

Civil Society  
Organizations' Report  
on Aarhus Convention  
Implementation  
in Croatia  
for the period  
2014-2016



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Publisher:

NGO Zelena Istra  
Gajeva 3, 52100 Pula, Croatia  
Tel. i faks +385 (0)52 506 065  
ured@zelena-istra.hr  
www.zelena-istra.hr



Editor: Dušica Radojčić

Texts and examples: Dušica Radojčić, Lana Ofak, Enes Čerimagić, Denis Frančišković, Ivana Grubišić

Graphic design: Vjeran Juhas

Translated by: Analekta j.d.o.o.

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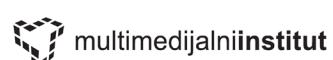
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# Civil Society Organizations' Report on Aarhus Convention Implementation in Croatia for the period 2014-2016

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# INTRODUCTION

## 1

On 30<sup>th</sup> of October 2016, the 15<sup>th</sup> anniversary of the entry into force of the Aarhus Convention was marked. This is the only international agreement that enforces states parties, 46 at the moment, to obey the principles of environmental democracy – ensuring citizens' right to information, participation in decision-making and access to justice in environmental matters. Croatia ratified the Aarhus Convention and transposed it into its legislation in 2007. Since that time it is the most powerful weapon in the hands of the citizens and environmental NGOs in the fight for the protection of nature and environment and against policies that contribute to their degradation. Although public authorities are reluctant to apply the obligations arising from this convention, by ignoring or misinterpreting its principles to limit access to information, and to reduce public participation in decision-making processes to mere formalism, there are some positive trends. However, we are still very far from the ideal of environmental democracy. By requesting information and participation, and going to the courts when their rights are denied, citizens and NGOs are slowly improving and will continue to improve the practice.

The Aarhus Convention imposes the obligation to produce three-year reports on the implementation of the Convention that should be submitted to the Aarhus Convention Secretariat. The Ministry of Environment and Energy was supposed to prepare the 4<sup>th</sup> National Implementation Report by December 2016. In September the Ministry established a working group for the preparation of the draft report, in which the representative of Zelena Istra (Green Istria) is involved on behalf of the member associations of the NGOs network Zeleni forum (Green Forum). Some comments made by environmental NGOs have been accepted and included in the final draft proposal of the National Report, but only in abbreviated form, and partly without necessary explanation for their understanding. During the public consultations, held from 12<sup>th</sup> of November to 12<sup>th</sup> of December 2016, NGOs repeated and updated their remarks. Since the Ministry has not issued the Public Debate Report by the end of December, we cannot know to what extent the comments of environmental NGOs were further included into text. Led by our desire to provide a more realistic picture of the situation regarding the right to information, participation in decision-making and access to justice in environmental matters, for which there was not enough space provided in the form, but also because of our fear that comments made by environmental NGOs will be in shortened form like it happened in previous years and in the first round of consultation in 2016, we have prepared our own report, supplemented by particular examples of bad practice. Preparing **Civil Society Organizations' Report on Aarhus Convention Implementation** is one of the activities within the „INcreasing TRAnsparency in WAters and SPace Management - INTRA-WASP” project which terminates on December, 31. 2016, so the report should be completed by that date.

The main weaknesses in the implementation of the Aarhus Convention described in our report can be summarized as follows:

# Obstacles in application of the right of access to information

Some of the most common forms of violations of right to information are administrative silence - public authority bodies do not respond at all to the citizens' requests in two-thirds of the cases<sup>1</sup>, delays in stipulated period for providing the information, providing incomplete information, referring to the exceptions to the right to information without applying the proportionality test in relation to the public interest, allowing only in-situ inspection of documents instead of delivering the information in the required form etc. Information Commissioner's Report on the Implementation of the Act on the Right of Access to Information for 2015<sup>2</sup> shows us poor picture of the situation with the right of access to information: "The total level of transparency and openness is not satisfactory yet. Significant deviations were noted particularly at the local and regional governments' level, in some legal entities with public authorities and state majority-owned companies, although examples of good practice in the implementation of the Act are noted there, too. At all levels and within all groups of bodies irregularities were noted in processing the citizens' requests, particularly in meeting deadlines and decision-making procedures, which is testified by the fact that on every 10 legal decisions come 17.2 illegal decisions, which is a decline compared to last year when the ratio was 10 to 12. Particularly concerning is the ignoring of citizens' requests for access to information, since the two-thirds of the complaints to the Commissioner are filed for that reason.

However, the most critical elements of the implementation of the Act are the extremely weak implementation of public consultations, especially at the local level and by institutions and other legal entities with public authorities, as well as a poor understanding of the obligations related to facilitating the re-use of information (open data) and thus the implementation of the part of the Act which transposed the European *acquis communautaire*. Therefore, efforts must be focused primarily on further strengthening the capacity of public authorities at all levels on the implementation of the Act, including the adoption of the transparency and openness values in daily work and practice and development of the knowledge and skills for efficient requests' procedure, and particularly encouraging the proactive publication of information, consultation with the public and re-use of information. ... Proceeding the complaints, considering the 64.42% of complaints due to administrative silence, shows that public authorities in two-thirds of the cases still do not respond on users' requests, which is almost at the equal level as the previous year, meaning that the ratio of complaints due to administrative silence is relatively constant for the period 2011-2015 and ranges between 60 and 66%. Another alarming statistic is an indicator relating processing the complaints that public authorities to a significant extent refuse or reject requests for wrong or legally unjustified reasons and based on incorrectly conducted proceedings. Public authorities more often make mistakes than act in accordance with the Act, i.e. on every 10 legal and correct decisions come 17.2 illegal and incorrect decisions, which is a decline compared to 2014 when the ratio was 10 to 12."

<sup>1</sup><http://www.pristupinfo.hr/dokumenti-i-publikacije/>

<sup>2</sup><http://www.pristupinfo.hr/dokumenti-i-publikacije/>

# Obstacles in application of the right to participate in environmental decision-making

The inclusion of citizens in decision-making is one of the main characteristics of democratic societies. Although in Croatia legal preconditions for that are created, today, according to the Information Commissioner<sup>3</sup>, „implementation of the consultations with the public at the local and regional level - in the counties, towns and municipalities - is more the exception than the rule” and “citizens’ trust in government institutions is at rock bottom right now”. The interest of citizens to participate in decision-making processes when it comes to the environment is growing, while the one for their meaningful involvement remains the same - the procedures are reduced to a formality - citizens are given the possibility of expressing an opinion, but those opinions are denied almost as a rule. Transparency and public involvement in decision-making are fundamental for the fight against deep-rooted corruption in Croatia. We find that also the main reason for delays in public involvement in decision-making processes.

# Obstacles in application of the right of access to justice

Public participation cannot be effective without adequate information. And the right to participation and information remains only “on paper” without possibility to protect them in court. But to fulfil its purpose, the right of access to justice must be available and effective, and judgments in due time. In practice, however, there are still many obstacles in the implementation of this law: inconsistent case law on the jurisdiction of administrative courts and administrative dispute cases; long-lasting procedures, deficient efficiency of judgments; non-existent free legal aid for NGOs, i.e. financial barriers; incompetence of judges in environmental issues; deficient mechanisms for protection from harassment of NGOs which use rights based on the Aarhus Convention; deficient protection of “whistleblowers” and other obstacles.

Despite the obstacles, environmental NGOs in Croatia have in the last few years won several cases in the court. Rights arising from the Aarhus Convention are very often violated, and changes can only happen if the lawsuits are filed in these cases. Thus the public authorities will start seriously to take into account threat of lawsuit and practice will slowly change.

Zelena Istra, in cooperation with legal experts and civil society organizations from network Zeleni forum has prepared an alternative report for the previous three-year period<sup>4</sup>, too. Unfortunately, Croatia has not done anything to correct non-compliance listed in the analysis for the period of 2011-2013. Therefore, the description of the non-compliance of regulations with the Aarhus Convention in our new analysis is nearly identical.

Public Debate Report as well as the final text of the Aarhus Convention National Implementation Report are not published until the end of December 2016. Their publication is expected in January 2017.<sup>5</sup>

*Dušica Radojčić, Zelena Istra*

<sup>3</sup><https://savjetovanja.gov.hr/UserDocsImages/dokumenti/Prirucnik%20za%20provedbu%20savjetovanja%20JLPS.pdf>

<sup>4</sup><http://aarhus.zelena-istra.hr/publikacije>

<sup>5</sup> Public Debate Report will be published at: <https://esavjetovanja.gov.hr/ECon/Dashboard>



# THE ANALYSIS OF THE DRAFT OF THE 4<sup>TH</sup> AARHUS CONVENTION NATIONAL IMPLEMENTA- TION REPORT

2.1

## Non-compliance of the regulations with the Aarhus Convention *Lana Ofak*

Every time new laws and regulations are being adopted, special attention should be paid to ensuring the consistency of the new provisions of the law with the standards guaranteed by the Aarhus Convention. We shall present a few examples which show that by the Environmental Protection Act (Official Gazette no. 80/13, 153/13, 78/15), as well as some other laws, a regime of public participation in decision-making and access to justice in environmental matters is established which results in restricting the rights guaranteed by the Convention. This is an absurd situation in which legal regulation that existed before the harmonization of the Croatian legislation with the Aarhus Convention was more harmonized with it than it is today. Such a situation, at least, causes unnecessary confusion and demands extra efforts from the part of officials and judges who will have to establish the proper application of standards in a situation of mutual non-compliance of the provisions of the law with the Aarhus Convention. This could, beyond doubt, lead to a danger of incorrect application of the law, legal insecurity and the violation of rights guaranteed by the Convention, since the public law bodies and courts, as a rule, are more prone to applying the provisions of domestic legislation than the provisions of international agreements. The

## Article 19, Paragraph 2 of the Environmental Protection Act contrary to the Constitution of the Republic of Croatia and to the Aarhus Convention

examples of non-compliance are as follows:

Article 19, Paragraph 2 of the Environmental Protection Act stipulates: „For the purposes of protecting the right to a healthy life and sustainable environment, as well as protection of the environment and particular components of the environment, and the protection from the harmful effect of burdens, a person who proves the probability of his legal interest and a person who, due to a location of the project and/or the nature and/or impact of the project can, in accordance with the law, prove that his rights have been **permanently** violated (emphasized by the authors), have the right to dispute the procedural and substantive legality of decisions, acts and omissions of public authorities bodies at the competent body and/or competent court, in accordance with the law.”

By this provision, the principle of access to justice, as one of the principles of the environmental protection, is established. This principle contains a stipulation of “permanent violation of rights” which is not in compliance with the Aarhus Convention. There is not a single other example in the Croatian legislation where a permanent violation of a right is condition for the admissibility of the lawsuit in an administrative dispute. It is enough for the plaintiff to believe that his rights have been violated. Violation does not have to be permanent. Besides the fact that condition of “permanent violation of rights” is contrary to Article 9, Paragraph 2 of the Convention, it is contrary to the Constitution of the Republic of Croatia as well, because it restricts disproportionately the right to judicial review of particular decisions of administrative authorities and bodies with public powers (Article 19, Paragraph 1 of the Croatian Constitution). This provision has probably arisen as a result of incorrect translation of Art. 10 of the Directive 2003/35 into the Croatian language.<sup>6</sup>

## Article 169 of the Environmental Protection Act contrary to the Aarhus Convention

In the proceedings against Austria - ACCC/C/2011/63 Aarhus Convention Compliance Committee found that Austria was not in line with Article 9, Paragraph 3 of the Convention because the members of the public, including environmental NGOs, have no possibility of access to justice in the case of misdemeanor proceedings and criminal proceedings for violation of laws relating to the environment and nature. Due to the narrow definition of the „party“ to proceedings (misdemeanor or criminal), NGOs can't participate in these proceedings in the case of violation of laws relating to the environment, because they are not covered by the term “victim” nor are considered to have a legal interest in the name of the nature, biodiversity, fauna and flora, even if the NGOs objectives are related to the environment and nature.

It is the same in Croatia. Croatian NGOs, in cases of violation of laws relating to the environment and nature not only do they not have access to misdemeanor proceedings and criminal proceedings, but also do not have the opportunity to participate in the inspection

<sup>6</sup> See a draft translation of the Directive 2003/35, <http://www.prevodi.gov.me/15.10.10/32003L0035.pdf> (accessed: December, 6th 2011). The relevant part of the incorrect translation says: “Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned (a) with sufficient interest, or (b) permanently violating a right (emphasised by authors) where administrative procedural act of a Member State stipulates this as a precondition, have access to a questioning at a court or another independent and impartial body defined by law to dispute the substantive or procedural legality of decisions, acts or omissions, in accordance with the provisions of this Directive relating to public participation.”

procedures except for the right to submit an application and the right to get a respond to the application. NGOs are not considered parties in these proceedings and do not have any procedural rights to participate in these proceedings, which they should have according to Article 9, Paragraph 3 of the Aarhus Convention, as shows the Board's decision in the case ACCC / C / 2011 / 63.

Regulation in Article 169 of the Environmental Protection Act is contrary to the Article 9, Paragraph 3 of the Aarhus Convention because:

- 1) it is impossible for the environmental NGOs to refer to that article, since it explicitly applies only to persons set out in Article 167, Paragraph 1, i.e. physical and legal persons which may, for the project location and / or because of the nature and impact of the project, in accordance with the law, prove that their right is violated;
- 2) in cases of violation of the rights relating to the environment and nature it is often difficult to prove violation of rights since the consequences for human life and health often occur only after several years of environmental pollution. Besides, why should you have to prove the violation of the rights of the people to file a lawsuit? Why the interest of environmental protection and nature should not be sufficient? The Aarhus Convention does not contain such a condition that violation of rights have to be proved (Article 9, Paragraph 3), and in particular this condition should not apply to environmental NGOs that operate, in accordance with its statutes, not only in the interest of protecting the rights of people, but also in the interests of environment, nature, biodiversity protection... themselves.

# Some provisions of the Building Act, the Physical Planning Act, the Act on Sustainable Waste Management and the Mining Act not in accordance with the Croatian Constitution nor the Aarhus Convention

These are following provisions:

- Building Act (OG no. 153/13) – Article 115, Paragraphs 1 and 3<sup>7</sup> and Article 138<sup>8</sup>
- The Physical Planning Act (OG no. 153/13) – Article 141, Paragraphs 1 and 2<sup>9</sup> and Article 154<sup>10</sup>
- The Act on Sustainable Waste Management (OG no. 94/13) – Article 93, Paragraph 3<sup>11</sup> and Article 95<sup>12</sup>
- The Mining Act (OG no. 56/13, 14/14) – Article 15<sup>13</sup>

<sup>7</sup> Article 115

„(1) A Party in the building permit procedure is an investor, owner of the property for which the building permit is issued and the holder of other real rights on the property and the owner and holder of other real rights on the property adjacent to the property for which the building permit is issued. (3) “As an exception to Paragraph 1 of this Article, the party in the process of issuing a building permit for the construction of interest to the Republic of Croatia or issued by the Ministry of the investor and the owner of the property for which the building permit is issued and the holder of other rights to the property.“

<sup>8</sup> Article 138

„The party in the procedure for issuing an operational licence is an investor, i.e. owner of the property on whose request the procedure of issuing the permit is instituted.“

<sup>9</sup> Article 141

„(1) The party in the location permit issuance procedure is the applicant, the owner of the property for which the location permit is issued, and the holder of other real rights on the property and owner and holder of other real rights on the property adjacent to the property for which the location permit is issued. (2) As an exception to Paragraph 1 of this Article, the party in the procedure for issuing the location permit for the implementation of the project in the area of significance for the Republic of Croatia or which is issued by the Ministry are the applicant, the owner of the property for which the location permit is issued and holder of other real rights on the property.“

<sup>10</sup> Article 154

„The parties in the procedure of issuing the change of the purpose and usage of the building permit are the applicant, the owner of the property for which the permit is issued and the holder of other real rights on the property.“

<sup>11</sup> Article 93

„(3) There is no need for the implementation of the procedure for public information and participation defined in Paragraph 1 of this Article if such public information and participation was implemented within the procedure defined by a special regulation regulating environmental protection.“

<sup>12</sup> Article 95

„(1) The party in the permit issuance procedure is the applicant, the owner of the property for which the location permit is issued and the holder of other real rights on the property and the local self-government unit in whose area operation defined in the permit is conducted. (2) As an exception to Paragraph 1 of this Article, the party in the temporary permit issuance procedure shall be the applicant, the owner of the property for which the permit is issued and the holder of other real rights on the property.“

<sup>13</sup> Article 15

“In the procedures conducted in accordance with the provisions of this Act the participation in the procedures shall be allowed, at the position of the party, to the owners of the land lots in relation to which the mentioned procedures are conducted.“

According to the General Administrative Procedure Act (Official Gazette no. 47/09) a party in an administrative procedure is a natural or legal person at whose request the procedure was initiated, against whom the procedure is conduct or who, in order to protect his rights or legal interests, is entitled to participate in the procedure (Article 4, Paragraph 1). This provision is one of the basic provisions of the General Administrative Procedure Act, the one which should not be deviated from in the provisions of special laws. Moreover, by the recognition of the position of the party in the administrative procedure the equality of everyone before the law and the right to a fair trial as guaranteed by the Croatian Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms is ensured. Nonetheless, in the Croatian legislation there are examples of limiting the term ‘party’ in the special, aforementioned administrative procedures. These provisions are in accordance with Article 6, Paragraph 1 of the European Convention (the right to a fair trial) and Article 14, Paragraph 2 (the equality before the law) and Article 29, Paragraph 1 of the Constitution of the Republic of Croatia (the right to an equitable procedure). Ensuring an economic procedure by having a small number of parties in the procedure is not an allowed goal which could restrict fundamental human rights. In addition, there are other, more appropriate measures by which the same goal could be achieved without encroachment on the constitutional rights or rights protected by the European Convention. Other reasons why these provisions should be abrogated is that they are not in accordance with Article 6 of the Aarhus Convention when they lead to denying of the right to participation of the public and the public concerned in administrative procedures relating to decisions about activities that may have significant effects on the environment. In fact, in administrative procedures in which decisions about whether to allow certain activities that may have significant effects on the environment are made, public participation must be allowed during all the stages of decision-making on that activity, not only in the procedure of the environmental impact assessment (see Aarhus Convention Compliance Committee decision in relation to the Czech Republic ACCC/C/2010/50). If the legislation explicitly states who may be a party in the procedure of issuing location permit, building permit, waste management permit, etc., while at the same time does not prevent public participation in such procedures when it comes to activities under Article 6 of the Aarhus Convention, such provisions of the law are not in accordance with the Aarhus Convention.

## Article 253 of the Environmental Protection Act not in accordance with the Constitution of the Republic of Croatia or with the Aarhus Convention

Article 253 of the Environmental Protection Act „Proceeding upon the application” prescribes as follows:

### “Article 253

- (1) The inspector shall inform the known applicant in writing on the facts established by the inspectional supervision within thirty days from the day the facts were established at the latest.
- (2) The applicant is not a party in inspectional procedure within the meaning of this Act.
- (3) If, during the inspectional supervision, it is established that there is no infringement of this Act and regulations adopted on the basis of this Act which environmental inspectorate is entitled to supervise, and no justifiable reason for further conduction of the procedure, and the applicant demands presentation of evidences, the procedure shall be continued upon applicant’s request.
- (4) The full costs of further conducting of the procedure from Paragraph 3 of this Article shall be borne by the applicant.
- (5) In the case from Paragraph 3 of this Article the inspector shall by a conclusion request from the applicant to deposit the amount of money

covering the costs of presenting other evidences.”

The aforementioned article is contrary to Article 9, Paragraphs 3 and 4 of the Aarhus Convention. The right to a healthy life is one of the fundamental human rights protected by the Constitution. Inspection procedures in environmental matters are procedures instituted ex officio in order to protect the public interest. According to Article 70 of the Constitution of the Republic of Croatia, the state is obliged to provide the conditions for a healthy environment and everyone is required to pay special attention to the protection of human health, nature and the environment.

In this context, it is against the Constitution of the Republic of Croatia to transfer the responsibility of bearing the costs of the inspectional supervision in matters of environmental protection to the applicant, even if the inspection finds that there is no reasonable cause for further proceedings. A healthy environment and nature conservation is an interest that concerns everyone, even the Constitution stipulates that the state is the one that provides the conditions for a healthy environment. The transfer of the responsibility of bearing the costs of presentation of evidences to the individual in order to examine whether there has been a infringement of environmental legislation represents a disproportionate burden that none of the individual (applicant) should not have to bear alone, as the interest of environmental protection is a general interest.

Surely there are people who wantonly submit ungrounded reports to inspection, just as there are abuses of the rights in other fields of social life. However, since there is a very strong interest in protecting human health and nature and environmental protection which are, in addition, fundamental values of the constitutional order of the Republic of Croatia, such extreme abuses should not be the guideline in formulating a general rule. This general rule, as it is prescribed in Article 253 of the Environmental Protection Act, will be at the expense of everyone who will, feared by possible costs of presenting the evidence, be afraid to exercise their rights and duties which they are entitled to by the Constitution (the right to a healthy life and the duty to pay special attention to the protection of human health, nature and human environment).

Besides, it is unacceptable that the burden of the costs of the proceedings initiated ex officio falls on the applicant whose status of a party in the administrative procedure is denied (see Article 253, Paragraph 2), and consequently he has not any of the procedural rights guaranteed to the parties by the General Administrative Procedure Act. Such a provision is therefore contrary to a fair proceeding and equality before the law guarantee.

The provision of Article 253, Paragraph 4 on covering the costs of inspection supervision is also contrary to Article 9, Paragraphs 3 and 4 of the Aarhus Convention, which guarantee that the procedures of assessment of the legality of actions and omissions made by private persons and public authorities, which are contrary to the provisions of environmental law, must be fair, equitable and not overly expensive. In a case led against the United Kingdom before the Aarhus Convention Compliance Committee (case ACCC/C/2008/27) it was found that the United Kingdom violated Article 9, Paragraph 4 of the Aarhus Convention. The Committee believed that fairness, in cases when a member of the public institutes a procedure due to environmental concerns in the public interest (and not in private) implies that the public interest must be taken into account when allocating the costs of the proceedings.

In conclusion, it would be contrary to the fair proceedings guarantee that the individual, even if the inspection procedure finds that there was no infringement of the regulation, must fully bear the costs of the proceeding instituted not to protect personal and individual interests, but to protect the interests which have to be protected by everyone, as it is prescribed in Article 70, Paragraph 3 of the Constitution of Republic of Croatia.

# Article 171 of the Environmental Protection Act not in accordance with the Constitution of the Republic of Croatia or with the Aarhus Convention

Article 171 of the Environmental Protection Act prescribes as follows:  
„If a particular act by a public authority body is not valid due to the request submitted in accordance with Article 169 of this Act, and for that reason the developer, operator or another legal or natural person to which that act refers to, decides to wait until the legal validity of the act, in case it is established that the applicant has abused his right under the provisions of this Act, then the developer, operator or another legal or natural person has the right to demand compensation for damages and a loss of profit from the person who has submitted the request.“

The quoted article is contrary to Article 3, Paragraph 8 of the Aarhus Convention and Article 9, Paragraph 4 of the Aarhus Convention. A provision like this one does not exist in any other law within the Croatian legal system (it is excluded from the new Building Act and the new Act on Physical Planning!<sup>14)</sup> and it is absurd that it exists in the act which proscribes the principle of access to justice as one of the fundamental principles.

Persons who want to use guaranteed right of access to justice are put in uncertain and unequal position by this provision. Therefore, it is contrary to the equality before the law guarantee. Namely, it is unclear what it means to abuse the right to initiate an administrative dispute, particularly in the context of the right to judicial review of legality of particular acts of administrative authorities and other bodies of public authority (Article 19, Paragraph 2 of the Constitution of the Republic of Croatia).

The formulation “in case it is established that the applicant has abused his right under the provisions of this Act” can easily become the basis for arbitrary proceedings. The provision is vague and does not provide any guidelines to what it means to abuse the right to submit a complaint in the administrative procedure which is a right guaranteed by the Constitution of Republic of Croatia. Therefore, this provision is contrary to the principle of the rule of law (Article 3 of the Constitution of Republic of Croatia), according to which “the laws shall be universal and equal for everyone, and legal consequences shall be certain for those the law applies to” (Constitutional Court Decision no. UI/659/1994 of February, 8<sup>th</sup> 2006). This means that the “legal consequences must be appropriate to the legitimate expectations of the parties in each particular case where the law is applied directly to them” (see Decision of the Constitutional Court). Laws must be based on the principles of legal certainty, clarity and enforceability of regulations and certainty in achieving the legitimate expectations of the citizens. In situation like this, individuals who exercise their constitutionally guaranteed right to judicial review of acts of public authority bodies are placed in an uncertain position of a possibility of bearing enormous costs of damage compensation, because there are no clear criteria to determine whether they abused their right to complaint defined by law.

<sup>14</sup> Article 210 of the Physical Planning and Building Act which ceased to be valid (OG no. 76/07, 38/09, 55/11, 90/11, 50/12, 55/12) says:  
„(1) The investor may, at his own liability and risk, start building on the basis of executive decision on building conditions and building permit.  
(2) If a decision on building conditions and building permit is not valid, because the party instituted an administrative dispute, and the investor therefore decides to postpone building pending valid decision on building conditions, then the investor is entitled to seek compensation for damages and profit loss from such a party, if it is found that the party abused his right to initiate an administrative dispute.  
(3) An administrative dispute referred to in Paragraph 2 of this Article shall be resolved by the Croatian Administrative Court within a year.”

In case it is necessary to protect the interests of investors, sufficient protection is provided by the general rules of law of obligations on the prohibition of causing damage.

The provision of Article 171 favours the investor because it allows him to arbitrarily decide to wait with the construction/performance of the activity until the decision is valid (validly court decision on the dispute). Under the Act on Administrative Disputes, only the court is entitled to grant the injunctive relief or the temporary measures within the framework of administrative dispute against an act of bodies of public law. It should not be left to be decided by the investor (developer, operator) because this creates unequal position of the parties in the dispute, which also leads to the unfairness of the proceedings (contrary to Article 29, Paragraph 1 of the Constitution of the Republic of Croatia and Article 9, Paragraph 4 of the Aarhus Convention). An investor can postpone the construction/operations for other reasons as well, for example because of the lack of funds at that moment.

Investors (developers, operators) and persons performing activities that may have significant effects on the environment, as well as the state and public companies (when they act as developers), may use the provision of Article 171 to intimidate the public. This is contrary to Article 3, Paragraph 8 of the Aarhus Convention. The Convention requires that people who take risks and insist on respecting the legal rules for the environmental protection must be protected from various forms of retaliation.

## Free legal aid denied to civil society organizations

In Croatia, only natural persons may get a free legal aid. Access to legal aid is denied to NGOs, which is not in accordance with the Aarhus Convention (Article 9, Paragraph 4 and Article 9, Paragraph 5, requiring fair and equitable legal remedies and the duty to examine the possibility of establishing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice).

According to the Croatian Free Legal Aid Act, legal persons cannot be beneficiaries of free legal aid. Environmental NGOs should be able to participate equally in judicial and other proceedings. The legislator would have to establish fair criteria according to which the legal persons, especially non-profit organizations, could become beneficiaries of free legal aid.

## 2.2

# Practical examples of violation of Aarhus Convention

Everyone who has tried to get information from public authority or tried to get involved in decision-making about an environmental issue knows that we are still far away from understanding and implementing the real spirit of Aarhus Convention, and that is that interested citizens should cooperate with public authorities in decision-making and creating the policies regarding environmental protection. Citizens should have at their disposal all the information needed for decision-making, the way of involving should be such that it enables all those interested to have adequate conditions, and the authorities should seriously consider and take into consideration their contribution. In order to encourage the implementation of the principles of Aarhus Convention and make the implementation as easy as possible, UNECE has prepared The Aarhus Convention Implementation Guide<sup>15</sup> and Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters<sup>16</sup>. In these documents it is clearly pointed out that the meaningful public participation implies more than the simplified implementation of the procedures regulated by law – the minimum which authorities responsible for implementation in Croatia solely obey. Instead of fulfilling the form, the authorities should initiate public consultations with a sincere wish to hear the public opinion, and this can only happen if the decisions have not been made in advance i.e. if the options are still open. The success of involving the public in decision-making is reflected in the quantity of their inputs incorporated in the final decision.

It appears that the justice system has been a catalyst for solving the problems of authorities declining to implement declaratory accepted democratic standards in practice, when informing and involving the public in decision-making is in question. During the past few years, environmental NGOs in Croatia have won several cases in courts by which they have, among other things, demonstrated:

- 1) the environmental impact studies should use the latest and most reliable data and not outdated apocryphal data, which is quite common. This can be demonstrated by a case proceedings at the Administrative Court in Split UsI- 832/13-24 in which, among other things, the reasons for citizen's lawsuit were the flaws of the study and lack of professional explanation. In the verdict of the case the court accepted argumentative public opinion, explained the importance of full environmental impact assessment and warned the body responsible that the aim of the advisory expert committee in the environmental impact assessment was to evaluate the impact of the project and give the opinion on the acceptability of the project, with possible alternative environmental proposals and environment protection measures. The committee is obliged to explain the opinion and give concrete reasons of solving legal matters. However, in this case the committee accepted the environmental impact study as full and professional, stating only general acceptance, without an articulate and specific explanation, while the reasons for declining the remarks of the public were not stated. The cases of public lawsuits regarding the contents of the studies are frequent, but the practice in Croatia is diametrically opposite to the

<sup>15</sup> [https://www.unece.org/env/pp/implementation\\_guide.html](https://www.unece.org/env/pp/implementation_guide.html)

<sup>16</sup> [http://www.unece.org/env/pp/publications/maastricht\\_recommendations.html](http://www.unece.org/env/pp/publications/maastricht_recommendations.html)

example above. Namely, the courts would only procedurally check the procedures, while the contents of environmental studies are very rarely reviewed. The study, as a professional basis, has to be a matter of reviewing in court proceedings because it is conditio sine qua non of the environmental impact assessment. Administrative courts which concentrate on the procedure only do not implement Aarhus Convention efficiently<sup>17</sup>;

- 2) that a written opinion of a ministry is not an irrefutable evidence and that it can be disputed at court (verdict under reference number 7 Usl 160/13-32: "...does not mean that the opinion of the responsible authority on the conformity with town/county spatial plan is irrefutable evidence the contents of which cannot be disputed";
- 3) that the Environmental Protection Act in Article 168. is contrary to Aarhus Convention and that it should be changed since the members of the public concerned could dispute the decisions in courts even though they have not participated in the decision-making process, i.e. the participation in the decision-making process is not a prerequisite for recognizing the right of the public concerned in participating in reviewing the decision in court. A judge at the Administrative Court in Rijeka in the verdict under reference number 7 Usl 160/13-32 refers to the verdict of the European Court: "The European Court is....regarding the participation of the public concerned, of the opinion that the participation of the public in the procedure of making a decision regarding environment is not a prerequisite for recognizing the right of the public concerned in participating in reviewing the decision";
- 4) that the lack of description of alternative solutions of a development project in environmental impact studies is illegal (7 Usl 160/13-32). In almost all environmental impact studies made in Croatia, the lack of adequately described alternative solutions is a main deficiency, but in spite of that neither the competent ministry nor the members of the Advisory Expert Committee have never disputed this illegitimacy.

## HARDLY AVAILABLE OR FULLY UNAVAILABLE INFORMATION AND DECISIONS

Our reality is far from the recommendations from the listed UNECE manuals. Information on environmental procedures and results is given through the Internet, although only 75% of the households have access to Internet (Eurostat data from June 2016) and the authorities responsible for performing the procedures do not make any effort for the information to reach all the potentially interested or affected by a certain decision. Thus, there is no practice of preparing the list of public concerned to which this information could be sent by mail. Information is not available in public places and no meetings or so-called focus groups are arranged. Decision about procedures of impact on the environment are made public only on internet pages of the body responsible for the procedures, which are not easily available to the majority of the population. In the Articles 135 to 143 of the Maastricht Recommendations<sup>18</sup> it is stated that the availability

<sup>17</sup> Peggy Lerman, Almanac "Implementation of Aarhus Convention in Adriatic Countries", Zelena Istra, 2011: "I have mentioned at the beginning that procedural focus in Aarhus does not necessarily mean that access to justice also should focus on procedure. On the contrary, my argumentation about rights and remedies reveal that I very much believe in combining procedure with facts. I cannot understand how acknowledgement of a procedural wrong can make it OK for health and environment; it gives no remedy. This means that administrative courts that focus on procedure but very little on facts do not implement the Aarhus Convention effectively

<sup>18</sup> [http://www.unece.org/env/pp/publications/maastricht\\_recommendations.html](http://www.unece.org/env/pp/publications/maastricht_recommendations.html)

of the decision or agreement on Internet pages of the body responsible for the procedure is not in accordance with Article 6, Paragraph 9 of the Convention, which require quick and efficient informing. This means that the current Regulation on environmental impact assessment presents the violation of Aarhus Convention. The following are stated as desirable practices of informing the public about the decisions made: e-mailing those who have participated in public consultations on the procedures, as well as publishing information in the media for the general public. In accordance to Article 143 of the Recommendations, the public concerned should also receive, in addition to the decision/arrangement, information of the possibilities of appeal/lawsuit.

By publishing information about the environmental procedures and decisions regarding these procedures on the internet pages of the bodies responsible, which are not easily accessible for public, makes it difficult and even prevents disputing the results of the procedures in court. The possibility of appeal or lawsuit on a certain decision is time-limited and the period starts from the date of making it public on Internet pages. This means that the citizens or organizations that participated in a certain procedure or are interested in its result have to search internet pages of the responsible body daily. Such practice is contrary to Aarhus Convention. This practice should be changed in such a way that the representatives of the public who participated in the procedures by making comments receive their replies to their home or e-mail addresses. The same procedure should be applied regarding information about the final decision.

In many EU countries the practice of more efficient public information in EIA procedures have been applied. Thus, for example, in United Kingdom and Estonia, information in EIA procedures is announced not only on internet pages of responsible body and local newspaper but also in public places near the local amenities (bus stops, frequently visited shops, libraries etc.) and, most importantly, the public concerned should be informed by direct individual information sent to their home address.

In addition, when the Advisory Expert Committee asks for a change or addition of an environmental impact study, the amended text of the study is not available to public since there is no obligation for it to be published. Thus the public is prevented to access the information. The opinions of special bodies in the procedures are not published either, and these can be very important for participating in the procedure on environmental impact assessment. Therefore, it is also necessary to implement the obligation to make public the opinions of the bodies determined by special acts that have been given during a procedure as soon as they are available; these should be published at the same place as all the other documents related to the procedure, so that the public have access to the complete file and could participate in the consultation having full information at its disposal. This obligation is also stated in Article 104 of the Maastricht Recommendations. It is also necessary to implement the obligation to make public the amended studies at the same place where all documents related to the procedures are announced, so that the public could have access to the complete file and could be involved in the consultation procedure having all the information at its disposal, and also for the decisions of the responsible bodies in EIA procedures to be compared with the protection measures from a study of impact on the environment.

# **Example**

## The way the decisions in the environmental impact assessment procedures are published in Istria County

Istria County has announced the request of an investor for the evaluation of the need for environmental impact assessment for building a ski-lift in Valovine bay in Pula on its main Internet page in the section Information<sup>19</sup>. In this part of the procedure, the public has a right to send its opinion within the period of 30 days from announcing on Internet pages. However, information was noticeable for a very short period of time, since the number of information announced weekly is quite high. Namely, the page is arranged in such a way that only two information are noticeable, while the older information are transferred to the section “More information”.

After the procedure of estimating whether the environment impact assessment for a ski-lift is required has been completed, Istria County announced on its internet pages the decision that the EIA procedure for this intervention is not necessary – however, this was not announced at the same place where the first information was and where it would be logical to search for it, but on a completely different, not easily accessible place: on the internet pages of Istrian County [www.istra-istra.hr](http://www.istra-istra.hr) you have to click on ORGANIZATION, then on ADMINISTRATIVE BODIES, then ADMINISTRATIVE DEPARTMENT FOR SUSTAINABLE DEVELOPMENT, after that on NATURE AND ENVIRONMENT PROTECTION SECTION, then REPORTS AND IMPORTANT DOCUMENTS, after that on OPUO (ENEIA), then on SPECIFIC INTERVENTION and finally on DECISION<sup>20</sup>. Further on, the decision is posted without the date of posting, so the start date for appeal or lawsuit is not clear.

In 2014 Zelena Istra suggested to the Istrian County to install a noticeable column CONSULTATIONS WITH PUBLIC at the main internet page. This column should contain all the information, including the decisions which should also state the date of publishing of each document. Further on, in case of an appeal or suit, the second instance decisions or verdicts should also be published. All the documents from completed consultations should remain in the archives COMPLETED CONSULTATIONS, thus enabling the public to monitor the implementation of the decisions and required environment protection measures.

In 2016 Zelena Istra, in the name of Istrian Civil Platform (Civilna platforma Istre) reported Istrian County to the Information Commissioner for the infringement of Act on the Right of Access to Information during consultations with the public concerned regarding County Development Strategy. After the warning from the Commissioner that the law should be obeyed, Istrian County has created a “Consultations with Public” section, but only as one of the subsections under the title “Selected”. In that section only the document related to the procedures of consultations regarding plans, programs and strategies are published, while the consultations regarding the procedures of environmental impact assessments are omitted. Chronological way of placing the material is not clear and does not separate the consultations that have been completed from those that are still in process, neither does it enable an overview of all documents from one consultation in one place. Further on, the dates of posting the documents are missing, as well as invitation to public concerned to participate in the consultations etc.

<sup>19</sup> [https://www.istra-istra.hr/index.php?id=2326&tx\\_ttnews\[pointer\]=9&tx\\_ttnews\[tt\\_news\]=3813&tx\\_ttnews\[backPid\]=2483&cHash=bb486037a0](https://www.istra-istra.hr/index.php?id=2326&tx_ttnews[pointer]=9&tx_ttnews[tt_news]=3813&tx_ttnews[backPid]=2483&cHash=bb486037a0)

<sup>20</sup> <https://www.istra-istra.hr/index.php?id=4550>

## INSUFFICIENT DURATION OF PUBLIC CONSULTATIONS

Although Ministry of Environment and Energy in its Draft of the Aarhus Convention Implementation Report claims that “for each specific intervention a decision on the duration of public consultation is made, taking into consideration the complexity and scope of the intervention”, public consultations in general never last longer than the minimum of 30 days required by law, even when a very complex interventions and extensive environmental impact studies are in question. Very often, public consultations in the procedures of making strategies, acts, plans and programs last even less than this.

## AVOIDING THE PROCEDURE OF ENVIRONMENTAL IMPACT ASSESSMENT

### **Example** Splitting one big project of road reconstruction at Pula waterfront into several smaller in order to avoid the environmental impact assessment

A very common case of infringement of Article 6 of Aarhus Convention, which some NGOs have pointed out, is avoiding the procedure of environmental impact assessment by splitting one big intervention, for which EIA should be made and in which public should participate, into a number of smaller interventions for which subsequently Ministry for Environment and Nature Protection makes a decision that EIA for each of these small particular interventions is not required.

One of the fields in which local authorities, or other subjects in their ownership, frequently practice this is dredging, filling and building on maritime domain. Herewith we present one example of splitting a bigger project of road reconstruction at Pula waterfront into several smaller in order to avoid the procedure of environmental impact assessment:

2015 – Port authority Pula requested the Ministry the evaluation of the need for environmental impact assessment for the project Upgrading coastal wall and infilling of the harbour open for public traffic Pula (building 130 m wall, the coastline fill and deepening sea-bed); in March 2015 the Ministry issued the decision that EIA is not required and neither is the assessment of acceptability of the intervention for the ecological network.

2015 – Port authority Pula requested the Ministry the evaluation on the need for environmental impact assessment for the project Reconstruction of the harbour open for public traffic Pula – communal berths Mandrač – Tivoli (8 floating moles, 195 berths, site-development of part of the coastline by building costal wall and the reconstructed coastline fill ); in February 2016 the Ministry issued the decision that EIA is not required and neither is the assessment of acceptability of the intervention for the ecological network.

2016 – Port authority Pula requested the Ministry the evaluation on the need for environmental impact assessment for the project Reconstruction and upgrading of new coastline from the service plateau up to Mandrač in the harbour open for commerce Pula (widening the coastline for 30 m by building a 622 m long bank in the sea); in September 2016 the Ministry issued the decision that EIA is not required and neither is the assessment of acceptability of the intervention for the ecological network.

During 2015 and 2016 the city of Vodnjan tried to avoid EIA procedure in the similar way, for beach dredge and fill projects of 4 out of 9 kilometres of its natural coastline, sending the requests for the the evaluation on the need for environmental impact assessment (using the misleading term “beach nourishment”) for separated phases of the fill placement, i.e. for each beach separately.

# AVOIDING THE PROCEDURE OF STRATEGIC ENVIRONMENTAL ASSESSMENT

Local and regional authorities are frequently avoiding conducting the strategic environmental assessment for plans, programs and strategies and their modifications. In 2015, during the public consultation regarding amendments of Environmental Protection Act, legal experts from Zagreb Faculty of Law pointed out its flaws when the obligation for conducting strategic environmental assessment is in question, especially in reference to multiple simultaneous modifications and amendments of spatial plans. In these cases, individual changes of spatial plan do not have important environmental impact, while if cumulative assessment was made, significant impact would have probably been established and therefore the need for strategic environmental assessment. The Ministry did not accept their amendment which would prevent such a practice.

## **Example** Two separate procedures of strategic environmental assessment for two simultaneous changes of Karlovac County Spatial Plan

Karlovac County gives us an even more absurd case in which two separate strategic impact studies, i.e. two separate procedures of strategic environmental assessments, were prepared for two almost simultaneous changes of the spatial plan:

- May 26, 2014 –The decision on starting the procedure of strategic environmental assessment for Targeted II amendments of Karlovac County Spatial Plan
- July 16, 2014 –The decision on starting the procedure of strategic environmental assessment for Targeted IV amendments of Karlovac County Spatial Plan
- August 8, 2014 – Information on implementation of the procedure of establishing the contents of the strategic impact study for Targeted II. Amendments of Karlovac County Spatial Plan
- August 8, 2014 – Information on implementation of the procedure of establishing the contents of the strategic impact study for Targeted IV. Amendments of Karlovac County Spatial Plan
- November 27, 2014 – Decision on the contents of the strategic impact study for Targeted II. Amendments of Karlovac County Spatial Plan
- November 27, 2014 – Decision on the contents of the strategic impact study for Targeted IV. Amendments of Karlovac County Spatial Plan
- December 28, 2015 – Decision on public consultation in the proceedings of strategic environmental assessment for Targeted II. Amendments of Karlovac County Spatial Plan for the period January 8 to February 8, 2016
- December 28, 2015 – Decision on public consultation in the proceedings of strategic environmental assessment for Targeted II. Amendments of Karlovac County Spatial Plan for the period January 8 to February 8, 2016

Public presentation for both proceedings was made on January 19, 2016 at 11 a.m. at the City hall. The public which participated in the public consultation gave written comments for each proceeding separately.

## SLOW JUSTICE

Aarhus Convention demands efficient legal remedies, which means that timely verdicts and court professionalism combined with a bit of benevolence for the matters regarding environment should compensate past damage in full, or at least prevent future damage. Article 9 stipulates that countries have to ensure that “the procedures ... should be fair, equitable, timely and not prohibitively expensive”.

Article 172 of Environmental Protection Act stipulates that the court procedures on each suit regarding environment protection should be urgent. In practice, the proceedings at Administrative Courts in Croatia last too long and the motions for injunctive relief are rarely accepted.

### Examples of slow justice system

7 Usl-160-13/32 – lawsuit of Zelena Istra and six private plaintiffs against Ministry of Environmental Protection and Nature in the case of Decision on environmental acceptability of exploitation of carbonate raw material for industrial use on the exploitation field “Marčana I”, on the territory of Marčana Municipality; the lawsuit was filed on January 18, 2013 and the verdict in favour of the plaintiff was given on January 15, 2015 – the proceedings lasted 2 years.

- 1 Usl-159/13-24 – lawsuit of Zelena Istra and six private plaintiffs against Ministry of Environmental Protection and Nature in the case of Decision on Environmental Acceptability of exploitation of architectural-building stone at the exploitation field “Marčana” in Marčana Municipality; the lawsuit was filed at the Administrative Court in Rijeka on January 18, 2013 and the verdict in favor of the plaintiff was given on September 7, 2016 – the proceedings lasted 3 year and 8 months.

- Usl-1956/14-4 – the lawsuit of Pan, environmental and nature protecting organization, against Ministry of Environmental Protection and Nature in the case of Decision on Environmental Acceptability of the project “Retention of Drežnica Field” for ecological network; the lawsuit was filed on December 11, 2014 at the Administrative Court in Rijeka and the term of the first hearing has still not been set – 2 years without the date of the first hearing.

- Usl-1053/15-3 – the lawsuit of Pan, environmental and nature protecting organization, against Ministry of Environmental Protection and Nature in the case of Decision of Karlovac County regarding the Decision on Environmental Acceptability of the project “Small Hydroelectric Power Plant Primišlje” for ecological network, the lawsuit was filed on June 29, 2015 at the Administrative Court in Rijeka, the term of the first hearing has not been set yet – 1 year and 6 months without the date of the first hearing.

- Usl-44/14 –the lawsuit of Pan, environmental and nature protecting organization, against Ministry of Environmental Protection and Nature in the case of Decision on Environmental Acceptability of the project “Small Hydroelectric Power Plant Brodarci” for ecological network; the lawsuit was filed on December 11, 2013 at the Administrative Court in Rijeka and the verdict rejecting the lawsuit made by Pan was given on November 2, 2015 – the proceedings lasted 1 year and 11 months.

- Usl-144/14-10 –the lawsuit of Pan, environmental and nature protecting organization, against Ministry of Environmental Protection and Nature in the case of Decision on Environmental Acceptability of the project “Small Hydroelectric Power Plant Brodarci”; the lawsuit was filed on December 31, 2013 at the Administrative Court in Rijeka and the verdict rejecting the lawsuit made by Pan was given on March 21, 2016 – the proceedings lasted 2 years and 3 months. On April 4, 2016 Pan appealed the verdict at the High Administrative Court in Zagreb and on July 6, 2016 it gave a verdict that the Decision of the Ministry would be annulled in favour of the plaintiff – the proceedings lasted 3 months. We would like to point out the last example from High Administrative Court, which completed the case in 3 months, as an example of good practice.

# RELUCTANCE OF COURTS FOR GRANTING INJUNCTIVE RELIEF REMEDY

Contrary to an appeal, a lawsuit does not postpone the enforcement of a decision. In case when there is a concern that enforcement of a decision could result in irreparable damage (sometimes the effective outcome of the litigation can depend entirely on whether an injunction is granted) or could complicate implementation of the final verdict, one of the aspects of (un)efficiency of courts is a measure known as the injunctive relief. This measure is rarely used in Croatia. As we have pointed out in the previous chapter, court procedures last very long, the lawsuits filed in reference to illegal decisions do not postpone the enforcement of the decisions and this enables the developers to act upon a decision, in spite of the possibility for the decision to be annulled at court, or that the court could find the decision illegal. Long court procedures in combination with reluctance to grant injunctive relief can result in “academic winnings” – annulment of permits for developments already made.

## Examples of injunctive relief granted by courts

Frane Staničić, PhD in the analysis “The Effect of Initiating Administrative Dispute on the Enforcement of Administrative Decisions: temporary measures and injunctive relief<sup>21</sup> published the data regarding the issuing of the injunctive relief and temporary measures:

- From January 1, 2013 till June 30, 2014 only 51 motions for injunction were registered at the Administrative Court in Rijeka (3500 lawsuits filed) and 13 motions for temporary measures, all of which were rejected, while on 7 of the rejected ones appeals were made to High Administrative Court. HAC has up to now denied two motions for temporary measures, while on 5 motions High Court has yet to rule. Unfortunately, there are no exact data regarding the number of accepted motions for injunction, but it is certainly very low.
- From January 1, 2013 till June 30, 2013 Administrative Court in Osijek received 701 lawsuits and in 18 cases the motion for injunction was made and one of the motions was accepted. However, in the remaining 17 cases the decision on the motion has not been made.
- From January 1, 2012 till August 31, 2014 Administrative Court in Split received 194 motions for injunction; the court has ruled on 34 motions, while in 160 cases the court has not dealt with these motions yet.

## Example Green Action & Green Istria vs. MENP in the case of ecological permit issued for the thermal power plant Plomin C

In the case of a lawsuit made by Zelena akcija, Zelena Istra and several private plaintiffs against the ecological permit which Ministry of Environmental Protection and Nature issued for thermal power plant Plomin C, an injunctive relief was claimed. The court denied the injunctive relief since the decision on environmental acceptability does not present direct executive act for the realisation of the project. However, the decision does make the necessary condition to obtain such a direct executive act in further steps of the project. Public and public concerned does not have the right to participate in these proceedings and therefore they cannot claim suspension of the enforcement of the environmental acceptability decision before the case is closed in court.

<sup>21</sup> Frane Staničić, PhD: The Effect of Initiating Administrative Dispute on the Enforcement of Administrative Decisions: preliminary measures and injunctive relief, Almanac of the Faculty of Law in Split, year 52, 1/2015, pg. 159-173) <http://hrcak.srce.hr/138132>

# INABILITY TO DISPUTE PROJECT'S CONFORMITY WITH SPATIAL- PLANNING DOCUMENTS IN LAWSUITS AGAINST THE ENVIRONMENTAL ACCEPTABILITY DECISIONS

The practice of Croatian administrative courts in cases which dispute the legality of decisions regarding environmental acceptability is, in accordance to Environmental Protection Act, to view the conformity of a project with the spatial-planning document as a fact that should be verified by an adequate verification in the administrative procedure of environmental impact assessment of the project, but the legality of which cannot be disputed in the lawsuit against the main subject – decision on environmental acceptability of the project.

## Examples of case law

The above attitude of Croatian courts is evident in at least two verdicts (2UsI- 1472/12-59 and UsI-970/13-32), in which it has been stated that the matter of conformity of the project with spatial-planning documents is a subject matter of the administrative procedure of issuing location permits. The problem is the fact that the Physical Planning Act strictly determines the parties in the process of issuing location permits to the submitter of the request and the owners, as well as ownership holders on that particular and adjoining real estate. In other words, it means that the environmental NGOs cannot participate in the procedure of issuing location permits. Taking this into consideration, together with the inability to dispute project's conformity with spatial-planning documents in the administrative procedure of environmental impact assessment of the project, one of the vital elements of the control of negative environmental impact still remains out of reach of general public and public concerned – which is contrary to Aarhus Convention.

## Example of inconsistent case law

In order for the judicial system to be just and efficient, as Aarhus Convention demands, it is necessary to ensure that the court practice is coherent. This means that the interpretation and implementation of the law has to be uniformed in all cases. However, in Croatian case law the predictability of the norm that is disputed and interpreted in court is questionable.

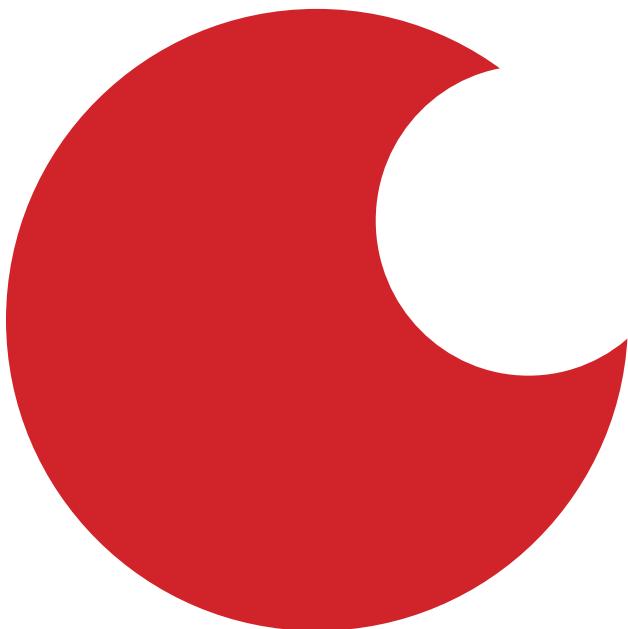
Thus, in two cases mentioned above, the court was of the opinion that in the procedure of lawsuit against the decision on environmental acceptability of a certain project, the project's conformity with planning documents cannot be considered. However, in the verdict 7 Usl 160/13-32 the court was of a different opinion and settled that the project in question was not in conformity with the spatial plan.

# Addition to Civil Society Organizations' Report on Aarhus Convention Implementation in Croatia for the period 2014-2016

January 2017

The Public Debate Report on the Draft of the IV Aarhus Convention National Implementation Report for the period from 2014 to 2016 was published on internet pages eSavjetovanja<sup>22</sup> on January 6, 2017, although the date of the document states December 9, 2016. Ministry of Environmental Protection and Energy states that the following were involved in preparing the draft proposal: Ministry of Agriculture, Ministry of Economy, Entrepreneurship and Crafts, Ministry of the Sea, Transport and Infrastructure, Croatian Agency for Environment and Nature, Environment Protection and Energy Efficiency Fund, Information Commissioner, State Office for Radiological and Nuclear Safety, Croatian Government Office for Cooperation with NGOs, Croatian Waters, High Administrative Court of the Republic of Croatia, representatives of counties and the City of Zagreb as well as the representative of Zelena Istra. As the representatives of public concerned who have submitted their statements during the public consultation, Lana Ofak and Zelena Istra are listed. Out of 20 comments submitted, 18 were submitted by Zelena Istra in the name of Zeleni forum, while 2 were submitted by Lana Ofak. 17 comments were accepted, while 2 were rejected and 1 was partly accepted, which presents a significant improvement in considering and accepting comments of public concerned in comparison to the previous reports.

<sup>22</sup> <https://esavjetovanja.gov.hr/Econ/EconReport?EntityId=4298>



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