ost-Vlaananden (VZW Vlaams Zweefvliegcentrum, No. 193.593))

The environmental permit was issued by the provincial government of Ost-Vlaananden for work at the airport for sailboats in a valuable agricultural area. The decision was made by side of VZW Milieufront, claiming it violated the planning sketches for such an area. Regarding the issue of admissibility, the State Council stated that according to his bylaws, VZW Milieufront Omer Wattez is an environmental NGO which is active in the region of the Flemish Ardennes, which includes the city of Gerasbergen. The collective interest in the operation of NGOs is sufficiently specialized and refers to land use planning, environmental protection and conservation nature. This goal does not coincide with the general interest, nor with the individual interests of its members. Instead, it stems from the combined reading of Article 2, paragraph 5 and Article 9, paragraph 2 of the Aarhus Convention, which indicate that environmental NGOs such as the applicant should have effective access to justice. In the Convention, environmental NGOs should have access to State Council. Thus, the decision of the provincial government of February 2, 2006 for granting such permission is revoked[94]

In the mentioned case, where it is a question of a decision for issuing a disputed construction permit for the construction of an airport for sailboats in the agricultural area, the State Council as a competent authority has authorized a non-governmental organization operating in the area of animals environment to have active legitimacy to challenge the decision, ie to appear as party in an appeal procedure against the first instance decision.

The legitimacy and legality of the said NGO draws directly from Article 2 paragraphs 5 and 105 Article 9 of the Aarhus Convention which explicitly states that environmental NGOs organizations need to have effective access to justice. In this case, they should have access to the State Council which is competent to decide on the appeal. The outcome of the procedure is annulment of the decision of the provincial government of 02.02.2006 for granted permission.

Conclusion: The State Council has recognized the legal interest of environmental NGOs organizations so that as parties they can appear in the proceedings, ie in the specific one case in administrative proceedings. The direct application of Article 2 paragraph 5 and Article 9 of the Archives Convention allow access to justice for NGOs specializing in the area of environment.

93 Case Summary posted by the Task Force on Access to Justice from: 08.10.2011 http://www.unece.org/fileadmin/DAM/env/pp/compliance/TFon_A_to_J/Belgium_2007_Lenaerts.pdf [accessed 10.05.2019]

94 Case Summary posted by the Task Force on Access to Justice from 08.10.2011: http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/BELGIUM/ConseilEtatVZW_Milieufront/Belgium_2009_VZW_Milieufront.pdf [accessed 10.05.2019]

2.1.5.3 Court practice in Hungary

Case: Waste management in the village of Kaposmero

Material administrative decisions, such as permissions may be subject to complaints by those who have a legal position under the Law on Administrative Procedure before 2017-12-31 in Hungary. Such complaints must be submitted to the competent authority that made the first instance decision within 15 days from the submission of the decision to the party in the case. In case the deadline for submitting the appeal has expired, the party may request an extraordinary leave of appeal for an additional 8 days from the expiration date on a regular 15 days. Residents of Kaposmero, a small village in southwestern Hungary, noticed one day that machines for heavy earthworks arrived at the edge of their village. They soon discovered that it was a new waste management site on the outskirts of the village. Waste disposal was to be managed at the site, grinding bricks and concrete.

Residents also found that the building had the necessary permits issued by the competent authority, although they were not informed of any connection with the site.

As soon as they recognized the seriousness of the situation, the residents asked for a copy location permit. As soon as they received that permission, they filed an appeal within the deadline 15 days, within the legal deadline for any administrative legal remedy in Hungary. The response of the National Environment Agency, ie the appellate forum in that case, the residents' complaint was filed too late. The agency claimed that the time limit for appeal should be considered from the initial issuance of the permit and despite the fact that it was not disclosed to any citizen or posted online or otherwise publicly available. The agency claimed that the appellants they had to request an extraordinary leave of absence for an appeal for which there was a deadline of eight days. Because they did not do so, their complaint was outdated and therefore rejected as inadmissible without substantive examination of the details. Residents filed a lawsuit against this decision. In its ruling, the Pec Administrative and Labour Courts confirmed the validity of the citizens' arguments and an order was issued by the Agency to decide on the merits of the case and to take into account the material complaints of the citizens.

The court confirmed that the time available for appeal could not begin before anyone was informed in an appropriate manner of the decision itself which he wishes to appeal. Nobody he cannot be deprived of the right to a remedy if he has not had a reasonable way of knowing administrative act. If the decision of the competent authority has never been public published, especially for those with legal interest in the case and thus with the right of access to courts, then the right to a remedy becomes ineffective.[95]

In Hungary under the Administrative Procedure Code, appeals against material administrative decisions, such as permits, can be made by any resident who lives in the area covered by the permit. The deadline for appealing against the decision is 15 days after receiving the decision. It is submitted to the body competent to decide on the appeal of the first instance decision.

Conclusion: The deadline for appeals starts from the moment the decision is submitted to the subjects, ie from the moment they found out or could have found out in an unmistakable way that such a decision has been made.

95 Case Summary posted by the Task Force on Access to Justice, Hungary: Waste Management Site at Kaposmérő Village from: 12.03.2018 http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/HUNGARY/Hu_2018_Kaposmero_Summary.pdf [accessed 09.05.2019]

2.2 Concluding remarks

It can be concluded that the main practical challenges associated with processing cases related to the environment are:

Lack of legal awareness among individuals and NGOs about the possibility of appeal of administrative decisions; Lack of free legal aid mechanisms to support those interested individuals or NGOs to file administrative complaints in compliance with applicable law;

Lack of competent lawyers / legal specialists to deal with administrative environmental complaints;

Lack of specialized courses in the area of environmental law at the level of higher education to develop students' legal skills in referring to environmental issues in administrative or judicial bodies.

It should be noted that there are a small number of cases when a non-governmental organization acting as a plaintiff filed a lawsuit before the court on behalf of the public interest. Some of the challenges include the risk of recurrence of environmental damage when the judgment of the court cannot be enforced.

PART III: BEST PRACTICES IN SECURING THE ACCESS TO JUSTICE IN THE ENVIRONMENTAL AREA

3.1 Good practices for human rights and the environment[96]

UNEP, Office of the UN High Commissioner for Human Rights and the Special UN rapporteur on human rights and the environment have joined forces for identifying, promoting and exchanging views on good practices related to the use of human rights obligations and obligations to inform, support and strengthening environmental protection policy, especially in the areas of protection and environmental management.

The joint initiative identified practical and concrete examples of good practices where states and other stakeholders have successfully implemented their obligations human rights related to environmental protection and management. This one principle can be repeated in other contexts, which will increase understanding and awareness of the connection between human rights and the environment, including greater clarity in connection with their obligations.

Good practices were collected internationally, regionally, nationally and sub-nationally level through collaboration, consultation, questionnaires and surveys. In the process of identification of such practices and analysis of the practical aspects of the interaction between the two areas Human rights and the environment, UNEP and partners have identified challenges and problems in balancing the protection of human rights and animal protection environment. The lessons learned in relation to such an interaction have been identified, as well are available with good practices..

3.2 Actio popularis

In general, the right to a healthy environment is one of the most basic human rights.

On the other hand, a healthy environment is of public interest even if this is taken into account the legislature should provide for the possibility of actio popularis in proceedings and disputes violation of the right to a healthy environment. As positive examples and good practice, we need to consider some of the states in which actio popularis is enabled. This is the case in Portugal, which is probably a country with the widest availability of administrative and judicial remedies. Portuguese Constitution recognizes actio popularis in court proceedings, including public health proceedings, consumer rights, quality of life, environmental protection, cultural heritage, etc.

- In the United Kingdom, Ireland and Latvia, the broad interpretation of the courts on the concept of “interest” has led to the de facto recognition of actio popularis.
- In some countries actio popularis is possible for specific cases:
- In Spain there is actio popularis for land use planning, coastal waters, national parks and criminal law;
- In Estonia there is actio popularis for land use planning;
- In Slovenia for civil lawsuits, the Law on Environmental Protection gives them broad access to the civil courts of citizens acting as individuals or through communities, associations and organizations;[97]
- In the Republic of N Macedonia, the Constitution provides an opportunity for use of actio popularis.

96 Downloaded from the UN Human Rights and Environment Reporter’s website https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SRenvironmentIndex.aspx [accessed 20.06.209 year]

97 The Aarhus Convention: How to Access to Judicial Provisions? (Belgium 2 June 2008 year), https://ec.europa.eu/environment/aarhus/pdf/conf/closing_speech.pdf [accessed 13.05.2019 year

3.3 Good practices for access to justice in other areas

Because the new Law on Prevention and Protection against Discrimination[98] is part of the law framework for the protection of human rights, it is inevitable to look at it in terms of their regulation. This law regulates the prevention and prohibition of discrimination, forms and the types of discrimination, the procedures for protection against discrimination as well as the composition and the work of the Commission for Prevention and Protection against Discrimination.[99] The purpose of this law is ensuring the principle of equality and non-discrimination in the realization of human rights and freedoms rights.[100] Article 3 1 1 states that this law applies to all natural and legal persons.[101] Persons considered to be victims of discrimination may submit a complaint to the Commission, in writing or orally on record, without obligation to pay of fee and other compensation.[102]

The legislator has left room for the person who thinks he has been discriminated against to be able to the commission should be represented by an association, foundation or trade union prior consent.[103]

Associations, foundations or other organizations from civil society and institutions that have a justified interest in protecting the interests of a particular group or within its own activity dealing with protection against discrimination, can file a complaint, if show that they have been discriminated against by a certain natural or legal person more people.[104]

Individuals who initiate court proceedings for protection against discrimination are exempt from payment of court fees. The costs of court fees for individuals are borne by the budget of the Republic of N Macedonia.[105]

In a lawsuit on the side of a person who feels discriminated against an organ, organization, institution, association, trade union or other may join a person who, within the scope of his / her activity, deals with the protection of the rights of equality and non-discrimination whose rights are decided in the proceedings. About the participation of the mixer the court decides by applying the provisions of the Law on Civil Procedure.[106]

In truth, the essential elements of the new Law on Prevention and Protection against discrimination[107] remain unchanged, ie the new law only amended and better regulated legal provisions and solutions.

The most interesting thing is that, given the fact that it is one of the basic human rights (as well as human rights to a healthy environment), this proposal law allows actio popularis, ie a lawsuit for protection against public discrimination interest. Because we need to keep in mind that a healthy environment is also public interest, we consider that the need to enable actio popularis within the framework is inevitable of the law on free legal aid. This is a basic human right, a subject of public interest, and according to the Aarhus Convention should be subject to minimum costs in proceedings, whenever this right is violated. The right to actio popularis in a proposal the Law on Prevention and Protection against Discrimination is regulated in Article 35 paragraph 1, thus: Associations, foundations, or other civil society and informal organizations groups that have a legitimate interest in protecting the interests of a particular group or within are engaged in

98 Law on Prevention and Protection against Discrimination, Official Gazette of RNM, no. 101 of 22.5.2019
99 ibis, Art. 1
100 ibis, Art. 2
101 ibis, Art. 3 paragraph 1
102 ibis, Art. 23 paragraph 1
103 ibis, Art. 23 paragraph 2
104 ibis, Art. 23 paragraph 3
105 ibis, Art. 39 paragraphs 1 and 2
106 ibis, Art. 40 paragraphs 1 and 2
107 Law on Prevention and Protection against Discrimination (Official Gazette of RNM No. 50/10), Law on amending the Law on Prevention and Protection against Discrimination (Official Gazette of RNM no. 44/14), The Law on Amending the Law on Prevention and Protection against Discrimination ("Official Gazette of RNM" no. 150/15), http://www.mtsp.gov.mk/content/pdf/zakoni/2019/27.5Zakon%20za%20zastita%20od%20diskriminacija.pdf [accessed on 20.06.2019]

protection against discrimination in their activity, they can file a lawsuit, if they make it probable that the actions of the defendant discriminate against a larger number persons.[108]

This law goes so far as to allow the Commission to take office ex officio procedure for protection against discrimination whenever it is determined by all state bodies, bodies of local self-government units, legal entities with public authorizations and all other legal and individuals in the area of:

1. work and labour relations;
2. education, science and sports;
3. social security, including the area of social protection, pension and disability insurance, health insurance and health insurance protection;
4. judiciary and administration;
5. housing;
6. public information and media;
7. access to goods and services;
8. membership and action in trade unions, political parties, associations and backgrounds donations or other membership-based organizations;
9. culture and all other areas

Discrimination was committed on the basis of discriminatory grounds.[109]

The provision should always be taken into account in environmental disputes from the Law on Civil Procedure which regulates the provision of previous measures, it is subject to court costs. Namely, during the procedure, the court may propose to impose temporary measures on the party to prevent violent acts or for the purpose of removing irreparable damage.[110] Temporary measures are important in environmental disputes, because according to their nature, for the most part in some cases, the application of such measures would lead to the prevention or elimination of irreparable damage.

Given the fact that these are human rights, guaranteed by the Constitution of the state, they must be regulated on an equal footing, ie the right to prevention cannot and protection against discrimination to be regulated in a much more favourable way than it is this is done with the right to a healthy environment. We need to work to improve laws governing basic human rights to be legally sustainable solutions, so that all persons can be legally and legitimately protected.

The draft law on free legal aid has space, but also an unavoidable need to allow all persons (natural and legal) to have equal access to justice at all times when the right in the area of environment is violated, but even more to be provided for enabling *actio popularis*, because a healthy environment is in the public interest.

108 Law on Prevention and Protection against Discrimination Official Gazette of RNM, no. 101 of 22.5.2019, Art. 35 paragraph 1, http://www.mtsp.gov.mk/content/pdf/zakoni/2019/27,5Zakon%20za%20zastita%20od%20discrimination.pdf

109 ibis, Article 21 paragraph 1 item 15 in conjunction with Article 23 paragraph 4 and Article 3 paragraph 2 a

110 Law on Civil Procedure (Official Gazette of RM, No. 7 of 20.01.2011), Art. 407 paragraph 1, https://www.pravdiko.mk/wp-content/uploads/2013/11/Zakon-za-parnichnata-postapka-20-01-2011-prechisten-tekst.pdf [accessed 09.09.2019]

PART IV: RECOMMENDATIONS FOR MONITORING DEVELOPMENT OF MACEDONIAN POLITICS AND LEGISLATION ON FACILTATED ACCES TO JUSTICE IN ENVIRONMENTAL AREA

4.1 Recommendations for access to justice in the environment

The recommendations that emerge from this analysis are aimed at strengthening the institutions for acting in cases related to violation of the right to life and the environment as in previous as well as in court proceedings.

First, to strengthen previous legal aid to facilitate the resolution of legal issues problems before litigation, ie out-of-court settlement of disputes as a "cheaper" form of free legal aid, ie. mediation. For the purpose of the institute mediation to revive in Macedonian legislation, citizens should have easy access to relevant information in clear and understandable language.

Providing access to effective justice for all, ie reducing litigation costs under the Law on Court Fees, the Law on Administrative Taxes and the Law on Couplings procedure where it is provided for vulnerable categories of citizens, as well as other parties in accordance with these laws. In addition, Article 9, paragraph 4 of the Aarhus Convention states "*... with procedures 1, 2 and 3 will provide adequate and effective removal measures the consequences, including the issuance of court orders (where appropriate), that they will be fair, just, timely and* not too expensive. *The decisions of the courts and (always when possible) will be made available to the public.*"

So, access to justice should be facilitated by reducing or completely abolishing it administrative and court costs for cases in the area of environmental protection Despite the mitigating circumstances in the new Law on Free Legal Aid, expensive Expertise is still an obstacle for citizens and civic associations. Another

The problem that needs to be addressed is in terms of the quality of the expertise and whether it is the same can achieve the goal for which it was made, ie the connection with the impact on human health and life in terms of the capacity of the entire judicial system. It is proposed to consider the idea of establishing an Expertise Fund that would allow those experts interested in participating in cases of public interest in the environment, after preferential tariff or pro bono to offer available their skills, security equipment and conditions for expertise at the lowest possible cost, in accordance with Article 9, paragraph 4 of The Aarhus Convention.

As for access to justice in environmental cases, several procedures have been initiated that directly refer to Article 9 of the Aarhus Convention, which is ratified and as such is part of the domestic legal system and the same (procedures) are still ongoing.

Taking into account the programs for continuous training of judges and public prosecutors, it is obvious that the judges attended trainings every year on the Law on Animals environment and that special attention is paid to crimes in the area of the environment. There are even so-called green prosecutors, who are part of the European Network / Association, for whose activities there is no information available[111]. Academy for Judges and Public Prosecutors is open to cooperation with external experts and civil society organizations, so it exists space for more focused and specialized training related to the Aarhus Convention and the right in the area of environment, ie to study the case law of Committee for Compliance with the Aarhus Convention.

In this regard, the State, ie the institutions should pay more attention to promoting the right to free legal aid and provide greater visibility in the public at work of the institutions and

111 The European Network of Environmental Prosecutors was established in 2012 by the Academy of Judges and Public Prosecutors of the Republic of Macedonia, Introduction to European Law Contributions from the work of Foundation for International Legal Cooperation (IRZ) Macedonia Tom II, https://evropsko-pravo.info/mk/IRZ/Publications/Index/8e0d3789-60db-4f5f-b150-5bfedeb1947c [accessed 08.04.2019]

organizations responsible for the implementation of the LCP. In this direction is proposed to improve public awareness of opportunities for access to justice in the area of environment.

Also, the State, ie the institutions, should ensure the realization of the right to access information related to the environment, to ensure public participation and provide access to justice at a reduced cost of proceedings (under the Aarhus Act) convention).

There is a need for greater diligence of the judiciary in resolving cases environment, as well as greater engagement of the Public Prosecutor's Office in the area of initiating procedures related to environmental protection.

Having in mind that the new Law on Free Legal Aid does not exclude an animal environment as an area in which free legal aid can be sought, should be worked on to encourage individuals who meet the BPP criteria for use of the same. With greater promotion of this opportunity, visibility will be provided for the citizens, that is, the legal protection for access to environmental information will be affirmed.

At the same time, it will strengthen the implementation of the Aarhus Convention as existing mechanism for access to environmental justice.

Macedonian legislation allows for the joint submission of a lawsuit by a group of citizens (actio popularis), and they can receive a reduction / exemption from costs for procedure in accordance with the LCP and the Aarhus Convention, which will improve access to justice for settlements inhabited by members of marginalized and vulnerable communities, in addition that environmental impacts often have consequences for many people at the same time.

It is necessary to strengthen the capacities of the Academy for Judges and Public Prosecutors in in relation to environmental law and the Aarhus Convention, to be determined whether judges and public prosecutors acquire relevant knowledge on the subject.

If it is determined that there is room for improvement of the capacities of the Academy from this area, to approach the implementation of additional training and additional preparation of lecturers in order to improve access to justice in the area of environment.

It is proposed to provide information on the number of proceedings that have been initiated in relation to protect the right to a healthy environment and to calculate the success rate of the same, ie of the procedures related to environmental protection that have been initiated or ongoing.

It is also necessary to raise collective awareness of the importance and benefits, but and the consequences arising from environmental law and active promotion of this right.

According to international standards, it is necessary to introduce the right to a healthy life environment in multiple legal solutions, ie wherever possible, as separate category of rights, instructions and lessons for further action in cases where it occurs violation of the same.

There is a need to start a discussion with the involvement of the Ministry of Animal Affairs environment, the Ministry of Justice, the Prosecutor's Office and the judges who point out theirs role in enforcing access to justice and reducing barriers.

At the same time, it is necessary to improve the information system for the general public the rights and obligations arising from the Constitution, ratified international agreements and legal regulations on environmental protection (Environmental Law, Law waste management, the Law on Nature Protection and other laws and bylaws), in order for it to be in the daily function of the citizens and companies in the Republic of N Macedonia.

As for capacity building, it needs to be done at all levels state bodies, local self-government and civil society organizations for active participation in the system of informing the general public about the rights and obligations related to life environment.

Easy access and legal assistance should be provided to citizens and companies for obtaining information on environmental issues and legal protection in the exercise of this right through free legal aid.

Finally, it is necessary to effectively and efficiently involve the general public in the creation of environmental policies and laws, and especially in the area of governance with waste.

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