ANALYSIS OF THE LEGAL FRAMEWORK AND GAPS AFFECTING THE CIVIL SOCIETY SECTOR IN ENVIRONMENTAL PROCEEDINGS IN SERBIA

Greening JUSTICE
Legal Protection of the Environment

Publisher
Lawyers' Committee for Human Rights - YUCOM
Kneza Miloša 4, 11103 Belgrade
www.yucom.org.rs

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ISBN-978-86-82222-30-9

"Analysis of the legal framework and gaps affecting the civil society sector in environmental proceedings in Serbia" was prepared through the activities of the Lawyers' Committee for Human Rights (YUCOM) and the Association of Public Prosecutors of Serbia (PAS) within the framework of the 'Greening Justice' project, jointly implemented by YUCOM and PAS with the support of the Swedish International Development Cooperation Agency (SIDA). The views and opinions expressed in this publication are the sole responsibility of the authors and do not necessarily reflect the official views of SIDA or the Government of the Kingdom of Sweden.

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1. INTRODUCTION

1.1 CONTEXT AND BACKGROUND

The participation of civil society organizations (CSOs) in environmental procedures represents a key aspect of democratic governance and sustainable development. Ensuring the public's rights to participation, supervision, and access to justice in environmental matters is not only a fundamental human right but also a practical necessity for the effective protection of nature and human health. The international legal framework - particularly through the Aarhus Convention and the legal acquis of the European Union - clearly emphasizes the required role of CSOs in national legal systems as watchdogs, advocates, and key actors in environmental decision-making processes.

Nevertheless, numerous challenges persist in Serbia with regard to the implementation of these standards. The country faces serious structural obstacles that prevent CSOs from fully exercising their rights in proceedings before public authorities and courts. Although environmental harm and risks are widespread - including unlawful waste disposal and industrial pollution, deforestation, illegal construction, building without necessary permits, and water and air pollution - the role of CSOs in addressing these issues through legal means remains limited.

Procedural laws in Serbia rarely recognize civil society organizations (CSOs) as parties in environmental protection proceedings, which significantly limits their right to initiate legal actions, participate in decision-making, and challenge decisions that impact the environment. In addition to a lack of clarity and consistency in legislation itself and its implementation, CSOs face a range of practical obstacles, including high costs, limited access to legal support, insufficient capacity, and various forms of pressure, threats, and retaliation.

Despite these challenges, CSOs in Serbia have demonstrated resilience and a strong commitment to environmental protection. Their role is becoming increasingly important, particularly in light of growing public interest in environmental issues and the increasing need for institutional and legislative reform. This is further underscored by the recent adoption of EU Directive 2024/1203,[1] which highlights the need to formally strengthen the position of CSOs within national legal systems in order to enhance their role.

1 Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024

To better understand the challenges faced by environmental organizations in Serbia and to explore avenues for improvement, this analysis was developed within the framework of the "Greening Justice – Legal Protection of the Environment" project, jointly implemented by the Lawyers' Committee for Human Rights (YUCOM) and the Association of Public Prosecutors of Serbia (PAS) with the support of the Swedish International Development Cooperation Agency (SIDA).

1.2 OBJECTIVES AND TASKS

The primary objective of this analysis is to identify and classify the key obstacles and gaps within the legal, institutional, and practical framework regulating the status of civil society organizations (CSOs) in environmental procedures in Serbia.

The analysis focuses on: assessing the compliance of domestic regulations with international standards, particularly the Aarhus Convention and EU law; identifying legal gaps and misalignments that limit the role of CSOs; mapping institutional barriers and weaknesses in practice; recognizing practical challenges faced by CSOs in their daily work, including access to legal aid, capacities, resources, and protection from retaliation; and formulating recommendations to improve legislation, institutional practices, and support for CSOs to ensure full access to justice.

This analysis will serve as a basis for further steps within the project and for the development of public policy recommendations and advocacy initiatives.

1.3 SCOPE OF THE ANALYSIS

The analysis covers the following areas:

- **Legal Framework:** Analysis of international and domestic regulations governing the rights and capacities of environmental organizations to participate in environmental procedures. The focus is on administrative, criminal, and civil proceedings.
- **Identification of Practical Barriers and Challenges:** Assessment of institutional obstacles and challenges that authorities and courts encounter in enforcing the law, based on data collected through desktop research, questionnaires, and focus groups with CSOs engaged in environmental protection in Serbia.
- **Comparison with International Standards:** Evaluation of the alignment of domestic regulations and practices with the Aarhus Convention and relevant EU law.
- **Recommendations:** Development of concrete proposals to improve the status of environmental organizations, including legislative amendments, strengthening institutional support, and ensuring a sustainable and secure framework for civil society engagement in environmental protection.

The analysis is based on a combination of normative assessment of legislation, analysis of relevant practical cases, and empirical data obtained through questionnaires and focus groups with CSOs from various regions of Serbia.

The analysis was conducted between March 1 and April 30, 2025, in accordance with the tasks and phases defined within the project framework. The questionnaire was distributed to 296 CSOs, including 22 CSO networks, with a total of 46 valid responses collected. Additionally, a focus group was organized, including nine representatives from eight organizations with relevant experience in administrative, civil, and criminal proceedings. Overall, the analysis was based on the responses, perspectives, and experiences of 46 CSOs active in the field of environmental protection in Serbia.

2. METHODOLOGY

2.1 GENERAL DESIGN OF THE ANALYSIS

The methodology of the gap analysis was carefully designed with consideration of the project's objectives and the need to provide a realistic and comprehensive overview of the legal and institutional status of civil society organizations (CSOs) in environmental procedures in Serbia. The analysis aimed to understand both the formal aspects of the regulatory framework and the operational experiences of CSOs in exercising their rights and participating in various types of proceedings.

To ensure a comprehensive understanding of the subject, the research was conducted through a combination of legal analysis and primary data collection. The legal framework was examined via desktop research, which included international sources, domestic legislation, and available judicial and administrative case law. At the same time, questionnaires and focus groups gathered insights into the specific challenges and obstacles faced by environmental organizations. The focus was on identifying key points of misalignment between formal regulations and the actual needs and capacities of organizations to participate in environmental protection procedures through legal and administrative mechanisms.

2.2 DATA COLLECTION, VALIDATION AND ANALYSIS

Data for this analysis was collected during March and April 2025, using two primary methods. The first involved a survey conducted among CSOs engaged in environmental protection. The questionnaire was disseminated online to organizations from various parts of Serbia, previously mapped based on their involvement in environmental issues. The survey questions focused on the organizations' experiences with initiating and conducting legal proceedings, the formal and informal obstacles they encounter, and their perceptions of the legal and institutional support available to them. A total of 46 valid responses were collected, representing a significant sample for this type of analysis.

In addition, on January 31, 2025, a focus group was held with prosecutors from several cities in Serbia who are engaged in prosecuting environmental offenses.

Another focus group was organized on April 14, 2025, bringing together nine representatives from eight different organizations with experience in administrative, civil, and criminal proceedings. The discussion with representatives of environmental organizations provided a deeper understanding of certain issues and offered additional insights that could not be fully captured through the questionnaire. This focus group also served as a validation mechanism for the findings obtained through the survey, and participants contributed a number of suggestions for possible solutions and improvements to the existing legal framework.

This analysis identifies the most significant legal, institutional, and practical obstacles that these organizations face and examines how these barriers affect access to justice in environmental protection.

2.3 METHODOLOGICAL LIMITATIONS

Although the applied methodological framework allowed for a comprehensive understanding of the issue, certain limitations were nonetheless present and must be considered when interpreting the results. First and foremost, there is no comprehensive or official database of organizations engaged in environmental protection in Serbia, which made it necessary to perform additional mapping to ensure the sample's representativeness. Despite these efforts, it is possible that not all relevant organizations were included in the research. In addition, some local organizations and informal initiatives expressed a certain level of hesitation to participate, partly due to the unfavorable social and political climate, but also due to growing distrust toward institutions and larger Belgrade-based organizations. Moreover, the analysis was conducted during a period of heightened social tensions, protests, and other forms of civic activism, which further complicated outreach and engagement with all targeted groups. Despite these challenges, the analysis resulted in valid and useful findings that shed light on key issues and provide a solid basis for formulating recommendations in the next stages of the project. Furthermore, access to decisions of administrative bodies and courts concerning environmental protection cases remains limited. This restricted access contributed to the relatively small number of decisions reviewed in the analysis.

3. LEGAL FRAMEWORK

3.1 IDENTIFYING THE STATUS OF NGOS IN INITIATING, PARTICIPATING IN, AND MONITORING THE PROCEEDINGS

3.1.1 INTERNATIONAL LAW: STANDARDS AND THEIR IMPLEMENTATION

3.1.1.1 THE AARHUS CONVENTION AND EUROPEAN UNION LAW

The EU normative framework regulating the procedural rights of civil society organizations (CSOs) in the field of environmental protection builds upon three interconnected levels. The Aarhus Convention of 1998[2] establishes general standards for transparency, public participation, and access to justice. The European Union's accession to the Convention in 2005[3] imposed the obligation to transpose these standards into EU law (*acquis communautaire*). This was achieved through EU directives, primarily Directive 2003/4/EC on public access to environmental information[4] and Directive 2003/35/EC on public participation and access to justice,[5] which clarify and apply the Convention's provisions within the legal systems of member states and candidate countries. The third level consists of the case law of the Court of Justice of the European Union (CJEU), which, through rulings such as in cases *C-240/09 Lesoochranárske zoskupenie*,[6] *C-115/09 Trianel*,[7] and others, interprets the directives and fills normative gaps to ensure the effective achievement of the Aarhus Convention's objectives.

THE AARHUS CONVENTION

The Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (1998) is a binding international instrument that elevates the procedural rights of individuals and

2 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, 25 VI 1998).

3 Council Decision 2005/370/EC of 17 Feb 2005 concerning the conclusion, on behalf of the European Community, of the Aarhus Convention, OJ L 124, May 17, 2005, p. 1.

4 Directive 2003/4/EC of the European Parliament and of the Council of 28 Jan 2003 on public access to environmental information, OJ L 41, February 14, 2003, p. 26.

5 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation and access to justice, OJ L 156, June 25, 2003, p. 17.

6 CJEU, Case C-240/09, Lesoochranárske zoskupenie VLK (2011) ECLI:EU:C:2011:125.

7 CJEU, Case C-115/09, Bund für Umwelt und Naturschutz Deutschland (Trianel) (2011) ECLI:EU:C:2011:489.

civil society organizations (CSOs) in the field of environmental protection to the level of fundamental democratic standards. The premise of the Convention states that "every person has the right to live in an environment adequate to his or her health and well-being, and it is the duty of each person to protect and improve the environment; [8] the States Parties are obliged to develop a legal framework that makes this right effective."

The Convention is further built upon three interdependent pillars. The first is the right of access to information, where transparency is considered a precondition for participation. The second is public participation as the democratization of environmental decision-making processes. The third pillar is access to justice, i.e., judicial and administrative protection that ensures oversight of the first two rights.[9] Special attention is given to the role of civil society organizations - environmental NGOs - which the Convention recognizes as key actors in protecting the public interest in the environment.

EU DIRECTIVES

On the other hand, the directives of the European Union serve as a bridge between the international obligations stemming from the Aarhus Convention and the concrete, legally binding rules that Member States (and candidates such as Serbia, which are required to align their legislation with EU standards and law) must implement in their national legal systems. Thus, EU Directive 2003/4/EC transformed the Convention's first pillar into a clear obligation for states to ensure access to environmental information. Directive 2003/35/EC, complementing existing regulations on Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA), incorporated the second pillar by mandating timely and effective public participation in plans, programs, and individual projects. Furthermore, the codified and subsequently amended Directive 2011/92/EU (EIA), with the 2014/52/EU amendments, detailed procedural steps (screening, scoping, publication of studies, public consultations, reasoned decisions), thereby giving effect to Article 6 of the Convention. Through clauses on access to justice, the path was opened for the implementation of the third pillar. Unlike the Convention, the directives contain precise deadlines, minimum standards, and a sanctions mechanism through infringement proceedings before the Court of Justice of the EU, thereby ensuring uniform and enforceable application of the Aarhus principles across the Union and setting clear benchmarks for candidate countries.

It is also important to mention the most recent EU Directive (2024/1203, DIRECTIVE (EU) 2024/1203 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 April 2024), which, in Article 15, highlights the need for national legislations to further regulate the procedural standing of environmental organizations in criminal proceedings so that their capacities contribute effectively to these processes and their role in protecting the collective interest becomes strengthened. Additionally, Article 14 of the Directive requires states to ensure fundamental rights and protections for environmental defenders, whistleblowers, and cooperating persons

8 UNECE, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (done Aarhus, June 25, 1998) preambula.

9 Aarhus arts 4–9.

in the context of criminal proceedings. This includes protection against retaliation and the provision of necessary support and assistance to individuals who provide evidence or cooperate by other means in the investigation, prosecution, or trial of such criminal offenses.

COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU)

Following the EU directives, the Court of Justice of the European Union (CJEU) plays a crucial role in interpreting and harmonizing the application of the Aarhus Convention principles and EU directives, as well as ensuring their effective implementation. In case C-240/09 *Lesoochranárske zoskupenie VLK*,[10] the Court confirmed that the provisions of Article 9 of the Aarhus Convention have a sufficiently clear and unconditional character so that, although they do not apply directly, they allow national courts a broad interpretation of the procedural standing of environmental organizations. Subsequently, in case C-243/15 (LZ II) *Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín*,[11] the Court interpreted these principles, holding that concluding the procedure while an environmental organization's request for party status remains unresolved is contrary to the Convention, thereby effectively establishing the rule that the public cannot be excluded from EIA/SEA procedures due to formal procedural reasons. In the more recent case C-411/17 *Inter-Environnement Wallonie*,[12] the Court emphasized that modifications to high-risk projects, such as nuclear power plants, cannot be approved without a new impact assessment and full public participation. It underscored that the rights under Directive 2011/92/EU require effective judicial protection and the possibility to suspend works. Through these and similar decisions, the CJEU constitutes a key mechanism for the effective implementation of the Aarhus Convention into concrete rights and obligations, urging Member States (and candidate countries) to ensure broad access to justice, consistent application of procedures, and meaningful consideration of public comments in environmental protection.

APPLICATION AND SIGNIFICANCE OF EU LAW

CSOs as "Interest Public" (Article 2, Point 5 of the Convention)

Article 2, point 5 of the Aarhus Convention defines the "interested public" as entities that are affected, likely to be affected, or "have an interest" in decisions concerning the environment. Environmental CSOs that meet the criteria established by national

10 Court of Justice of the European Union, Case C-240/09 *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia SR*, Judgment of 8 March 2011, ECLI:EU:C:2011:125.

11 Court of Justice of the European Union, Case C-243/15 *Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín*, Judgment of 15 March 2016.

12 Court of Justice of the European Union, Case C-411/17 Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres, Judgment of 29 July 2019, ECLI:EU:C:2019:622. In 2015, the Belgian government adopted a law extending the operation of two nuclear power plants (Doel 1 and Doel 2) for an additional ten years, despite their prior planned closure. This decision was made without a prior environmental impact assessment, which raised concerns among the non-governmental organizations Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen. They filed a lawsuit before the Belgian Constitutional Court, which subsequently referred preliminary questions to the Court of Justice of the European Union.

legislation are automatically considered interested parties. The importance of this provision is reflected in the following:

- It eliminates the need for CSOs to demonstrate ad hoc legal standing in each individual case;
- It expands their active legal standing before administrative authorities and courts;
- It fosters effective public-law representation of collective environmental interests.

Although point 5 sets the condition that national legislation criteria must be met, primarily through CJEU case law, it has been clearly established that conditions imposed by national law which contradict the principles of the Aarhus Convention, are discriminatory, or otherwise unjustified will not be accepted. In other words, restrictions set out in point 5 may only be established and applied by states with a legitimate aim. The relevant case law of the CJEU will be presented below.

Right of Access to Information (Article 4 of the Convention; Directive 2003/4/EC)

Article 4 of the Aarhus Convention stipulates that environmental information includes data on the state of natural elements, factors, and measures affecting that state. Furthermore, Directive 2003/4/EC implements the principle of *maximum disclosure*:[13] all information is presumed accessible, and exceptions are to be interpreted restrictively. Public authorities are obliged to respond within 30 days, or sooner in urgent cases.[14] In addition to passive access, the Directive introduces the obligation of proactive electronic publication of databases. Thus, Article 4 of the Aarhus Convention prescribes the individual right of any person - whether a citizen or an organization - to request and receive, without the obligation to prove a specific legal interest, environmental information held or controlled by a public authority within a reasonable timeframe. The deadline for responding to a request is a maximum of one month but may be extended if the requested documentation is particularly extensive or if processing the request is complex. In such cases, the authority must inform the applicant of the reasons for the extension and the expected response date. Although the starting assumption is maximum availability of information (*principle of maximum disclosure*), the Convention allows a limited number of exceptions, which must be narrowly interpreted. A request may be refused, for example, to protect national security, international relations, commercial confidentiality, or personal data. However, even then, refusal must be proportionate and accompanied by a written justification that the applicant may submit to a court or other independent body for review, in accordance with Article 9 of the Convention.

Public Participation (Article 6–8 of the Convention; Directive 2003/35/EC, Directive 2011/92/EU)

Article 6 of the Aarhus Convention regulates the public's right to participate in decision-making regarding individual projects that may have a significant impact

13 UNECE Guide 2014, pages 60–62.

14 Dir 2003/4/EC art 3(2), (4).

on the environment. This right is mandatory for activities listed in Annex I of the Convention (such as large industrial facilities, hydropower plants, landfills, chemical plants, etc.) and may be extended to other activities the State considers potentially having serious environmental effects. The key principle of this article is to ensure early, effective, and informed public participation at a stage when all options are still open. The public must be timely informed about the proposed activity, the nature of possible decisions, the competent authority, the decision-making procedure, deadlines for participation, available information, and opportunities for organizing public hearings. Participants must be granted access to all relevant documents without the need to demonstrate legal interest. The public authority is obliged to allow the public to submit comments and opinions within a sufficiently long period and to take those views into account when making decisions. Upon reaching a decision, the public must be informed of the outcome, the reasons leading to that decision, and how the public's comments were considered.[15] Article 7 extends this model to the strategic level, requiring practical arrangements for public participation during the preparation of environmental plans and programs, thereby enabling environmental organizations to influence policy frameworks before individual projects even arise.[16]

Article 8 goes a step further by requiring the promotion of effective public participation at an early stage in the preparation of laws, regulations, and other generally binding rules. This enables environmental organizations to contribute expert input to technical standards and to monitor the regulatory process "while all options are still open". States are obliged to make draft legislation and relevant explanatory information available to the public in a timely manner. They must also provide realistic timeframes for submitting comments and ensure that the outcomes of public consultations are considered when finalizing the legislation. Although the Convention allows states flexibility in choosing specific procedures, the core message of Article 8 is that the normative framework shaping environmental policy must result from a transparent and participatory process, thereby strengthening public trust, improving the quality of regulations, and aligning them more closely with environmental interests.[17]

Viewed together, these provisions transform procedural rights - such as access to information, public participation, and reasoned decision-making - into key tools therby enabling environmental organizations to prevent or mitigate harmful projects, strategically shape public policies, and improve the quality of regulations. Violations of these procedures also enable them to rely on Article 9 of the Convention for judicial protection, without the need to prove a personal legal interest, thereby significantly strengthening their procedural standing and role in safeguarding the public interest. In this way, the three pillars of the Aarhus Convention - timely participation, reasoned decision-making, and inclusiveness[18]

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15 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Article 6, UNECE, 1998.

16 *Ibid*., Article 7.

17 *Ibid*., Article 8.

18 *Timely participation (of the public), reasoned decision-making, public inclusiveness.*

- serve as a triple safeguard aimed at preventing public participation from being reduced to a mere formality.

Access to Justice (Article 9 of the Convention and Directive 2011/92/EU, Article 11)

Article 9 of the Aarhus Convention guarantees the right of access to justice in environmental matters. This article obliges the States Parties to ensure legal mechanisms enabling citizens and organizations to challenge violations of the rights to access information (Articles 4 and 5) and public participation in decision-making (Articles 6–8). To this end, the Convention requires that everyone is entitled to initiate proceedings before an independent and impartial body to review the legality of decisions, acts, or omissions by public authorities. Particular importance is placed on non-governmental organizations, which, in accordance with domestic law, should enjoy broad procedural capacity without the obligation to prove individual interest when acting in the field of environmental protection. Article 9 thereby ensures that legal protection accompanies the other rights set forth in the Convention and constitutes a key instrument for their effective implementation. This article, reinforced by Directive 2011/92/EU, entails:

1. **Broad Legal Standing:** Article 11 of Directive 2011/92/EU (formerly Article 10a, introduced by Directive 2003/35/EC[19]) stipulates that the public affected by a decision, i.e. the "interested public", shall have access to judicial or other independent review procedures to challenge the substantive and procedural legality of "EIA decisions". The same article explicitly provides that the interest of environmental non-governmental organizations that promote environmental protection and meet national legal requirements shall be deemed to have an interest.[20] Accordingly, environmental organizations are also recognized as holders of rights that may be violated, granting them *locus standi* without the need to demonstrate individual harm or violation of a personal right. The position of the Court of Justice of the European Union (CJEU) in the *Trianel case (C-115/09, Bund für Umwelt und Naturschutz Deutschland eV/Landesverband NRW v Bezirksregierung Arnsberg, Trianel Kohlekraftwerk Lünen GmbH & Co. KG)*[21] and *the Protect case (C-664/15, Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd)* [22] confirmed that any national provision

19 Directive 2011/92/EU (codification of EIA Directive) as amended by Directive 2014/52/EU, OJ L 124/1, 25 IV 2014.

20 Directive 2011/92/EU.

21 *CJEU, Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg, Trianel Kohlekraftwerk Lünen GmbH & Co. KG (C-115/09, 12 May 2011), ECLI:EU:C:2011:289.* In this case, the German environmental NGO Bund für Umwelt und Naturschutz Deutschland (BUND) challenged the permit issued by the Arnsberg District Authority to *Trianel Kohlekraftwerk Lünen GmbH & Co. KG* for the construction of a coal-fired power plant in Lünen. BUND argued that the permit failed to comply with environmental impact assessment (EIA) requirements. The national court referred a preliminary question to the CJEU, seeking clarification on whether national legislation that limits the right of NGOs to challenge such permits solely on the basis of infringements of individual subjective rights - rather than broader public interest - violates the right of access to justice under Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, and Article 9(2) of the Aarhus Convention.

22 *CJEU, Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd (C-664/15, 20 December 2017), ECLI:EU:C:2017:987.* In this case, the Austrian environmental *NGO Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* challenged a permit issued by the Gmünd District Authority for the construction of a facility that could potentially affect the status of surface waters, as

that unduly restricts these standards (such as a requirement to prove violation of a personal right) is not compatible with the Aarhus Convention.

2. **Effectiveness and the Absence of Excessive Costs.** Article 9(4) stipulates that the procedure must not be prohibitively expensive. In *the Edwards case (C-260/11 PPU, Edwards & Pallikaropoulos v Environment Agency)*,[23] the CJEU developed criteria for assessing whether costs are "objectively not prohibitive," while in *Commission v United Kingdom (C-530/11)*,[24] it found that the UK legislation on court fees still remains unable to ensure predictability of costs and accessibility to the courts.

3. **Interim measures.** Environmental disputes carry the risk of irreversible harm occurring before the final resolution of the proceedings. The Aarhus Convention and the EIA Directive explicitly require that courts have the authority to suspend permits through interim measures. In the case of *Krizan* (C-416/10, *János Krizan and Others v Dunastav*),[25] the CJEU confirmed that courts must possess - and exercise - the power to suspend administrative decisions in a timely manner when there is a serious threat to the environment or when there is reason to believe that such decisions have been adopted in breach of EU law, particularly concerning the obligation to carry out environmental impact assessments and the right of the public to participate in decision-making.

4. **Interpretation of National Law in Light of the Aarhus Convention.** In the landmark case *Lesoochranárske zoskupenie VLK (C-240/09)*, the CJEU held that Article 9(3) of the Aarhus Convention does not have direct effect, but that national courts are required to interpret domestic procedural law in the light of the Convention's objectives in order to ensure effective judicial protection and access to justice for organizations acting in the public interest. This line of reasoning was reinforced in *Commission v Poland (Białowieża Forest) (C-441/17)*,[26] where the Court issued interim measures ordering Poland to suspend logging activities pending the outcome of proceedings, thereby confirming the critical role of interim relief in environmental cases. Furthermore, in case *C-263/08 Djurgården*, the CJEU

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defined under Directive 2000/60/EC (the Water Framework Directive). The organization argued that the permit did not comply with the obligations of the directive, particularly those concerning the prevention of deterioration in water status. The Austrian court referred a preliminary question to the CJEU, seeking interpretation on whether the NGO had a right of access to justice under Article 9(3) of the Aarhus Convention and Article 47 of the EU Charter of Fundamental Rights, even when such access is not provided for under national law.

23 CJEU, *Edwards and Pallikaropoulos v Environment Agency (C-260/11, 11 April 2013), ECLI:EU:C:2013:221*. In this case, the Court emphasized that national courts must consider all relevant factors, including the applicant's financial capacity, as well as the potential costs and the risk of being ordered to pay the opposing party's legal expenses.

24 CJEU*, European Commission v United Kingdom of Great Britain and Northern Ireland (C-530/11, 1 April 2014), ECLI:EU:C:2014:67*. In this case, the European Commission initiated proceedings against the United Kingdom, arguing that the UK's legal framework did not provide sufficient legal certainty and predictability regarding costs, which could discourage individuals and organizations from seeking legal protection in environmental matters. The Court ruled that the United Kingdom failed to fulfill its obligations under Directive 2003/35/EC by not ensuring that judicial proceedings in environmental cases are not excessively costly. The Court emphasized that the legal framework must provide clear and predictable mechanisms that enable access to justice without disproportionate financial burdens.

25 CJEU, *János Krizan and Others v Dunastav Rt (C-416/10, 15 November 2012), ECLI:EU:C:2012:761*.

26 CJEU, European Commission v Republic of Poland (C-441/17, 17 April 2018, interim order), ECLI:EU:C:2018:255.

emphasized that quantitative restrictions under national law - such as requiring NGOs to have a minimum number of members as a precondition for legal standing - are incompatible with the objectives of the Convention, as they discriminate against smaller local organizations and undermine the principle of inclusiveness.[27] In *Lesoochranárske zoskupenie VLK (C-240/09)*, the Court confirmed that national courts must interpret domestic procedural rules in the spirit of the Aarhus Convention, even where the Convention's provisions lack direct effect, in order to ensure effective legal protection for environmental organizations. [28]

3.1.1.2 INTERNATIONAL BODIES COMPETENT IN CASES OF SERBIA'S NON-COMPLIANCE WITH INTERNATIONAL STANDARDS

In addition to the Aarhus Convention, Serbia is a signatory to other international instruments that directly or indirectly address the protection of environmental rights, as well as the status of environmental organizations in representing broader public interests. Some of these instruments have established specific mechanisms or bodies tasked with overseeing and monitoring the implementation of obligations by the States Parties. In cases of non-compliance, environmental organizations may also bring claims before these bodies. The mandates of these institutions differ both in terms of their scope of action and the strength and type of responses they can undertake. Below follows a brief overview of the competences of international bodies operating in certain contexts related to environmental protection and the role of environmental organizations.

In cases where the Republic of Serbia, or its administrative authorities, act contrary to the principles of the Aarhus Convention (as specified by the relevant directives and the case-law of the Court of Justice of the EU), as well as other conventions which Serbia has signed and ratified, environmental organizations have the possibility to submit complaints to the following bodies:

1. **Aarhus Convention Compliance Committee (ACCC), established under the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters**: Upon submission by environmental organizations, the Committee issues so-called *Findings and Recommendations*[29]. The procedure begins when any member of the public - an individual, a group of citizens, a non-governmental organization, or others - submits a written communication to the Committee, providing a detailed description of the alleged breach

27 CJEU, *Case C-263/08, Djurgården-Lilla Värtans Miljöskyddsförening v City of Stockholm (2010), ECLI:EU:C:2010:454*. In this case, the Swedish *NGO Djurgården-Lilla Värtans Miljöskyddsförening* challenged a decision by the City of Stockholm approving the construction of a tunnel for electrical cables, arguing that the project could have a significant environmental impact. However, under Swedish law, only organizations with at least 2,000 members had the right to initiate legal proceedings against such decisions. Since the NGO had fewer members, its lawsuit was dismissed.

28 In CJEU *Case C-240/09 Lesoochranárske zoskupenie VLK*, the national court referred a preliminary question asking whether Article 9(3) of the Aarhus Convention has direct effect in EU law. If not, the court asked whether national courts of Member States are nevertheless required to interpret their procedural law in a manner that grants NGOs party status and access to the courts when challenging acts, they consider to be in breach of environmental law.

29 UNECE, *Digest of Aarhus Convention Compliance Committee Findings* (description of the legal nature of "Findings & Recommendations").

of the Convention along with supporting evidence. After a preliminary acceptability review, the Committee examines the case, requests information from the state concerned, and, if it finds non-compliance, adopts *Findings and Recommendations*, which are subsequently endorsed by the Meeting of the Parties (MOP). Although these are soft-law instruments without formal enforcement mechanisms, their public nature and the continued oversight by the MOP exert a certain degree of pressure on the state. Environmental organizations from Serbia are authorized to initiate this mechanism, which they have already done in case ACCC/C/2020/179.[30]

2. **UN Special Rapporteur on Human Rights and the Environment** *(Rapid Response Mechanism for Environmental Defenders):*[31] Any individual, including environmental organizations from Serbia, may file a complaint with the Special Rapporteur in situations where they face or are at risk of facing acts of retaliation, intimidation, manifestly unfounded criminal prosecution (e.g., SLAPP[32] lawsuits), or other forms of pressure in response to the exercise of rights, including those guaranteed under the Aarhus Convention (access to information, public participation, and access to justice). The procedure entails submitting a brief description of the incident along with supporting evidence, with the possibility to request confidentiality of the complainant's identity. The Special Rapporteur then contacts the relevant state authorities and urges the adoption of protective measures.[33] Additionally, the Rapporteur may engage in mediation or recommend specific actions to stop the repression. The outcome typically consists of a letter of recommendation or an urgent appeal in cases of immediate threat. While the recommendations are not legally binding, they serve as a prompt and effective advocacy tool, exerting international pressure on the state to ensure the protection of environmental defenders.
3. **Implementation Committee of the Espoo Convention**,[34] as a compliance mechanism under the Convention on Environmental Impact Assessment in a Transboundary Context (commonly referred to as the Espoo Convention, 1991), reviews the compliance of Parties based on information received from any person or entity (including environmental organizations from Serbia). The Committee may examine whether a Party's conduct is consistent with the Convention and adopt findings and recommendations. [35] In this case, environmental organizations may only inform the Committee about the conduct of Serbian authorities, but the procedure is initiated *ex officio*. Accordingly, while organizations may submit information, they do not have the status of parties to the procedure.

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30 On 27 January 2020, the Centre for Ecology and Sustainable Development (CEKOR) and ClientEarth submitted a communication to the Compliance Committee, alleging that Serbia had failed to comply with Articles 6 and 8 of the Convention in relation to the Kostolac B3 thermal power plant project, as well as Article 9 concerning access to justice, available at: Communication to the Aarhus Convention - Compliance Committee on phase II of the Kostolac B Power Project and Serbia's failure to comply with Article 6 and Article 9 of the Convention

31 Mandate and Functions of the Special Rapporteur

32 SLAPP – Strategic Lawsuit Against Public Participation

33 Submission information and individual complaints

34 Rules of Procedure Convention on Environmental Impact Assessment in a Transboundary Context

35 UNECE, Implementation Committee – objective and procedure.

4. **The Secretariat of the Energy Community**, **established under the Treaty establishing the Energy Community,** which Serbia signed and ratified in 2006, provides a dedicated complaints mechanism accessible to environmental organizations in Serbia. These organizations may submit a complaint if they suspect that the state is failing to implement legislation constituting the binding Energy Community acquis,[36] which includes key "green" directives such as the EIA Directive 2011/92/EU, SEA Directive 2001/42/EC, and IED Directive 2010/75/EU. Upon receiving a complaint, the Secretariat initiates a preliminary procedure by sending an Opening Letter to Serbia, requesting a response within a specified deadline. If the non-compliance is not rectified, the Secretariat may initiate proceedings resulting in a reasoned opinion.[37] Should the state still fail to take appropriate measures, the Ministerial Council of the Energy Community may issue a decision,[38] which may result in political and financial consequences if not implemented. While environmental organizations cannot obtain a legally binding ruling through this mechanism, they may use the Secretariat's opinion, and in particular the Ministerial Council's decision, to support their claims before domestic courts in Serbia.
5. **The Standing Committee of the Bern Convention** serves as the main decision-making body under the Convention on the Conservation of European Wildlife and Natural Habitats. It is composed of representatives of all Contracting Parties and is responsible for overseeing the implementation of the Convention. Environmental organizations from Serbia may submit a complaint to the Secretariat regarding alleged violations (such as threats to protected species or habitats). The Secretariat then forwards the matter to the Bureau (a sub-body of the Committee), which determines whether to register it as a "new complaint," classify it as "possible," or open *a case-file* immediately. During the investigation phase, the Bureau and Committee may request further information from the state, organize on-site missions, and engage independent experts. The Standing Committee then examines reports and adopts recommendations at its annual meeting and, less frequently, issues decisions that provide specific guidance and set deadlines for remedying the breach. This mechanism does not result in legally binding outcomes; however, its effectiveness lies in the requirement for the state to submit periodic progress reports, with the case remaining "open" until the Committee determines that sufficient measures have been taken. The transparency of the entire process applies a certain level of public pressure on the state.
6. **The European Court of Human Rights (ECHR)** operates under the European Convention on Human Rights and Fundamental Freedoms, whose Article 34 permits applications by "any person, non-governmental organization, or group of individuals." Thus, environmental organizations from Serbia may, under certain prescribed conditions, submit complaints to the Court against the Republic of Serbia in cases where rights guaranteed by the Convention have been violated. Article 46 provides that the Court's judgments are binding, and the Committee of Ministers of the Council of Europe supervises their execution.[39] While the Convention does not explicitly guarantee a right to a healthy environment, the Court has, through its case law, made environmental violations justiciable by recognizing them under breaches of Article 2 (right to life), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article

36 The complete body of Energy Community legislation.

37 Energy Community, Dispute-settlement procedure

38 Procedural Act No 2008/01/MG-EnC of the Ministerial Council of the Energy Community of 27 June 2008

39 European Convention on Human Rights

10 (freedom of expression – access to information), and Article 13 (right to an effective remedy). This mechanism results in legally binding judgments requiring the state to adopt specific measures and is subject to execution monitoring. Compared to other mechanisms, this one holds the greatest legal authority.

In addition, in urgent cases, the Court may, under Article 39 of its Rules of Court[40] (as further elaborated and clarified in the Practice Direction on the application of Article 39), indicate interim measures to the state, provided that there is an immediate risk of irreplacable harm in the context of rights protected by the Convention. This mechanism is particularly effective in urgent situations due to the Court's expedited procedure in such cases and the binding nature of its decisions on interim measures.

3.1.1.3 THE EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW: VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS V. SWITZERLAND (APP. NO. 53600/20)

Examples of relevant case-law are not uncommon. Among them are *Öneryıldız v. Turkey* (GC), appl. no. 48939/99, judgment of 30 November 2004,[41] and *Kolyadenko and Others v. Russia*, appl. nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05, and 35673/05, judgment of 28 February 2012,[42] in which the Court found a violation of Article 2 of the Convention in environmental proceedings. Violations of Articles 8 and 6 of the Convention were established in cases such as *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (appl. no. 53600/20, Grand Chamber judgment of 9 April 2024). However, the Court's position on the issue of legal standing (*locus standi*) of associations[43] is of particular significance, and will therefore be examined in more detail.

In the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (appl. no. 53600/20)*, the Court explicitly confirmed that Article 8 "encompasses the right of individuals to effective protection by public authorities from the serious adverse effects of climate change on life, health, well-being, and quality of life." This establishes a positive obligation on the State to implement a comprehensive regulatory framework (including a national emissions budget or other measurable targets), to take timely, corresponding, and coherent measures to reduce greenhouse gas emissions, as well as to monitor and review the achievement of those targets. The Court also identified "critical gaps" such as the absence of emission limits, failure to meet previous reduction targets, and delays in adopting legislative measures. Accordingly, the Court found that the State exceeded the limits of its margin of appreciation and failed to fulfill its positive obligations under Article 8.

40 Rules of Court

41 Case of Öneryıldız v. Turkey, (Application no. 48939/99), Judgment, Strasbourg, 30 November 2004

42 Case of Kolyadenko and Others v. Russia (Applications nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05), Judgment, Strasbourg, 28 February 2012

43 Case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application no. 53600/20), Judgment, Strasbourg, 9 April 2024

Additionally, the European Court of Human Rights has examined the *locus standi* of applicants in assessing victim status under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which requires individual applicants to demonstrate that they have been personally and directly affected by the actions or omissions of the State. However, in interpreting the Convention, the Court found that the unique nature of climate change as a matter of common concern for humanity, as well as the need for intergenerational burden-sharing, justify allowing associations to bring proceedings. For an association to act on behalf of its members or other affected individuals, it must meet several conditions outlined in the judgment, but it is not necessary for each individual to independently satisfy the victim criteria. Thus, in this judgment, the Court for the first time precisely set out three cumulative conditions that an environmental (or other) association must fulfill to be granted *locus standi* to file an application on behalf of its members in climate-related cases:

1. legal establishment in the competent state – the organization must be registered or have full procedural capacity in the state against which the proceedings are brought;
2. the primary or one of the statutory objectives of the organization must be the protection of the human rights of its members (group of individuals) in the context of climate;
3. proof that the organization is "qualified and representative" – the organization must demonstrate that it genuinely represents individuals "who are exposed to specific threats or harmful effects of climate change on their life, health, or well-being." This does not require every member individually to meet the strict criteria of a "victim," but the organization must have a real and close connection to the affected group.

The Court emphasized that these criteria enable collective protection when it constitutes the "only effective way" to defend the rights at risk, while also preventing *actio popularis* - general public interest claims lacking a real connection to the members or victims. Once these conditions are met, the organization acquires the status of an applicant under Article 34 of the Convention, after which the Court proceeds to examine the merits, as it did in the aforementioned case, where it afterwards found a violation of Article 8 of the Convention.

In this manner, the Court found that the association *Verein KlimaSeniorinnen Schweiz* meets the relevant criteria and possesses the necessary standing *(locus standi)* to act on behalf of its members, while also clarifying the criteria that guide the Court's further proceedings when dealing with applications submitted by environmental organizations.

CONCLUSION

The Aarhus Convention, as an international instrument that established procedural rights in the field of environmental protection, serves as the foundation of legal protection for the public interest, particularly for civil society organizations (CSOs) engaged in the protection of nature and ecosystems - namely, environmental organizations. European Union directives (Directive 2003/4/EC on access to information, Directive 2003/35/EC on public participation and access to justice, and Directive 2011/92/EU) have complemented these international standards by

conferring binding legal force upon them, as part of the EU's secondary legislation, and by more precisely defining the rights of CSOs and the conditions for their legal standing. Furthermore, the case law of the Court of Justice of the European Union has reinforced these standards by guiding national courts of Member States toward a broad and proactive interpretation of the relevant provisions in order to ensure effective judicial protection.

In this context, civil society organizations have been recognized as "the concerned public" with a presumed interest ("shall be deemed to have an interest"), thereby eliminating the need to demonstrate legal standing to initiate proceedings. Through landmark cases such as *Trianel*, *Protect*, *Lesoochranárske zoskupenie*, *Edwards*, and *Białowieża Forest*, case law has reinforced standards of effectiveness, access to justice, absence of prohibitive costs, and the possibility of issuing interim measures to ensure the timely protection of the environment.

On the other hand, international instruments and bodies available to environmental organizations from Serbia provide a multi-layered framework for protection and pressure on the state to comply with the standards of the Aarhus Convention, relevant EU directives, and the case law of the Court of Justice of the European Union. Although most mechanisms (the Aarhus Convention Compliance Committee - ACCC, the UN Special Rapporteur on human rights and the environment, the Espoo Convention Implementation Committee, the Energy Community Secretariat, and the Bern Convention Standing Committee) operate on the basis of "findings and recommendations" without direct sanctions, their transparency, public character, and continuous monitoring by bodies such as the Meeting of the Parties or the Council of Ministers create strong political and reputational pressures for states to fulfill their obligations. By contrast, the European Court of Human Rights, through binding judgments and interim measures under Rule 39 of the Rules of Court, represents the most powerful mechanism, given that its decisions are binding and must be effectively implemented by the state, under the supervision of the Committee of Ministers. Through a combination of urgent interim measures, public recommendations, and legally binding court judgments, environmental organizations have the opportunity to initiate change, protect citizens' rights, and demand accountability from Serbian authorities through mechanisms that go beyond the actions of domestic institutions and courts.

3.1.1.1 SERBIA AND THE AARHUS CONVENTION: LEGAL FRAMEWORK AND THE IMPORTANCE OF HARMONISATION WITH EU LAW

By acceding to the Aarhus Convention in 2009,[44] Serbia undertook the obligation to develop and harmonise its national legal framework with the Convention's core pillars – access to information, public participation, and access to justice in environmental matters.[45] This Convention is a fundamental instrument for defining

44 The National Assembly of the Republic of Serbia adopted the Law on the Ratification of the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (ratified Aarhus Convention) on May 12, 2009 ("Official Gazette of RS - International Treaties," No. 38/09).

45 Aarhus Convention, UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), Article 3(1).

the procedural standing of environmental organisations acting in the public interest of environmental protection.

In line with its international obligations, Serbia developed and adopted key environmental laws in the period before and immediately after the ratification of the Aarhus Convention. Although the Law on Free Access to Information of Public Importance, the Law on Environmental Protection, the Law on Environmental Impact Assessment, and the Law on Strategic Environmental Assessment were formally adopted before the ratification (in 2004), their content and following amendments were directly shaped by the obligations arising from the Convention. The implementation of these obligations has been regularly detailed in national reports submitted to the UNECE Aarhus Secretariat.[46]

In the context of European integration, Serbia has further recognized the importance of harmonization with EU law, particularly within Chapter 27, which addresses the environment and climate change and represents one of the most complex and demanding segments of the EU *acquis communautaire*.[47]

As a candidate country for EU membership, Serbia is obliged to ensure alignment with the legal standards of the EU and the Aarhus Convention. In this regard, national legislation governing access to information, public participation, and access to justice must comply with EU law. Beyond formal legal harmonization, the practices of national courts and administrative authorities must also be further adapted to the standards set by the EU and the Aarhus Convention, including the guidelines arising from the rulings of the Court of Justice of the European Union.

3.1.2 NATIONAL LEGAL FRAMEWORK

The national framework regulating the status of environmental organizations primarily includes general procedural laws - the Civil Procedure Act, the Criminal Procedure Code, the Law on General Administrative Procedure, and the Law on Administrative Disputes - as well as a number of specific laws that govern the position of environmental organizations and set out special procedures for exercising the rights under the Aarhus Convention. These include the Law on Environmental Protection, the Law on Environmental Impact Assessment, the Law on Strategic Environmental Assessment, the Law on Integrated Pollution Prevention and Control, and the Law on Free Access to Information of Public Importance. In line with the above, environmental organizations in Serbia that wish to initiate, instigate, or participate in proceedings concerning environmental matters may do so through administrative procedures, administrative court proceedings, civil litigation, criminal proceedings, or by submitting a constitutional appeal.

The following sections of this analysis will examine key procedural provisions and other relevant regulations governing the standing and legal position of environmental organizations before administrative and judicial authorities, with

46 UNECE, National Implementation Reports of Serbia under the Aarhus Convention (2011, 2014, 2017).

47 European Commission, *Screening Report Serbia – Chapter 27: Environment and Climate Change* (2015).

a focus on the implementation of the Aarhus principles and an overview of the available case law. Particular attention will be given to administrative procedures, preventive legal remedies (such as the environmental lawsuit under Article 156 of the Law on Obligations), and mechanisms for the judicial review of decisions made by competent authorities.

In order to ensure a focused analysis, this document will not delve into the position of organizations in criminal proceedings and proceedings related to economic offences, nor into the role of inspections, as these topics have already been the subject of separate studies.[48]

3.1.2.1 CIVIL PROCEEDINGS

CIVIL PROCEEDINGS AND STANDING OF ENVIRONMENTAL ORGANIZATIONS

Pursuant to the provisions of Article 74 of the Civil Procedure Act (*Official Gazette of RS,*No. 72/2011, 49/2013 – Constitutional Court Decision, 74/2013 – Constitutional Court Decision, 55/2014, 87/2018, 18/2020 and 10/2023 – other law), any natural or legal person may be a party in proceedings. Special regulations determine which other entities, aside from natural and legal persons, may also be parties in proceedings. In this regard, the civil court may, by a decision that has legal effect in a specific case, recognize party status to forms of association and organization that do not have party capacity (within the meaning of paragraphs 1 and 2 of Article 74), if it finds that, considering the subject matter of the dispute, they meet essential conditions for acquiring party capacity, especially if they possess property against which enforcement can be carried out. Article 93 of the Civil Procedure Act prescribes that a party initiates civil proceedings by filing a complaint (lawsuit).

In the context of the standing of environmental organizations, this means that, according to the Civil Procedure Act, registered citizens' associations, foundations, and even informal groups that the law specifically recognizes, may assume the role of plaintiff when challenging acts or conduct that endanger the environment.

The Supreme Court of Cassation, in a specific case, emphasized that party standing in civil proceedings represents a substantive legal relationship between the party and the subject matter of the dispute, or the right for whose protection the litigation was initiated. Accordingly, in civil proceedings, those substantively entitled as participants are the subjects of the substantive legal relationship from which the dispute arose. This means that the plaintiff has standing when, based on the substantive legal relationship giving rise to the dispute, they have the right to request the establishment of a right, performance of an obligation, or tolerance of a condition; whereas the defendant has passive standing when, based on the same relationship, they bear the obligation to tolerate or perform what the plaintiff is entitled to request.[49] In the concrete case, it was determined that the plaintiff did not have standing to bring the lawsuit, as the plaintiff was neither a contractual party nor a legal successor of the contractual party who concluded the disputed

48 Analysis of Inspection Supervision and Control in the Area of Environmental Criminal Law Protection in the Republic of Serbia and Gap Analysis of the Public Prosecution Service in the Republic of Serbia in Handling Environmental Crime Cases.

49 Judgment of the Supreme Court of Cassation, Rev 5145/2020, dated 20 January 2022.

contracts; therefore, the court found that the plaintiff was not in a substantive legal relationship with the subject matter of the claim. Although this case lacks an environmental aspect, it clarifies the concept of standing, which is generally required to initiate proceedings before a civil court. However, the particular nature of environmental organizations - that is, the interests and rights they represent - in proceedings where they appear must be interpreted more broadly, constituting an exception to this rule, as also indicated by Article 74, paragraph 4.

Since the Civil Procedure Act does not recognize the concepts of "concerned public," "collective interest," or "general public interest," environmental organizations are effectively denied civil standing unless they prove that they have suffered specific harm. The only exception is the *actio popularis* established by Article 156 of the Obligations Act, which allows them to acquire the status of plaintiff even without a direct violation of a private interest.[50]

However, a thorough search of relevant judicial databases[51] and official court portals shows that the practice of initiating environmental lawsuits in which organizations claim standing based on the protection of the general (public) interest is practically nonexistent.[52] Available judgments mostly concern disputes over compensation for damages or protection of the property rights of individual plaintiffs.

ENVIRONMENTAL LAWSUITS (ACTIO POPULARIS) – ARTICLE 156 OF THE LAW ON OBLIGATIONS

In civil proceedings, the sole relevant instrument for environmental protection is the so-called environmental lawsuit provided under Article 156 of the Law on Obligations (*Official Gazette of RS*,No. 18/2020), which stipulates the following: "Any person may require another to remove a source of danger from which significant harm threatens them or an indefinite number of persons, as well as to refrain from activities causing disturbance or risk of harm, if the occurrence of such disturbance or harm cannot be prevented by appropriate measures. Upon request of the interested party, the court shall order the undertaking of adequate measures to prevent the occurrence of harm or disturbance, or to remove the source of danger, at the expense of the holder of the source of danger, should they fail to act themselves."

Although this provision does not directly refer to environmental damages, it has opened the possibility of *actio popularis*, a procedure whereby any individual or association may request a court decision obliging a person to proactively eliminate sources of environmental danger.

Besides the issue of standing to initiate proceedings for compensation in such cases, a more significant question for the purposes of this analysis is the possibility for a second plaintiff to bring a lawsuit against the same defendant concerning the

50 Drenovak-Ivanović, M.; Đorđević, S.; Važić, S., *Legal Instruments of Environmental Protection – Civil and Criminal Protection*, OSCE, Belgrade, 2015.

51 Paragraf Lex

52 dr Aleksa Radonjić, Ivana Stjelja, *Environmental Lawsuit – Everyone's Right to Protect the Environment.*

same matter, particularly in situations where, for example, the first plaintiff was unsuccessful in the case or where a dismissive judgment was rendered.

In this context, it is important to note that the effect of a judgment resulting from the so-called ecological lawsuit is limited to the parties involved in the proceedings - the plaintiff and the defendant. The first consequence, which cannot be said to align fully with the purpose of the lawsuit aimed at eliminating a danger that threatens an indeterminate number of persons, is the right to enforce such a decision through compulsory execution. According to applicable regulations, enforcement of the judgment as an enforceable document can be requested by the party designated in the lawsuit after the expiration of the deadline for voluntary fulfillment of obligations arising from the civil judgment, at which point the judgment becomes enforceable. However, this is not fully consistent with the nature of the claim introduced by Article 156 of the Law on Obligations, which pertains to an indeterminate number of persons who suffer the consequences.

Insufficient alignment and the lack of corresponding codification of regulations governing the procedural standing of environmental organizations lead to ambiguities and uncertainties regarding their procedural role before the court. Considering that, in civil proceedings, a judgment has effect only between the parties involved, this solution presents significant gaps in the context of environmental disputes, given the specific position of environmental organizations representing broader public interests and the interests of communities affected by environmental harm. Namely, a procedure formally conducted solely between two parties - the plaintiff (organization) and the defendant - although substantively concerning the rights and interests of the wider public, effectively excludes individuals to whom the judgment relates from influencing the outcome of that procedure. Furthermore, legal entities or natural persons who suffer consequences of harmful environmental actions but are not parties to the proceeding lack the possibility to seek enforcement of the rendered judgment, which contradicts the very essence of these proceedings and leaves room for potential abuses. On the other hand, allowing every individual affected by certain environmental harm to initiate their own lawsuit could lead to legal uncertainty, court overload, and the existence of multiple, potentially conflicting decisions regarding the same factual situation. Such legal incoherence and indeterminacy run counter to the purpose of ecological lawsuits and the objectives of the procedures initiated by environmental organizations, which are the protection of collective goods and the prevention of further environmental damage. Therefore, harmonization of procedural norms regarding the standing of organizations with the specificities of environmental proceedings, as well as further normative elaboration and codification of this issue, are necessary, all in accordance with international standards and principles governing access to justice in environmental matters.

3.1.2.2. CRIMINAL PROCEEDINGS

The Criminal Code ("Official Gazette of the RS", nos. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, and 94/2024) dedicates an entire chapter to the protection of the environment and criminal offenses (Articles 260–277), making the environment the primary legal

good protected in 18 specifically defined offenses. In addition to these, certain environmental criminal offenses are prescribed by special laws. All these offenses are subject to prosecution *ex officio*, meaning that the public prosecutor is the competent authority to initiate proceedings before the court.

The role of environmental organizations in criminal proceedings is limited to reporting a suspected criminal offense to the competent public prosecutor and, if proceedings are initiated, potentially appearing as witnesses. If the public prosecutor rejects the criminal complaint, terminates the investigation, or drops the charges before filing an indictment, there is no obligation to inform the person who filed the report. The duty to notify exists only in relation to the injured party, and under current legislation, environmental organizations are not recognized as such. In the event that the court renders an acquittal for the above-mentioned offenses, only the public prosecutor has the right to appeal. The person who reported the criminal offense is not considered a party to the proceedings, and therefore has no access to the judgment and is not informed of its outcome.[53]

Thus, from a formal criminal procedure perspective, environmental organizations do not have a significant role. However, prosecutors interviewed within the focus group conducted for the purposes of this and other analyses under the project unequivocally emphasized the importance of environmental organizations in their work. A public prosecutor from a basic public prosecution office in Belgrade noted that in many cases, information about potential offenses would have been completely lacking had the prosecution not been informed by active environmental organizations. Although few reported cases resulted in a conviction, prosecutors themselves stressed the importance of cooperating with environmental organizations, as these are often the first point of contact for citizens when they perceive a threat of environmental harm or when such harm has already occurred. Timely action by prosecutors, experts, and forensic specialists in this field is often crucial for gathering evidence of the committed offense, further underlining the importance of collaboration and communication between local environmental organizations and competent prosecution offices.

3.1.2.3 ADMINISTRATIVE PROCEDURE AND ADMINISTRATIVE DISPUTE

ADMINISTRATIVE PROCEDURE

Administrative procedure in Serbian legislation is governed by the Law on General Administrative Procedure ("Official Gazette of the RS", no. 18/2016, 95/2018 - authentic interpretation and 2/2023 – decision of the Constitutional Court; LGAP), which sets out the basic principles for the operation of administrative authorities and regulates the position of parties in the procedure. According to the classical legal construct, in order for someone to have the status of a party in administrative proceedings, a direct and specific material-legal connection must exist between that person and the subject matter of the administrative authority's decision. In other words, a person is considered a party when the outcome of the administrative procedure may directly affect their subjective rights. However, such a formal framework

53 Ivana V. Stjelja, *Public Participation in the Realization of Environmental Justice in Serbia*, Faculty of Law, Union University in Belgrade, p. 295.

shows certain limitations in areas where individual and collective interests strongly intersect, which is particularly evident in the field of environmental protection.

Modern concepts of participatory governance and the principles of collective interests require broader public involvement - particularly of civil society organizations active in the field of environmental protection - in decision-making processes that may have a significant impact on the environment and human health. It is precisely in this context that the Law on General Administrative Procedure recognizes the need to expand the traditional notion of a party to the procedure. Thus, the status of a party may also be granted to entities that protect collective and broader public interests, under the conditions prescribed by the Law. This opens the space for the institutional recognition of *locus standi* of environmental organizations in decision-making procedures concerning issues of environmental significance.

On the one hand, the Law on General Administrative Procedure expands the traditional concept of a party to the procedure by introducing the notion of a "representative of collective interests and representative of broader public interests" (Article 44, paragraph 3), thereby allowing recognition in the procedure of those whose interests are not directly affected by the decision or whose role primarily involves the protection of the public good. On the other hand, a number of special laws in the field of environmental protection (such as the Law on Environmental Protection, the Law on Environmental Impact Assessment, and the Law on Integrated Pollution Prevention and Control) introduce their own definitions and stages of involving the "interested public," derogating certain provisions of the Law on General Administrative Procedure under the *lex specialis* principle.

In this context, within the system of laws governing administrative procedures, we encounter a complex array of different forms of legal standing and procedures that may, in practice, lead to ambiguities and restrictive interpretations. The aim of this analysis is to provide a systematic overview and comparison of general and special regulations, as well as the available administrative practice, in order to highlight observed inconsistencies and gaps, and to assess whether the existing framework truly enables effective and predictable legal standing (*locus standi*) for environmental organizations in procedures concerning decisions of environmental significance. Additional attention will be given to distinguishing the position of environmental organizations when they participate in a consultative role from their position and rights as parties to the procedure (active legal standing).

ACCESS TO INFORMATION – ARTICLE 4 OF THE AARHUS CONVENTION

A key role in codifying the right to information transparency (Article 4 of the Aarhus Convention) is held by the Law on Free Access to Information of Public Importance (*Official Gazette of the Republic of Serbia,* Nos. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021), which establishes that everyone has the right to be informed whether a public authority possesses certain information of public importance, or whether such information is otherwise accessible. In addition, the same article provides that everyone has the right to access information of public importance by being allowed to inspect the document containing the information, to obtain

a copy of that document, and to request that the copy be sent by mail, fax, email, or other means. Article 2 of the same law defines what constitutes information of public importance, while Article 4 stipulates when it is deemed that the public has a justified interest in accessing certain information, highlighting, among other things, that this is always the case when the information held by public authorities relates to threats to, or the protection of, public health and the environment.

Considering these provisions, there is no doubt that the standard set by Article 4 of the Aarhus Convention has been fully implemented in national legislation, especially in terms of the broad legal standing granted for exercising this right. A positive aspect of this law is the special administrative procedure it prescribes for the prompt and effective realization of the right to access information of public importance.

Thus, the public authority is obliged to, without delay and no later than 15 days from the date of receipt of the request (or corrected request), inform the applicant whether it holds the requested information, allow access to the document containing the complete and accurate information, or issue/send a copy of that document. Any failure to act upon a request constitutes a misdemeanor and is subject to a monetary fine. In addition, this law established the institution of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: The Commissioner) as an independent state authority, autonomous in exercising its competences. The Commissioner also acts as a second-instance body in appeal procedures when a public authority fails to act in accordance with the law. The deadline for the Commissioner to act in such cases is usually 60 days. However, recognizing the importance of timely access to certain types of information, the law provides for an exception: a shortened deadline of 48 hours (instead of 15 days) for the authority to provide access to information "which, based on the facts stated in the request, can reasonably be presumed to be of importance for the protection of the life or liberty of a person, or for the endangerment or protection of public health or the environment." In such cases, the Commissioner must act within 30 days (instead of 60). When the Commissioner finds the appeal to be justified, a binding decision is issued ordering the authority to grant the applicant free access to the information. The Commissioner enforces this decision through coercive measures (fines), in accordance with the law governing general administrative procedure. If enforcement cannot be carried out in this way, the Government of the Republic of Serbia is authorized, at the request of the Commissioner, to assist in enforcement by applying measures within its competence, including direct coercion to ensure compliance with the Commissioner's decision.

Although the normative framework provides relevant standards, environmental organizations frequently face practical obstacles, such as delays, fragmented responses, excessive redactions, and refusal to disclose documents without explanation by public authorities. In many cases, the requested information is obtained only after an appeal, which hinders timely and well-substantiated interventions. A particularly noteworthy issue is the practice of public authorities to reject requests by claiming that they "do not possess" the requested information - not because the information is really unavailable, but because it is not readily extracted from existing databases or statistical records. For instance, if a request asks how

many times an authority has decided on a specific matter within its competence, how many favorable decisions have been issued, or whether any decisions were made at all, and such information is not already recorded in an accessible format, authorities often deny access by stating that they "do not possess" the information. This interpretation contradicts Article 8(2) of the Law, which explicitly provides that no provision of the Law may be interpreted in a way that abolishes or restricts any of the rights recognized by this Law shall not be interpreted in a way that would result in their revocation or in a restriction greater than that prescribed in paragraph 1 of this Article (if such restriction is necessary in a democratic society for the protection against serious harm to an overriding interest based on the Constitution or the law).

PUBLIC PARTICIPATION AND STANDING IN PROCEDURES – ARTICLES 6–9 OF THE AARHUS CONVENTION

Public Participation

The basic rules on the participation of the interested public in the adoption of regulations and decisions relevant to environmental matters, both in general and in specific administrative procedures, are set out in Articles 6, 7, and 8 of the Aarhus Convention. Article 6 pertains to public participation in the adoption of individual administrative acts; Article 7 concerns public participation in the adoption of strategic documents prepared by administrative authorities (such as programs, policies, strategies, etc.); and Article 8 regulates the right of the public to participate in the legislative process regarding laws that affect the environment. On the other hand, Article 9 of the Aarhus Convention relates to access to justice, granting individuals and organizations the opportunity to challenge decisions of public authorities (active legal standing). In Serbian national law, these standards are embedded from the Constitution of the Republic of Serbia, which guarantees the right of citizens to participate in the legislative process, to general laws such as the Law on State Administration, which contains provisions regulating public participation in the drafting of regulations and the conduct of public debates on already prepared drafts. This law stipulates that ministries or other competent bodies responsible for drafting legislation are obliged to consult all relevant actors: state authorities, civil society organizations, experts, and other interested stakeholders. Moreover, the consultation process must be organized in a manner that ensures effective public participation in the drafting phase. These provisions also apply to the preparation of by-laws that elaborate on legal provisions, significantly alter legal regimes, or regulate areas of special public interest.

In addition, there are special laws governing the field of environmental protection, some of which prescribe mandatory participation of the so-called interested public in relevant procedures - this necessarily includes environmental organizations. In these sector-specific laws, environmental organizations may sometimes have a consultative role, while in other cases, the legislation grants them the status of a party to the procedure (within administrative proceedings).

Unlike proceedings governed by regulations that explicitly recognize environmental organizations as parties under general administrative procedure rules, in cases where such status does not arise from a special law, the competent authority must

actively grant this status by issuing a formal decision. (the authority conducting the procedure).

For the purpose of understanding the analysis that follows, it is important to emphasize the distinction between consultative participation of environmental organizations and their participation as a party to an administrative procedure (legal standing). The position of environmental organizations differs significantly between these two categories, as they are not provided with the same set of rights. In this regard, a consultative role involves the ability to provide input such as opinions, comments, and suggestions during the procedure, while legal standing enables organizations to initiate a review of the legality of public authorities' actions (e.g., by submitting appeals to second-instance bodies or initiating administrative disputes).

In practice, consultative participation of organizations involves a range of mechanisms: from citizens proposing laws, to state bodies organizing roundtables with representatives from the civil sector and relevant groups, focus groups, panels, and surveys during the drafting phase; to including representatives of the interested public in working groups preparing legal regulations; and finally, public debates on the draft documents themselves. Public debate, as a formal stage, aims to improve the draft through open dialogue between the proposer (often the responsible ministry) and the public.

The importance of public participation in environmental matters in administrative disputes is undisputed, given that most of the most significant decisions in environmental protection are made precisely in these procedures. This fact is further confirmed by provisions in special laws such as the Law on Nature Protection, the Water Law, the Planning and Construction Law, and others. These laws prescribe special procedures for public participation in the adoption of administrative acts. The Law on Environmental Protection establishes as one of its principles the principle of informing and involving the public, according to which "everyone has the right to be informed about the state of the environment and to participate in decision-making processes that may affect the environment" as part of the right to a healthy environment. Equally important is the principle of protecting the right to a healthy environment and access to justice under the same law, which stipulates that citizens or groups of citizens, their associations, professional or other organizations may realize the right to a healthy environment before the competent authority or court, in accordance with the law.

The aforementioned provisions, as well as those in other laws, predominantly rely on vague and broad terminology, which is not further clarified by the regulations. Similar ambiguity is present in the rules governing procedures, that is, in the application of those norms in specific proceedings. Furthermore, there is a lack of a dedicated regulation that would clearly define the status of environmental organizations, elaborate all relevant terms, and establish uniform conditions - not with the aim of restricting access to justice, but to more clearly define boundaries that would facilitate the work of administrative bodies and require them to interpret these terms consistently, in a way that affirms the standing and visibility of environmental organizations in legally prescribed procedures. When the overall framework of public participation rights in the national legislation of the Republic

of Serbia is considered as a whole, another key challenge - aside from insufficiently precise codification - lies in the lack of clarity regarding the obligations of authorities when conducting public consultations and other related procedures. As a result, participation often turns into a formal ritual, lacking adequate justification for accepting or rejecting submitted proposals, which undermines trust in the process and prevents the meaningful and full-capacity realization of this right.[54] The issues raised will be further examined through the analysis of relevant legal norms and a review of existing practice.

ACTIVE LEGAL STANDING OF ENVIRONMENTAL ORGANIZATIONS IN ADMINISTRATIVE PROCEEDINGS

General rules

According to Article 44 of the Law on General Administrative Procedure, a party in an administrative procedure is a natural or legal person whose administrative matter is the subject of the procedure, as well as any other natural or legal person whose rights, obligations, or legal interests may be affected by the outcome of the administrative procedure. A party may also be a body, organization, settlement, group of persons, or others who are not legal entities, under the conditions under which a natural or legal person may be a party, or when so provided by law. **Representatives of collective interests and representatives of broader public interests,** organized in accordance with the law, **may also have the status of a party in administrative proceedings if the outcome of the procedure may affect the interests they represent.** Additionally, pursuant to Articles 45 and 46 of the Law on General Administrative Procedure, a party who has full legal capacity may act independently in the procedure (procedural capacity), while a party who lacks such capacity is represented by a legal representative.

Thus, in administrative proceedings, in order to acquire the status of a party, an organization must meet three requirements: party capacity, procedural capacity, and legal standing (*legitimatio ad causam*). The last implies the existence of a clear connection between the subject and the object of the procedure, which justifies the organization's participation in the protection of rights or interests of general importance (collective and broader public interests). Since the Law on General Administrative Procedure does not define the terms "collective interest" or "broader public interest," the administrative authority must, in each individual case, determine the criteria for deciding on legal standing and provide a justification for its decision. It is evident that inconsistent application of such criteria leads to legal uncertainty and unequal treatment of organizations.

In considering the process of recognizing legal standing, Article 93 of the Law on General Administrative Procedure is also relevant. According to this provision, a person who did not participate in the administrative procedure as a party may submit a request for recognizing party status until the completion of the second-instance procedure. Thus, representatives of collective interests and broader public

54 The European Commission Report on Serbia for 2021 highlights that civil society organizations point out their comments on draft laws are not sufficiently considered and that the deadlines for conducting public consultations are short.

interests, under the rules of general administrative procedure, do not acquire party status from the outset; the procedure is not initiated at their request. Instead, they acquire party status during the course of the procedure. From the moment such status is granted, all provisions applicable to a party in the procedure also apply to them.

The situation is entirely different when it comes to the right to appeal a first-instance decision in administrative proceedings. Namely, Article 151, paragraph 6, stipulates that an appeal against a first-instance decision may be submitted by any person whose rights, obligations, or legal interests may be affected by the outcome of the administrative procedure, within the time limit prescribed for a party to submit an appeal. An appeal submitted by a person who is not a party to the proceedings at the same time represents a request to be granted party status.[55] In such a case, the first-instance authority decides on the admissibility of the person's standing and will dismiss the appeal if it finds that it was submitted by an unauthorized person. A decision dismissing the appeal may itself be appealed within eight days of the party being notified of the decision. The appeal is submitted to the second-instance authority, which, if it finds that legal standing does in fact exist, simultaneously decides on the merits of the originally dismissed appeal.[56]

Additionally, Article 64 of the Law on General Administrative Procedure grants interested persons who demonstrate a legal interest the right to examine the case file, in accordance with the provisions of that article.

In line with the above, it can be said that the Law on General Administrative Procedure recognizes environmental organizations through the institute of representatives of collective and broader public interests (Article 44, paragraph 3), thereby confirming their role in proceedings of key importance for environmental protection. Nevertheless, the Law on General Administrative Procedure defines these concepts in an extremely broad and imprecise manner, leaving administrative authorities with an excessive degree of discretionary power when assessing standing. In order to ensure consistent and fair application, it is necessary to develop harmonized judicial practice and adopt clear positions to be applied by both administrative bodies and courts, or to amend the Law on General Administrative Procedure with specific criteria that would limit the scope for arbitrariness in this area.

PUBLIC PARTICIPATION AND LEGAL STANDING UNDER THE PROVISIONS OF SECTORAL LAWS

The Concept of the Concerned Public

Relying on the definition from Article 2 of the Aarhus Convention, domestic laws regulating the field of environmental protection define the terms "public" and "concerned public" in a broad manner. However, it should be noted that even

55 Dr Jelena Jerinić, *In the Name of the Public: Standing of Representatives of Collective and Broader Public Interests in Administrative Matters*, Faculty of Law, Union University, *Legal records*, Vol. XI, No. 2 (2020), p. 514.

56 The Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia*, Nos. 18/2016, 95/2018 – authentic interpretation, and 2/2023 – decision of the Constitutional Court.

among these laws, the definitions of the term "concerned public" are not fully harmonized, which may lead to ambiguities in their application. It should also be considered that these terms are adapted to the specificities of the sectors regulated by individual laws. The following section will examine four laws that define this concept in different ways.

The Law on Environmental Protection, in Article 3, item 26, defines "the public" as one or more natural or legal persons, their associations, organizations, or groups. In item 28, it defines "the interested public" as the public that is affected or is likely to be affected by a decision of a competent authority, or that has an interest in the decision, including civil society organizations and social organizations engaged in environmental protection and registered with the competent authority.

The Law on Environmental Impact Assessment, in Article 2, paragraph 1, item 7, defines "the interested public" as the public affected or likely to be affected by the project[57], or whose rights or legally based interests may be affected by the decision in the impact assessment procedure or the approval for project implementation. In the case of civil society organizations in the field of environmental protection that represent environmental protection interests (by preparing and implementing their protection programs, defending their rights and interests in the area of environmental protection, proposing protection measures and activities, participating in decision-making procedures in accordance with the law, and contributing to or directly engaging in environmental information dissemination), and are registered with the competent authority, it is considered that a legally based interest exists which may be affected by the decision in the impact assessment procedure or by the project implementation approval.

The **Law on Strategic Environmental Impact Assessment**, in Article 3, paragraph 1, item 5, defines the "public" as one or more natural or legal persons, their associations, organizations, or groups, while item 6 of the same paragraph defines the "interested public" as the public affected or likely to be affected by a plan or program[58] and/or having an interest in the decision-making related to environmental protection, including citizens' associations engaged in environmental protection and registered in accordance with the law.

The **Law on Integrated Pollution Prevention and Control**, in Article 2, paragraph 1, item 16, defines the "public" as one or more natural or legal persons, their associations, organizations, or groups, while item 17 specifies that the "interested public" is the public affected or likely to be affected by the operation of a plant or the performance of an activity, including non-governmental organizations engaged in environmental protection and registered with the competent authority.

While the term "public" is uniformly defined, the definition of "interested public" varies in each of the aforementioned laws, depending on the specific needs of the area and procedures regulated by those laws.

57 See Article 2, paragraph 1, item 3 of the Law on Environmental Impact Assessment.

58 See Article 2, paragraph 1, item 3 of the Law on Environmental Impact Assessment.

LEGAL STANDING OF THE INTERESTED PUBLIC

Article 81a of **the Law on Environmental Protection** stipulates that "the interested public, as a party in the procedure for exercising the right to a healthy environment, has the right to initiate a review procedure before the competent authority or court, in accordance with the law". Article 3, item 28 of the same Law defines the term "interested public," while Article 7 prescribes that citizens' associations in the field of environmental protection, among other things, protect their rights and interests, propose protection activities and measures, and participate in decision-making processes, in accordance with the law. Article 9, paragraph 1 of the Law introduces the principle of the right to a healthy environment and access to justice, under which individuals, groups of individuals, professional or other organizations exercise this right before competent authorities or courts, in accordance with the law. These rights, however, are not further specified.

The Law on Environmental Impact Assessment, which regulates the procedure for assessing the impact of projects that may have significant effects on the environment, the content of the environmental impact study, the participation of relevant authorities, organizations, and the public, as well as other matters of importance for environmental impact assessment, distinguishes between projects for which an environmental impact assessment is mandatory and those for which there is an obligation to submit a request, based on which the competent authority decides whether an assessment is necessary. In the case of projects for which the submission of such a request is required, the authority, upon receipt of a complete request, has a period of 15 days to notify the relevant authorities, organizations, and the public about the submitted request regarding the need for an environmental impact assessment in the specific case. The public, as well as the relevant authorities and organizations, may, within 15 days from the date of the public notice or the receipt of the notification, submit their opinions on the request. The same article also prescribes the obligation of the competent authority to consider the submitted opinions of the relevant authorities, organizations, and the public when deciding on the request. The concerned public has the right to appeal the authority's decision on the request.

Thus, for some projects, an environmental impact assessment study is mandatory, while for others, the competent authority decides whether an assessment is necessary. Whether mandatory or conducted following the authority's decision, this procedure entails the determination of the scope and content of the environmental impact assessment study and, subsequently, a decision on granting consent to the environmental impact assessment study. The competent authority is required to consider the opinions submitted by the concerned public when making its decision, which implies that the concerned public has the right to appeal the authority's decision on the request for determining the scope and content of the environmental impact assessment study. Regarding the procedure for issuing the decision on granting consent to the environmental impact assessment study, the authority is obliged, in addition to collecting the opinions of the concerned public, to conduct a presentation and a public hearing on the environmental impact assessment study. In the reasoning of its decision, the administrative authority must address the submitted opinions and comments of the concerned authorities, organizations, and

the public, as well as the results of the public hearings conducted. The concerned public has the right to initiate an administrative dispute against this decision.

The Law on Strategic Environmental Assessment regulates the conditions, method, and procedure for assessing the environmental impact of strategies, programs, and development plans adopted in accordance with the law governing the planning system, spatial and urban plans defined by the law on spatial and urban planning, as well as plans and foundations adopted under other laws during the preparation and adoption of plans and programs. According to this law, strategic assessment is mandatory for plans and programs when their implementation may cause significant adverse effects on the environment (further specified in the law). An analysis of the provisions of this law shows that public participation is not envisaged from the outset, i.e. from the first phase of the prescribed procedure, but rather that the right to participate is only recognized in the final phase - during the decision on approval. Thus, neither the general public nor the "interested public" formally have the right to participate either in the decision on the need for a strategic assessment or in the preparation of its draft, but only when the final act is under consideration. Therefore, legal protection of the right to public participation exists only at that final stage, while the Law does not foresee any legal remedy in cases where earlier forms of participation are denied, which significantly reduces the actual effectiveness of public involvement.[59]

The Law on Integrated Pollution Prevention and Control Pollution regulates the conditions and procedure for issuing an integrated permit for installations and activities that may have negative impacts on human health, the environment, or material assets, as well as the types of activities and installations, oversight, and other matters of importance for preventing and controlling environmental pollution. The general public and the concerned public are granted different scopes of rights. The general public is guaranteed the right to access environmental information that is part of the integrated permit procedure but not the right to participate - that is, the right to submit opinions and suggestions and have them considered. In contrast, representatives of the concerned public have the right to participate in the decision-making process on the integrated permit; they are guaranteed the right to participate both before and after the draft permit is prepared. Moreover, the technical commission is obligated to include the opinions of the concerned public in its report. Finally, the competent authority must consider the opinions obtained - that is, it must reference the opinions submitted by the public in the reasoning of the permit decision, explain the reasons for accepting or rejecting them, and provide a legal assessment.[60]

Analysing these regulations reveals a clear distinction in the procedural standing of environmental organizations. When participating in a consultative capacity, organizations are involved at an early stage in the adoption of planning or strategic documents - such as policies, plans, and programs - that may have a significant impact on the environment. An example of this is the strategic environmental assessment,

59 Ivana V. Stjelja, *Public Participation in the Realization of Environmental Justice in Serbia*, Faculty of Law, Union University in Belgrade, pages 205–208.

60 Ivana V. Stjelja, *Public Participation in the Realization of Environmental Justice in Serbia*, Faculty of Law, Union University in Belgrade, pages 203–204.

where organizations are engaged prior to the final decision but without formal rights to influence the content of the proposed act. In such cases, legal protection is limited to the right to appeal only if their participation has been unlawfully denied. In contrast, when an organization obtains the status of a party (active legal standing) in an administrative procedure, the competent authority is obliged to consider and address all submitted comments and suggestions in the final decision. As a party to the procedure, the organization enjoys a higher level of legal protection, including the right to appeal not only in cases of procedural irregularities (e.g. exclusion from participation) but also against the substance of the adopted act itself.

Based on the review of the provisions in the presented special laws, it can be concluded that although these laws formally recognize the role of the interested public, including environmental organizations, in environmental protection procedures, the manner and scope of this kind of participation vary significantly depending on the specific procedure and legal act. The insufficiently harmonized definitions of "interested public" among the special laws, as well as the differing procedural mechanisms at various stages of the special procedures in which public participation is permitted, lead to legal uncertainty and limit the effectiveness of the right to public participation. A key factor in evaluating the impact of these inconsistently prescribed rules is the actual practice of administrative authorities.

PRACTICE OF ADMINISTRATIVE AUTHORITIES IN THE REPUBLIC OF SERBIA

- Based on available practice, it can be observed that administrative authorities, in cases where requests for recognition of party status were submitted, have often disregarded paragraph 3 of Article 44 of the Law on General Administrative Procedure. The reasoning in their decisions showed no effort to independently determine the relevant concepts, relying solely on paragraph 1 of Article 44. One such example is the case involving the organization RERI (Regulatory Institute for Renewable Energy and Environment). The investor began a project by fencing parcels around a future industrial complex. The procedure was initiated on March 26, 2019, with the issuance of location conditions by the Provincial Secretariat for Energy, Construction, and Transport. Already on March 29, the same authority issued a decision approving the construction of the fence (as the first phase) around parcels owned by *Linglong International Europe* LLC. On May 10, 2019, RERI submitted a request for recognition of party status in the procedure, which the Provincial Secretariat rejected by decision on May 24, 2019. The Secretariat dismissed RERI's appeal as filed by an unauthorized party, stating that RERI had failed to provide evidence indicating that it was a subject whose rights, obligations, or legal interests could be affected by the outcome of this administrative procedure, or whose rights or legal interests might be violated in the process of issuing or content of the construction permit. This reasoning is based only on paragraph 1 of Article 44, while the acting authority disregarded paragraph 3 of the same article.

- In this procedure, it is particularly interesting to examine the approach of the administrative authority in the specially regulated administrative procedure under the Law on Environmental Impact Assessment. Namely, the authority accepted "dividing the factory[61] construction project into phases", concluding that for the first two phases there was no need to conduct an environmental impact assessment, and only initiated the assessment in the third phase. At one point in the procedure, when the authority was deciding on the necessity of the environmental impact assessment for the project, it issued a decision to discontinue the procedure for determining the need for the assessment, citing a lack of conditions to proceed further. During this procedure, 215 opinions from the interested public were submitted, including RERI's opinion, which the authority declared unfounded. This raises a justified question of how appropriately the authority applied the law in a manner that reflects its purpose and objectives.
- The existing analysis[62] highlights varying practices in interpreting the concept and criteria for legal interest as a prerequisite for exercising certain rights. Specifically, in two cases where administrative authorities assessed whether a party possessed legal interest (both concerning the right to inspect case files under Article 64, paragraph 6 of the Law on General Administrative Procedure), the parties' residential address was cited as evidence indicating the required legal interest in matters related to the construction of buildings near their homes. In the first case, the request was denied on the grounds that legal interest was not proven, with the reasoning that a residential address alone does not constitute proof of a relevant right from which legal interest could arise. In the second case, where the residential address directly bordered the object (a factory) subject to a demolition order, the request was granted, and access to the case file was permitted.[63] Besides the inconsistency in administrative practice, the reasoning behind such interpretations remains unexplained. Procedural authorities do not clarify these underdefined concepts but instead make arbitrary decisions.

COMPLIANCE OF ADMINISTRATIVE PROCEDURES WITH INTERNATIONAL STANDARDS (AARHUS CONVENTION)

Given the importance of decisions made by administrative authorities in the field of environmental protection, it is evident that, to fully implement the principles of the right to access information, facilitate public participation in decision-making, and guarantee access to justice for environmental organizations, administrative procedures must be improved.

61 In the procedure for issuing the building permit for the factory complex of the tire manufacturer *Linglong International Europe* LLC.

62 dr Jelena Jerinić, *In the Name of the Public: Standing of Representatives of Collective and Broader Public Interests in Administrative Matters*, Faculty of Law, Union University, *Legal records*, Vol. XI, No. 2 (2020).

63 dr Jelena Jerinić, *In the Name of the Public: Standing of Representatives of Collective and Broader Public Interests in Administrative Matters*, Faculty of Law, Union University, *Legal records*, Vol. XI, No. 2, pages 516–518.

Particularly emphasized is the insufficient implementation of Article 2 of the Aarhus Convention, which stipulates that environmental organizations meeting the conditions set by national legislation should be automatically recognized as interested parties. In the legal system of the Republic of Serbia, this issue is regulated in a fragmented manner through general and special laws, while the criteria related to environmental organizations are not clearly defined. This leads to a situation where administrative bodies largely exercise discretion in assessing the connection between the organization and the subject matter of the administrative procedure. The importance of this standard lies in its elimination of the need for environmental organizations to prove legal interest in each individual procedure.

Based on the analyzed practice of administrative authorities, it can be concluded that this standard has not been applied consistently. Analysing the legislation and administrative practice shows that the rights of environmental organizations are not being exercised in the manner prescribed by law, nor in accordance with the objectives for which these rights were introduced into the legal system. Ignoring the active legal standing of representatives of environmental interests, even in cases where it is explicitly prescribed (e.g., Article 44, paragraph 3 of the Law on General Administrative Procedure), as well as the standing prescribed by special laws, combined with a complete lack of reasoning or justification based on the alleged absence of proven legal interest, despite it being established by numerous international and domestic acts, represents an unacceptable approach that leads to arbitrariness in the work of administrative bodies and courts.

Involving environmental organizations in the adoption of administrative acts is crucial for exercising the right to a healthy environment, given that most decisions in this area have an administrative-legal character.

CONCLUSION

The first right considered - the right to access information of public importance - is relatively well regulated in the Republic of Serbia from a normative perspective. According to the law itself, everyone has the right to access this information. However, in practice, numerous problems hinder the consistent application of relevant provisions. Although information of public importance is most often eventually provided to the applicants, institutions frequently ignore their legal obligations, which may be the result of an insufficiently effective system of sanctions for non-compliance with the law.

The second right analyzed, concerning the participation of the public, environmental organizations, and citizens in administrative procedures, is regulated by the Law on General Administrative Procedure and special laws *(lex specialis)*. The analysis of procedural codification relating to environmental organizations within administrative proceedings reveals insufficient alignment and interconnection of regulations, both in terms of the definition of rights and the concepts themselves, which undermines consistent application and legal certainty. Additionally, the lack of developed administrative practice in these areas further prevents a comprehensive assessment of the functionality of the existing normative framework.

The limited and hardly accessible administrative practice indicates that the formal aspect of the procedure is to some extent regulated, but also that in a significant

number of cases, provisions, particularly those of special laws, as well as relevant norms of the Law on General Administrative Procedure guaranteeing the rights of actors representing collective and broader public interests (such as the legal standing of environmental organizations), are being disregarded. In administrative proceedings, competent authorities often apply general norms that are not adapted to the particularities of such situations, while certain provisions, introduced precisely to ensure the integration of environmental organizations, activists, and citizens, are frequently omitted from application in practice. This results in a lack of reasoning and an absence of appropriate administrative practice, further weakening the role of environmental organizations in these procedures.

ADMINISTRATIVE DISPUTE

The purpose of an administrative dispute, conducted before the Administrative Court, is to ensure judicial protection of individual rights and legal interests, as well as the legality of decisions in administrative and other individual matters provided by the Constitution and the law. This represents another form of legality control over the work of administrative authorities. The administrative procedure and the administrative dispute are interrelated processes, and it is therefore necessary for their provisions to be harmonized. The very date of adoption of the Law on Administrative Disputes ("Official Gazette of RS", no. 111/2009) indicates that the regulation governing this "subsequent" procedure was enacted earlier than the Law on General Administrative Procedure, which regulates the administrative procedure as the "preceding procedure" in relation to the administrative dispute. At the initial step, when examining standing in administrative disputes, certain gaps are already apparent.

According to the applicable Law on Administrative Disputes, there are three categories of participants in administrative proceedings: **the plaintiff, the defendant,** and **the "interested party."** Under Article 11 of this law, **a plaintiff** may be any natural, legal, or other entity that believes an administrative act has violated a right or a legally based interest. An **"interested party,"** as defined in Article 13, is a person for whom the annulment of the challenged administrative act would result in direct harm. Unlike the Law on General Administrative Procedure, which recognizes representatives of collective and broader public interests as potential parties to proceedings, this legal framework leaves environmental organizations without the necessary standing - unless they can prove direct harm to their own interests.

The concept of a plaintiff in administrative disputes limits standing to the plaintiff's personal right or legally based interest. Furthermore, in defining an "interested party," the Law on Administrative Disputes does not recognize the role of representatives of collective or broader public interests, instead strictly requiring direct and individual harm. By contrast, Article 9(3) of the Aarhus Convention acknowledges the general public interest, allowing anyone, including environmental organizations, to defend the interests of present and future generations. It is therefore evident that the Law on Administrative Disputes remains misaligned with international standards, likely because it was adopted in 2009, prior to the full ratification and implementation of the Aarhus Convention.

In addition to individuals, the Law on Administrative Disputes stipulates that an administrative dispute may also be initiated by state bodies, bodies of autonomous provinces or local self-government units, organizations and parts of business entities with special powers, settlements, or informal groups of persons, if they are entitled to hold the rights and obligations determined in the administrative procedure. Where the public interest has been violated, the Law on Administrative Disputes recognizes only the public prosecutor as having standing, whereas if the property rights of the Republic of Serbia, an autonomous province, or a local self-government unit have been violated, proceedings may also be initiated by the public attorney's office.

Such a definition of standing may constitute a procedural obstacle to the participation of environmental organizations in the dispute. In order to obtain standing, a party must prove that the contested act decided upon its right, obligation, or a legally guaranteed interest.

An additional limitation is imposed by Articles 14 and 15 of the Law on Administrative Disputes, which restrict the initiation of proceedings solely to individual administrative acts, against first-instance acts where no appeal is allowed, as well as in cases of administrative silence. These limitations prevent the review of general regulations or rules that have a cumulative impact on the environment.

However, certain special laws mitigate these barriers. For instance, the Law on Environmental Impact Assessment is the only statute that explicitly grants standing to the "interested public" to initiate administrative disputes against screening decisions (as discussed earlier), without the need to demonstrate individual harm. In such cases, the broad definition of "interested public" combined with a clear provision establishing all necessary elements of standing creates a procedural link with the Law on Administrative Disputes, allowing for a more extensive interpretation of its general provisions. Other laws, such as the Law on Environmental Protection, also recognise the right of the interested public to seek legal remedies. However, they do so without full codification. Specifically, the Law states that "the interested public, in the procedure for exercising the right to a healthy environment, as a party, has the right to initiate a procedure for reviewing a decision before the competent authority or court, in accordance with the law." Yet, neither this law nor other special laws provide further specification. In effect, this merely establishes the possibility of bringing an administrative dispute, without defining who may actually bring it. Consequently, in such cases, standing would have to be determined by applying the general provisions of the Law on Administrative Disputes, notably Article 11.

Although the provisions of the Law on Administrative Disputes do not align with the principles and standards of the Law on General Administrative Procedure or with international obligations, the courts retain the discretion, when applying the Law on Administrative Disputes, the Law on General Administrative Procedure, and other environmental protection laws, to interpret the standing provisions of the the Law on Administrative Disputes in a manner that recognizes the participation of environmental organizations in certain proceedings. Such an approach serves the purpose of implementing the relevant laws and ensuring the exercise of the rights they prescribe. An illustration of this judicial practice can be found in the Administrative Court's decision in the "Kalemegdan Gondola" case.

INTERIM MEASURES

Article 9(4) of the Aarhus Convention explicitly requires Parties to "provide adequate and effective remedies, including interim measures, that are fair, equitable, timely, and not prohibitively expensive." However, this standard is not consistently implemented in the legal system of the Republic of Serbia. Specifically, Article 23(2) of the Law on Administrative Disputes provides that, upon the plaintiff's request, the court may postpone the enforcement of a final administrative act that has resolved the matter on the merits until the court's decision is rendered, if enforcement would cause the plaintiff harm that would be difficult to remedy, and provided that such postponement is not contrary to the public interest and would not cause greater or irreparable harm to the opposing party or another interested person.[64] As with other misaligned legislative provisions, this rule does not recognize the protection of the public interest as a basis for granting interim measures, focusing instead exclusively on safeguarding the plaintiff's individual rights. Beyond this normative inconsistency, an additional challenge lies in the legal uncertainty and potential financial liability for plaintiffs. In cases where the court ultimately rejects the claim, the plaintiff may be obliged to compensate the opposing party for damages arising from the previously imposed provisional measure. For instance, Article 138a (3) of the Law on Planning and Construction stipulates that "if a party initiates an administrative dispute and, for that reason, the investor does not commence construction until the decision becomes final, the investor shall be entitled to compensation for damages and lost profits in accordance with the law, if it is established that the lawsuit was unfounded."

Normative provisions, such as Article 23 of the Law on Administrative Disputes and Article 138a of the Law on Planning and Construction, are primarily aimed at protecting individual rights, while disregarding the public interest. Furthermore, the risk of being obliged to compensate the opposing party in the event of an unsuccessful claim creates significant legal and financial uncertainty for claimants, particularly for environmental organisations acting not in their own interest but in the public interest. Such legislative solutions are in direct contradiction with Article 9(4) of the Aarhus Convention and, as such, discourage the public from making use of available legal remedies. Ultimately, this undermines the very foundations of the participatory and party role of environmental organisations in decision-making processes affecting the environment.

One example in which such legislative provisions have been identified as a significant obstacle is the case of the construction of the Kostolac B3 thermal power plant, in which the organisation CEKOR challenged all decisions approving the environmental impact assessment (two of which were annulled, while the third is still pending). In the meantime, the Kostolac B3 thermal power plant has been almost entirely built and is operational. The mere initiation of administrative proceedings does not suspend the execution of the contested decision, and CEKOR did not opt to request an interim measure,[65] at least not without facing prohibitively high costs.

64 The Law on Administrative Disputes, Article 23.

65 ACCC/C/2020/179 Serbia - Opening Statement on behalf of the Communicants

However, regarding the described legal provisions, there is jurisprudence from the Administrative Court in the form of a decision[66] granting an environmental organization's request to suspend the enforcement of a decision by the Ministry of Construction, Transport and Infrastructure until the final court decision is issued. In this specific case, the organization filed a motion for suspension, arguing that enforcement could cause irreparable harm and that the suspension would neither contradict the public interest nor harm the opposing party. The Court found the request well-founded, emphasizing that carrying out works on an immovable cultural property of exceptional importance could cause serious damage to broader public interests, thereby justifying the provisional suspension of enforcement. In issuing this decision, the Court did not provide a detailed reasoning regarding the active legal standing of environmental organizations in filing such a remedy. The Court had a five-day deadline to decide and did not have time to request a response from the opposing party. Given this circumstance and the fact that the opposing party had no opportunity to challenge the legal standing, the Court did not address the issue of active legal standing in its decision to suspend enforcement of the final act. This matter was subsequently clarified in a decision issued following the lawsuit.

An interim measure can only fulfill its purpose if it is decided promptly, that is, at a stage when harm can still be prevented, since protection granted belatedly loses its effectiveness. In this regard, both legislative alignment and consistent application represent essential preconditions. It is imperative that courts are clearly informed about the specificities of cases involving public interest protection by environmental organizations, and that efficient and timely procedural mechanisms are established to enable urgent intervention in situations posing risks to the environment and public health. Only through such an approach can effective protection of the public interest be ensured, in accordance with international standards.

ADMINISTRATIVE COURT PRACTICE

▶ "Kalemegdan Gondola" as an Example of Good Practice

In the recent practice of the Administrative Court, the citizens' association "Kalemegdan Gondola" initiated an administrative dispute against the decision of the Ministry of Construction, Transport and Infrastructure, which granted the investor approval to carry out preparatory works for the construction of the Kalemegdan - Ušće gondola.

In the lawsuit, RERI emphasized that it is an association established to represent collective interests and the broader public interest in the field of promoting and advancing the right to a healthy and preserved environment, the sustainable management of natural resources, and renewable energy resources, and that it is organized in accordance with the law, which in this case grants it standing to participate in this administrative matter (administrative dispute). RERI substantiated its legal standing in relation to the specific case, referring both to its statute and to a number of procedural and substantive legal provisions that guarantee legal standing to citizens' associations in general, and particularly in the field of environmental protection. In its reasoning, the Court accepted RERI's arguments,

66 Administrative Court, Decision No. U 6063/19, 19 April 2019

providing a very detailed and precise reference to numerous provisions that clearly support the arguments presented in the lawsuit, as well as citing additional practice of international institutions and courts.

In recognizing legal standing, the Court referred, among other things, to Articles 2 and 9 of the Aarhus Convention, the case-law of the European Court of Human Rights, and the Law on Environmental Impact Assessment, particularly noting that the issue of consent for the environmental impact assessment was one of the main arguments of the lawsuit. This law defines the term "interested public" as the public affected or likely to be affected by the project, including non-governmental organizations engaged in environmental protection and registered with the competent authority. The Court also based its reasoning on Article 44(3) of the Law on General Administrative Procedure, linking it with Article 11(1) of the Law on Administrative Disputes, which provides that the plaintiff in an administrative dispute may be a natural, legal, or other entity if it considers that an administrative act has violated a right or a legally based interest.[67]

The Court, in its reasoning on legal standing, also referred to RERI's statute, noting that the plaintiff was established in accordance with the Law on Associations. Taking into account all of the above-mentioned and cited provisions, as well as the fact that the interested public claiming a violation of rights in the protection of immovable cultural property has the right to judicial review in administrative proceedings for the purpose of challenging the substantive and procedural legality of any individual administrative act, the Court concluded that the plaintiff had legal standing within the meaning of Article 11(1) of the Law on Administrative Disputes. It found that the plaintiff was entitled to file a lawsuit seeking annulment of the contested act in this case, on the grounds that the administrative act infringed a legally based interest.

In this case, the Administrative Court clearly concluded that RERI, as an association protecting collective and public interests, had legal standing as a party entitled to seek judicial review of administrative decisions by initiating an administrative dispute before the competent court. However, in a subsequent decision,[68] the Supreme Court of Cassation upheld this judgment but provided its own reasoning on the legal standing of the association under Article 11(1) of the Law on Administrative Disputes. It found that the contested construction permit infringed an interest related to environmental protection - an area in which the organization is engaged - and that this interest is grounded in the Law on Planning and Construction and the relevant regulations. On this basis, the Court held that the plaintiff had legal standing to bring the lawsuit in this administrative dispute.

▶ Construction Permit for a Wastewater Treatment Plant

In a recent decision, the Supreme Court of Cassation found that,[69] although the applicant for judicial review was a voluntary non-governmental organization registered for the promotion and advancement of the right to a healthy and

67 Jovan Rajić and Mirko Popović, *Protecting the Public Interest through Legal Remedies: Administrative Court Judgment in the "Gondola" Case*, Belgrade Centre for Security Policy, May 2021.

68 Judgment of the Supreme Court of Cassation, Uzp 132/2021, 17 March 2023.

69 Judgment of the Supreme Court of Cassation, Uzp 41/2023, 8 August 2023.

preserved environment - whose objectives include, among other things, ensuring access to justice in environmental matters - the Administrative Court had correctly concluded that, in the given administrative dispute, the organization did not have legal standing to bring the lawsuit, as the contested decision did not clearly interfere with any of its rights. Specifically, the Court noted that the decision challenged in the administrative dispute had been issued in an administrative matter initiated upon the request of an interested party for the issuance of a construction permit for the construction of a wastewater treatment plant, submitted under the Law on Planning and Construction, in which proceedings the applicant for judicial review of the court decision (the plaintiff in the administrative dispute) had not participated.

The Court explained that, according to the legal understanding of the Supreme Court of Cassation (expressed in the above-mentioned judgment Uzp 132/2021 of 17 March 2023), environmental protection associations (the "interested public" under environmental legislation, i.e., representatives of collective interests and broader public interests under Article 44, paragraph 3 of the Law on General Administrative Procedure) do not have a direct right to bring a lawsuit in an administrative dispute against a decision on a construction permit (and thus no right to be parties to such administrative proceedings as plaintiffs under Article 11 of the Law on Administrative Disputes), even when the construction permit concerns a project for which an environmental impact assessment is required, or when the procedure is related to environmental protection. This is because the environmental laws - the Law on Environmental Protection and the Law on Environmental Impact Assessment, which establish the legal framework for environmental protection (alongside the Law on Integrated Prevention and Control of Environmental Pollution and the Law on Strategic Environmental Impact Assessment) and define the notion of "interested public" (which includes associations engaged in environmental protection and registered with the competent authority) - grant the interested public the direct right to participate in administrative procedures and to initiate administrative disputes only in certain procedures prescribed by these laws, but not under the Law on Planning and Construction. This conclusion also follows from the fact that the Law on Planning and Construction, which does not belong to the corpus of environmental laws, does not prescribe the interested public as a party in the procedure for issuing construction permits. The Law on Environmental Protection, the Law on Environmental Impact Assessment, and the Aarhus Convention contain only directive norms indicating that the right to bring a lawsuit is exercised in accordance with the law. Furthermore, pursuant to Article 11, paragraph 1 of the Law on Administrative Disputes, an association engaged in environmental protection does not have a direct right to bring a lawsuit in an administrative dispute against a construction permit, because the challenged administrative act does not decide on the subjective right of the association as the plaintiff, but rather on the rights of the party in the administrative procedure at whose request the challenged construction permit was issued.

The Court further emphasized that Article 11 of the Law on Administrative Disputes does not expressly recognize the interested public under environmental legislation, nor representatives of collective interests and broader public interests under Article 44, paragraph 3 of the Law on General Administrative Procedure, as legal entities entitled to act as plaintiffs in administrative disputes. According

to the legal interpretation of the Supreme Court of Cassation (also expressed in judgment Uzp 132/2021 of 17 March 2023), although an environmental protection association does not have a direct right to bring a lawsuit in an administrative dispute, it may nevertheless acquire standing to sue in administrative proceedings challenging a construction permit when the project requires an environmental impact assessment. However, the existence of such standing for an environmental protection association is assessed on a case-by-case basis, in accordance with Article 11, paragraph 1 of the Law on Administrative Disputes. This assessment depends on whether there is a legally relevant connection to the subject matter of the administrative act, specifically whether the challenged construction permit breaches the environmental protection interest pursued by the association (the plaintiff), and whether this interest is grounded in the Law on Planning and Construction under which the challenged construction permit was issued.

- Analysis of case law indicates that the current normative framework is not aligned with current environmental protection standards and that, in specific cases involving environmental elements, corresponding protection of the public interest is not properly recognized. The root cause lies in the application of outdated and inconsistent legal norms, as well as in unsystematic laws and subordinate regulations which, as such, are subject to broad interpretation and do not correspond to the complexity and specificity of environmental disputes. Furthermore, the laws governing the institute of legal standing do not contain sufficiently precise and explicit provisions that would allow clear recognition of environmental organizations as legitimate actors in environmental protection proceedings. In the absence of specialized norms, courts rely on general provisions that are not suitable for this type of dispute and fail to acknowledge the specific role and importance of environmental organizations in safeguarding the public interest. This situation creates legal uncertainty, discourages civil society organizations from using legal mechanisms, and leads to the substantive inefficiency of institutional environmental protection.

CONCLUSION

According to the current Law on Administrative Disputes, a formal instrument exists for judicial review of the legality of administrative acts. However, in its present form, it is not adapted enough to protect the public interest, particularly the environmental interest. The definition of plaintiffs' standing applies to those whose personal rights or legally protected interests are directly violated, as well as to an "interested party" who would suffer direct harm from annulment of the act. This definition does not directly encompass collective or broader public interests, which are recognized under the Law on General Administrative Procedure. Considering the interrelation of these two laws, as well as the fact that the role and purpose of administrative disputes is to review decisions made in administrative proceedings, it is certain that the Administrative Court faces the challenge of interpreting these provisions quite extensively.

The demonstrated lack of clarity, together with the lack of consistent practice, raises the question of which criteria should, with sufficient legal certainty, define when

the connection between the subject of an administrative dispute and the objectives of an organization (i.e., its statute and statutory goals in the field of environmental protection) is close enough to justify procedural standing and recognition as a representative organization. In brief, it is necessary to develop clear criteria for assessing the legitimacy of environmental organizations both in administrative disputes and administrative procedures, to avoid arbitrary approaches, legal uncertainty, and violations of the right to access to court, and to ensure consistent application of the law in administrative proceedings and disputes.

COSTS OF PROCEEDINGS AS AN OBSTACLE TO ENVIRONMENTAL ORGANIZATIONS IN INITIATING AND CONDUCTING LAWSUITS

In judicial proceedings, especially those initiated to protect the public interest, the issue of procedural costs represents one of the greatest barriers to access to justice. Considering that the rules of the Law on Civil Procedure also apply in administrative disputes, there is no legal possibility to exempt parties conducting proceedings from procedural costs - such as court fees and advance payment of costs - and, particularly, there is no possibility to exempt them from the costs awarded to the opposing party if they do not succeed in the dispute. Namely, Article 153, paragraph 1 of the Law on Civil Procedure stipulates that the party who loses the case entirely is obliged to compensate the opposing party for procedural costs. According to Article 168 of the same law, the court may exempt a party from paying procedural costs if, based on their overall financial situation, they are unable to bear these costs. Exemption from procedural costs includes exemption from paying court fees and exemption from advance payment for costs related to witnesses, experts, inspections, and court notices. Furthermore, paragraph 4 of the same article prescribes that when deciding on exemption from procedural costs, the court shall consider all circumstances, particularly considering the value of the dispute, the number of persons the party supports, and the income and property of the party and members of their family. It is clear that the conditions for exempting parties from procedural costs generally relate to natural persons. Nevertheless, the general provision that the court shall consider all circumstances suggests that organizations with low budgets could be exempted from costs to a certain extent.

Additionally, the Law on Court Fees (*Official Gazette of the Republic of Serbia*, Nos. 28/94, 53/95, 16/97, 34/2001 – other law, 9/2002, 29/2004, 61/2005, 116/2008 – other law, 31/2009, 101/2011, 93/2012, 93/2014, 106/2015, and 95/2018) prescribes the payment of court fees in all judicial proceedings, both for submissions and court decisions.[70] The amount of the fee in civil proceedings depends on the value of the dispute, which can be challenging in cases where that value is high. Such a general rule, applied also in cases concerning the protection of the public interest, may constitute a significant financial burden with a deterrent effect.

Supporting all of the above is the already mentioned case law of the Court of Justice of the European Union (CJEU), which, in the cases of *Edwards* (C-260/11 PPU, *Edwards & Pallikaropoulos v Environment Agency*) and *Commission v United Kingdom*

70 The Law on Court Fees (*Official Gazette of the Republic of Serbia*, Nos. 28/94, 53/95, 16/97, 34/2001 – other law, 9/2002, 29/2004, 61/2005, 116/2008 – other law, 31/2009, 101/2011, 93/2012, 93/2014, 106/2015, and 95/2018), Article 3.

(C-530/11), addresses the predictability of procedural costs and access to justice, all in accordance with Article 9(4) of the Aarhus Convention, which stipulates that proceedings must not be prohibitively expensive.

All of the above indicates the necessity of a systemic regulation of the position of environmental organizations as representatives of the public interest, including the possibility of exemption from court costs and the clear definition of "public interest" as a criteria for alleviating financial barriers in judicial proceedings. Otherwise, the role of environmental organizations will remain significantly limited.

4. ANALYSIS OF QUESTIONNAIRE RESPONSES

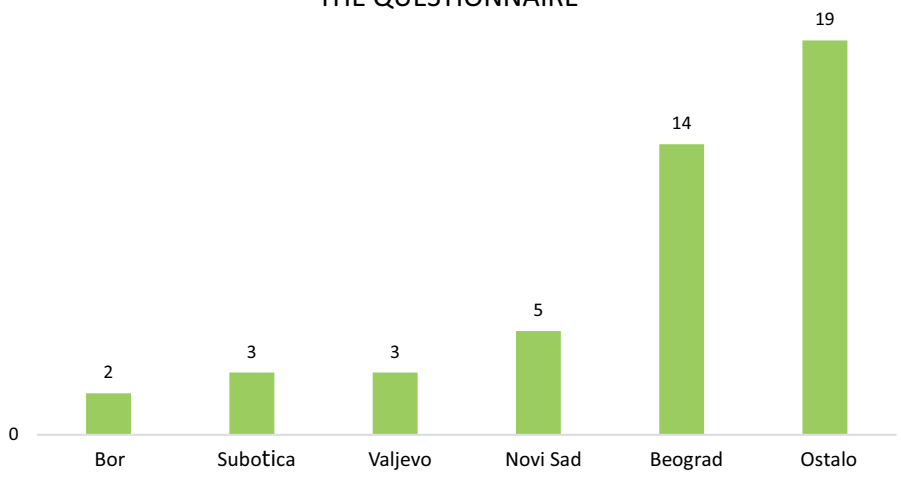
4.1 GENERAL INFORMATION ABOUT RESPONDENTS

4.1.1 LOCATIONS OF ORGANIZATIONS

Uneven economic development in Serbia has led to a concentration of NGOs in larger cities, leaving many areas vulnerable and lacking sufficient capacity to address environmental protection issues. On the other hand, some regions have predispositions to be the focus of environmental organizations (such as protected areas, mineral-rich regions, etc.). Within the scope of the research, the geographical distribution of organizations was diverse and balanced, which strengthens the relevance and credibility of the findings.

Respondents were from the following locations across Serbia: Belgrade (14), Novi Sad (5), Subotica (3), Valjevo (3), Bor (2), Loznica (1), Sombor (1), Deliblato (1), Pirot (1), Zrenjanin (1), Gornji Milanovac (1), Užice (1), Niš (1), Vrbas (1), Despotovac (1), Vršac (1), Leskovac (1), Sokobanja (1), Pančevo (1), Brodarevo (1), Futog (1), Petrovac na Mlavi (1), Paraćin (1), and Smederevo (1). One organization indicated Serbia as its location.

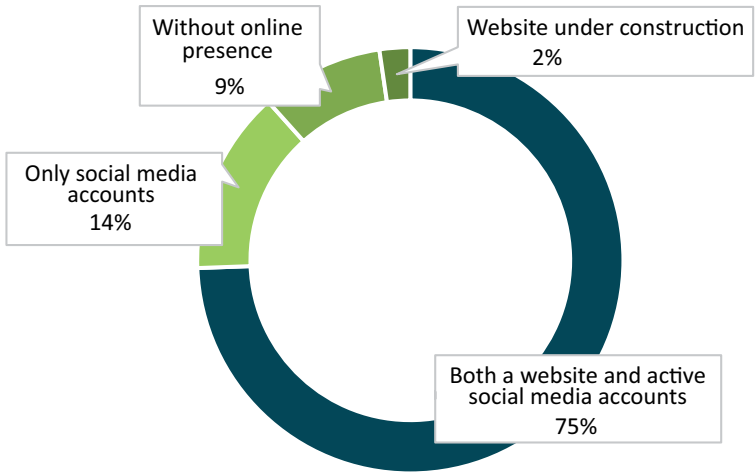
LOCATIONS OF ORGANIZATIONS THAT RESPONDED TO THE QUESTIONNAIRE



4.1.2 ONLINE PRESENCE OF THE ORGANIZATIONS

Digital visibility enables NGOs to communicate with the public, promote transparency, and strengthen their advocacy efforts. The varying levels of online presence among respondents represent a key factor in assessing their capacity to exert public influence. Among the respondents, 30 organizations have both a website and active social media accounts, six use only social media without a dedicated website, two reported having no online presence, one organization stated that their website is under construction, and one provided incomplete or unclear information. This indicates a generally strong but uneven level of digital visibility.

ONLINE PRESENCE OF THE ORGANIZATIONS



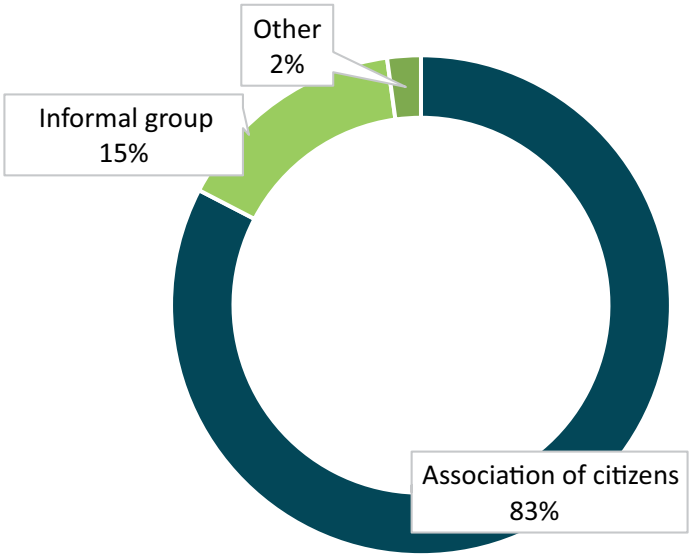
4.1.3 TYPE OF THE ORGANIZATION

The majority of respondents are members of registered associations (38), seven belong to informal groups, and one respondent is a member of an initiative. Registered associations offer certain advantages compared to informal groups, primarily regarding the precise outlining of their objectives through a published statute in the Business Registers Agency, which is relevant for recognizing active legal standing in proceedings before authorities and courts in the Republic of Serbia.

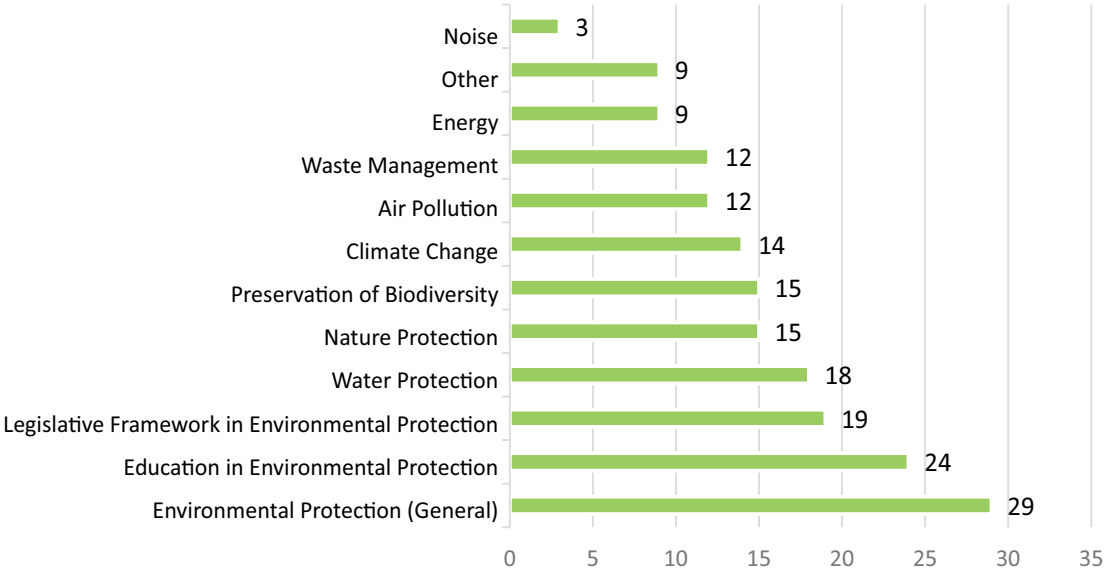
4.1.4 FIELDS OF ACTIVITY

The majority of organizations participating in the research reported involvement in a broad scope of activities related to environmental protection. The most frequently mentioned fields were: general environmental protection (29), environmental education (24), environmental legislative framework (19), water protection (18), and nature conservation (15).

TYPE OF THE ORGANIZATION



FIELD OF WORK

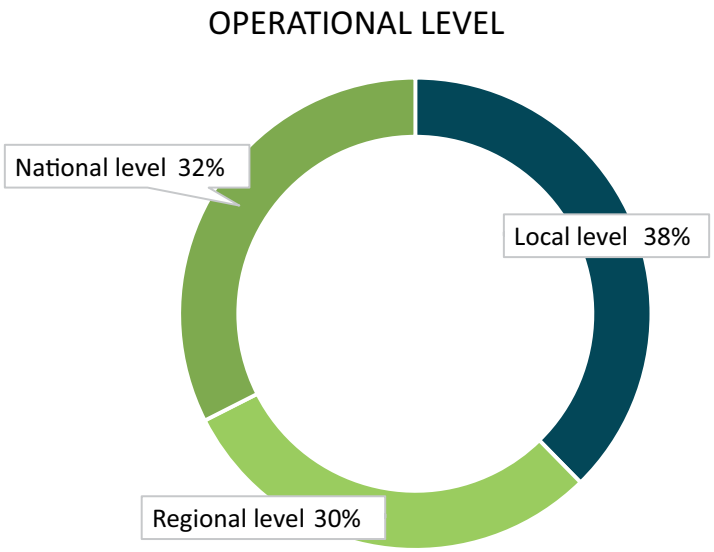


Respondents who selected the "other" option listed the following fields: green public procurement (1), circular economy (1), corruption in environmental protection (1), rule of law and human rights (1), cultural and artistic projects (1), agriculture (1), and mining (1).

Most respondents selected multiple categories, resulting in significant overlap in the answers. This may indicate awareness of the need for a holistic approach to environmental protection, as well as the fact that the activities of organizations are largely shaped by project-defined priorities.

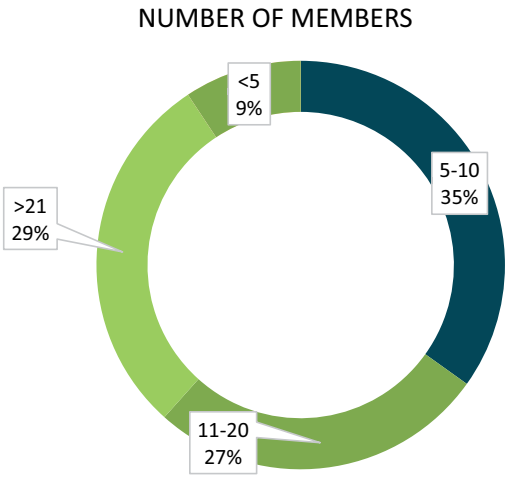
4.1.5 OPERATIONAL SCOPE

29 respondents indicated that their operational scope is at the local level, making it the most common response. Many also indicated combinations such as local and regional, or local and national levels, suggesting that while most organizations originate from local communities, they have broader ambitions and influence. This points to a multi-layered approach to activism, rooted locally but connected to national networks.



4.1.6 MEMBERSHIP

Most organizations reported having more than 20 members, followed by those with 5–10 and 11–20 members. This indicates that the surveyed organizations are predominantly based on volunteer engagement, with a medium-sized membership base sufficient for community activities or legal actions.



4.1.7 PARTICIPATION IN PROCEEDINGS AND ACCESS TO JUSTICE

The research results point to an active but complex role of civil society organizations in environmental protection in Serbia. Most organizations use available legal mechanisms, most commonly participation in administrative procedures before administrative bodies, to respond to environmental issues, while a smaller number utilize mechanisms to initiate court proceedings (lawsuits, criminal charges, proceedings before the Constitutional Court). However, a significant number of organizations (21) do not initiate legal proceedings but contribute through education, public campaigns, field actions, and data collection, alongside exercising the right to access information. Nevertheless, as many as 36 organizations report facing serious obstacles in accessing justice, primarily in the form of institutional passivity, inefficiency of legal remedies, limited access to information, high costs, and lengthy procedures. These barriers particularly affect smaller and local organizations and point to the need for systemic reforms that would enable more effective enforcement of rights, institutional accountability, and greater influence of civil society in environmental protection.

4.1.8 CIVIL COURT PROCEEDINGS

Most respondents indicated that they have no experience with civil courts concerning environmental protection. This evident trend suggests that civil society in Serbia rarely initiates civil lawsuits related to environmental issues. Those who have started civil proceedings mention cases of illegal logging and poaching in protected areas, as well as data related to forest theft. Additionally, the responses point to a lack of clarity among some organizations regarding the role or jurisdiction of civil courts in environmental protection matters.

4.1.9 CRIMINAL PROCEEDINGS

The analysis further shows that CSOs in Serbia rarely use criminal complaints as a mechanism for environmental protection, with only 16 stating that they have filed such complaints. Reasons for this include the complexity of the process, lack of legal and financial support, passivity and lack of transparency of prosecutors' offices, and the perceived inefficiency of the judicial system. Even when complaints are filed, organizations rarely receive information on the progress and outcome of the proceedings, while their formal participation is often hindered by restrictions on standing. Some complaints are dismissed without explanation, even when supported by relevant evidence, and fear of retaliation is also present. Most organizations report negative experiences, expressing deep disappointment with the institutional response and a sense of uselessness. Overall, the limited use of criminal law in the field of environmental protection reflects deep structural and systemic gaps – from legal ambiguity and institutional passivity to the need for substantial reforms and stronger CSO capacities to make this mechanism truly accessible, effective, and legally relevant for the protection of the public interest.

Survey data show that CSOs in Serbia rarely use criminal complaints as a tool for environmental protection - 64% of respondent organizations stated they had filed such complaints, while 36% had not used this legal mechanism. They identified several obstacles to its use, including the complexity of proving criminal offenses, the low efficiency and motivation of judicial authorities, and a general lack of trust in the institutional response. In addition, many organizations expressed the view that all other mechanisms are more effective. This situation highlights structural weaknesses in the legal system when it comes to environmental crime and points to the need both to strengthen the position of CSOs and to build the capacity of institutions to take environmental offenses more seriously. Out of all respondents, only eight organizations reported having access to the case after filing a criminal complaint. This means that even among those who submitted a complaint, only a few were informed about the course or outcome of the proceedings. A significant number, six organizations, explicitly stated they had received no information at all, despite sending requests. Four organizations said they had not followed the case, which may point either to resignation caused by the system's inefficiency or to limited capacity for sustained engagement.

The overall tone of responses to the question about how, based on their experience, they assess the criminal justice system's handling of environmental offenses was overwhelmingly critical. Organizations and individuals involved in such proceedings reported that processes are slow, ineffective, and discouraging, and often fail to produce any tangible impact on public policy or practice. Prosecutors were frequently described as passive, dismissing criminal complaints without conducting proper investigations or reviewing evidence, and without informing complainants about the progress of the case.

Key challenges

- **Lengthy proceedings and institutional passivity:** Many respondents noted that while filing a complaint is relatively straightforward, the

proceedings involve long periods without visible progress or procedural actions that participants perceive as intentionally designed to lead to the statute of limitations.

- **Dismissal of complaints without explanation:** Some organizations filed extensive criminal complaints supported by expert reports and medical documentation. Despite this, prosecutors dismissed the cases without providing any rationale for their decisions.
- **Limited standing of civil society organizations: r**espondents emphasized that CSOs lack the legal status that would enable them to participate formally in proceedings, preventing them from effectively representing the public interest in environmental protection before the courts.
- **Fear of retaliation:** one respondent reported that engaging in legal actions against public authorities led to retaliation, indicating that access to justice is further hindered by intimidation and power imbalances.

In conclusion, the insufficient use of criminal law to protect the environment reflects certain challenges within the judicial system. This highlights the need to strengthen the capacities of civil society organizations and to increase institutional sensitivity toward environmental crime.

4.1.10 ADMINISTRATIVE PROCEEDINGS

Research shows that most civil society organizations use administrative proceedings as their primary legal mechanism for environmental protection, most often by contacting inspections and local self-governments. However, their experiences with institutions are frequently negative – there were no responses, purely formal without real action, or authorities declared themselves incompetent. While some organizations know what steps to take in cases of administrative silence or institutional shifting of jurisdiction, many of them lack sufficient capacity, legal assistance, or information to continue the process. Distrust in competent authorities, reliance on external legal support, and a lack of legal literacy further limit their effectiveness. These findings indicate the need for systemic support for organizations through practical training, clear guidelines, experience sharing, and accessible legal aid mechanisms to strengthen their ability to respond to institutional inactivity and effectively use administrative law instruments in environmental protection.

A large number of respondents highlighted the lack of responses from authorities, shifting of responsibility, or declarations of incompetence as significant issues, indicating a lack of coordination and accountability within the administrative system. Only a small number of organizations reported having experiences with satisfactory reactions from authorities, suggesting that positive institutional conduct is the exception rather than the norm. In several detailed responses, participants described a wide range of interactions, where experiences with administrative bodies depend on the specific employee involved - resulting in situations where

the same authority's behavior ranges from complete inactivity to lawful and timely decisions, further emphasizing inconsistency in institutional conduct.

The data reveal a troubling pattern in which civil society actors are often bounced from one institution to another without clear solution, with many lacking the knowledge or tools to break this vicious cycle. Although some manage to compensate for this gap by seeking legal assistance, such dependence can limit their ability to respond quickly and independently.

4.1.11 ADMINISTRATIVE LITIGATION

Research shows that most civil society organizations have not initiated proceedings before the Administrative Court, primarily due to a lack of need or insufficient knowledge about its jurisdiction in environmental matters. Among those who have, experiences vary - from issues with lengthy procedures and non-enforcement of rulings to procedural successes whose impact was diminished by the absence of institutional response. Additional obstacles include high costs, limited capacity, and distrust in the effectiveness of judicial protection. While some recognize the legitimacy and importance of the Administrative Court, the prevailing impression is of limited use and frustration with systemic weaknesses. These findings indicate the need to raise awareness, provide legal support, and strengthen enforcement mechanisms to make the Administrative Court a more effective tool for environmental protection.

4.1.12 INTERNATIONAL MECHANISMS AND ENGAGEMENT WITH INTERNATIONAL BODIES

Research shows that civil society organizations working on environmental protection in Serbia rarely use international human rights mechanisms, such as the European Court of Human Rights (ECtHR) and UN special procedures, despite their potential to address systemic gaps. Only three organizations have approached the ECtHR, while the majority have not, due to limited capacity, reliance on prior Constitutional Court decisions, financial barriers, and legal complexity. Similarly, only a few organizations have engaged with international bodies such as the UN Special Rapporteur or the Aarhus Convention Compliance Committee. Although most respondents are skeptical about the effectiveness of international mechanisms, one successful case demonstrates that they can be effective when used strategically and with adequate support. These findings highlight the need for education, legal and financial assistance, and the development of strategic partnerships to enable greater use of international instruments for rights protection and to enhance institutional accountability in environmental matters.

When highlighting experiences with submitting applications to the ECtHR, a small number of respondents who filed complaints pointed out that the requirement for a prior Constitutional Court decision effectively blocks access to the ECtHR: "We received a very quick response from the ECtHR within two weeks, but it was negative because they referred to the Constitutional Court of Serbia, which has yet to respond."

When it comes to experiences with international bodies, one response stood out by describing a very positive and ongoing interaction. The organization addressed the UN Special Rapporteur on Environmental Defenders and the Aarhus Convention Compliance Committee, which resulted in:

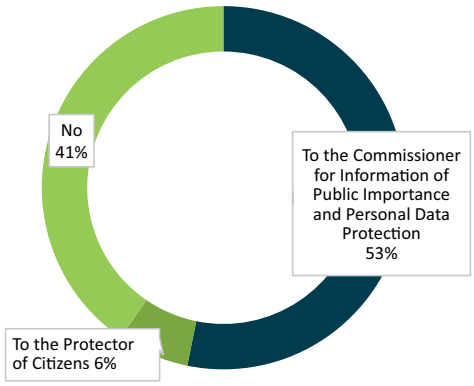
- the formal initiation of a case;
- recognition of their coordinator as an "environmental defender";
- an invitation to Geneva to testify before the Committee;
- the Committee's communication with the Public Prosecutor's Office in Serbia, leading to requests for hearings involving national environmental inspectors.

This demonstrates that international mechanisms, when used strategically and with proper support, can intensify the fight for environmental protection and exert pressure on domestic institutions - especially when engagement is sustained and visible.

4.1.13 ADDRESSING INDEPENDENT INSTITUTIONS

Most respondents have had contact with at least one independent institution, indicating that these mechanisms are better known and more frequently used compared to international mechanisms or the highest courts. This also suggests that they are relatively accessible and better integrated into the advocacy strategies of civil society organizations. Some respondents described independent institutions as highly effective, noting that they succeeded in obtaining public documents that were previously denied to them. Others pointed out that while the process had results, it was slow.

ADDRESSING INDEPENDENT INSTITUTIONS



Experiences are mixed - while some organizations emphasize successfully obtaining requested information or initiating proceedings, many highlight slow administration, limited jurisdiction, and weak enforcement of decisions. Comments such as "the form exists, but the substance is missing" reflect a sense of inefficiency, leading to independent institutions being perceived more as symbolic rather than effective mechanisms of protection.

However, given their institutional potential, continuous cooperation between the civil sector and these bodies is necessary, along with strategic pressure to enforce decisions, coalition-building around key cases, and advocacy for stronger mandates and institutional support to strengthen their role in protecting rights and the environment.

4.1.14 CONCLUSION

Responses to the questionnaire show that organizations engaged in environmental protection in Serbia face a wide range of structural and institutional obstacles. The most frequently mentioned challenge is the lack of financial resources, cited by 35 respondents. This indicates the difficulties many civil society organizations encounter in ensuring the continuity of long-term activities, conducting research, or initiating legal proceedings.

Immediately following is the issue of insufficient institutional transparency (31 responses), suggesting that public authorities act in a non-transparent way, hindering organizations' access to information, monitoring of procedures, and ensuring institutional accountability.

Another significant obstacle is the lack of legal support (25 responses), indicating that many organizations lack internal legal expertise or cannot afford external legal counsel, limiting their ability to respond to violations of the right to a healthy environment.

Additionally, limited mechanisms for public participation in decision-making processes were noted by 21 respondents. This points to either restricted or poorly implemented opportunities for meaningful involvement of civil society organizations and citizens in administrative or environmental procedures.

Ultimately, 20 respondents reported pressures and intimidation of activists, indicating an environment where public advocacy or organizing to defend the right to a healthy environment can provoke negative reactions, threats, or repression.

The findings highlight a challenging environment for environmental defenders in Serbia. A combination of limited resources, institutional opacity, an underdeveloped legal framework, and personal risks makes effective advocacy for environmental protection extremely difficult.

Addressing these issues requires systemic reforms, greater institutional transparency, improved legal protections, and targeted support for civil society participation in environmental governance.

5. ANALYSIS OF FOCUS GROUP RESULTS

During the focus group discussion held on April 14, 2025, significant insights were gathered regarding the experiences and challenges that civil society organizations encounter while working on environmental protection and accessing justice in Serbia. The discussion highlighted the systemic presence of institutional gaps that reduce the effectiveness of legal mechanisms and impose a heavy burden on CSOs, which often simultaneously act as guardians of the public interest and initiators of proceedings.

The main concern highlighted was the inconsistent and often inadequate conduct of inspections. The Environmental Protection Inspectorate was specifically noted as the least responsive -complaints are regularly ignored, dismissed, or the Inspectorate declares itself incompetent. In some cases, inspectors even disclosed the identities of complainants to polluters, raising safety concerns and discouraging further reporting. Positive examples of cooperation with the Water and Construction Inspectorates were mentioned but described as exceptions rather than the rule. A lack of coordination among inspectorates and poor monitoring of enforcement measures further undermine the credibility of the inspection system.

Inefficiency of the judiciary and prosecutorial bodies was also a dominant theme. Criminal complaints often remain at the pre-investigation stage, and even when proceedings begin, they are frequently slow and lack clear outcomes. Administrative courts were described as slow, with cases lingering unresolved for years. In numerous instances, penalties imposed on polluters fell below the legal minimum or involved suspended sentences, even for repeat offenses. Excessive anonymization of court documents, including the names of polluters, was seen as a serious obstacle to public oversight and transparency. The lack of continuous legal support represents another significant barrier. Many organizations have limited financial resources and cannot hire legal counsel outside specific projects. There is an evident shortage of lawyers, prosecutors, and judges with specialized knowledge in environmental law. Moreover, effective management of environmental disputes often requires a multidisciplinary approach, but technical experts such as urban planners or environmental engineers are rarely involved in formal proceedings.

Participants also described a hostile environment for activism, citing instances of threats and intimidation directed at civil society representatives, especially in politically sensitive cases. Institutions were identified as slow to respond unless

pressured by public opinion or the media. In some cases, formal mechanisms such as the Ombudsman's office or experts from inspection bodies were perceived as means to dilute or redirect responsibility rather than contribute to resolving cases.

Focus group participants pointed to the persistent gap between environmental harm and institutional response. Despite significant legal and procedural efforts by civil society organizations, they continue to face a judiciary that is often slow, unresponsive, and lacking both capacity and will. While public advocacy and media pressure remain key tools for ensuring accountability, systemic reforms are urgently needed - especially in the areas of inspections, judicial specialization, legal support structures, and recognition of the role of civil society organizations in proceedings - to ensure that environmental justice does not remain merely a symbolic ideal.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 CONCLUSIONS

The analysis of applicable international standards, EU law, and the national legislation of the Republic of Serbia regarding the procedural rights of environmental organizations highlights the state's clear obligation to ensure effective public participation, access to information, and access to justice in environmental protection matters. The Aarhus Convention, relevant EU directives, and the case law of the Court of Justice of the EU establish high standards for the procedural standing of civil society organizations, explicitly recognizing environmental organizations as "the public concerned" with a presumed interest in environmental issues.

Civil litigation in the Republic of Serbia, viewed from the perspective of environmental protection, is practically limited almost exclusively to the application of Article 156 of the Law of Obligations, known as the ecological lawsuit (*actio popularis*). However, even this sole legal basis for initiating proceedings in the public interest remains underutilized, with limited visibility in practice and almost no developed or established case law to support it. In practice, litigation under Article 156 of the Law of Obligations is most often initiated to protect subjective property rights, even when clear elements of environmental rights violations as a collective interest exist. For all these reasons, civil litigation cannot currently be considered an effective mechanism for legal protection of the environment in Serbia. It is neither efficient nor sufficiently visible. Normative and institutional improvements are necessary to make this mechanism a truly accessible and effective tool in the fight of environmental organizations to preserve the environment.

Although the Criminal Code of the Republic of Serbia recognizes environmental criminal offences by defining 18 specific offenses against the environment, the role of environmental organizations in criminal proceedings remains extremely limited. Prosecutors' experiences show that without the initiative and notification from environmental organizations, many cases would remain undiscovered. However, a weak institutional response, passivity from nearly all actors in the process, and the absence of a legal obligation to communicate with complainants create feelings of discouragement and inefficiency. This results in a missed opportunity to make this segment of legal environmental protection more functional and proactive.

The general administrative procedure, under Article 44, paragraph 3 of the Law on Administrative Procedure, allows environmental organizations to obtain party status in proceedings as representatives of collective and broader public interests. However, practice shows that this provision is rarely applied in accordance with its purpose and essence; authorities often rely solely on paragraph 1 of the same article, ignoring paragraph 3. This undermines the concept of public interest in administrative matters concerning the environment.

Special laws in the field of environmental protection further complicate the situation by using different definitions of the "public concerned" and introducing varying levels of rights at different stages of administrative procedures. In some procedures, environmental organizations have only a consultative role, without the right to appeal or access legal protection, while in others they are recognized as parties but often face a strict criteria for proving interest. The inconsistent approach creates legal uncertainty and opportunities for arbitrary interpretation, limiting the substantive influence of the public and discouraging participation. Additionally, administrative bodies' practice reveals several issues - from rejecting requests without justification to restrictive interpretations of legal interest or active legitimacy of environmental organizations. Opinions, comments, and participation by organizations in public discussions are largely reduced to formality, eroding trust in administrative procedures and rendering participatory rights meaningless. Especially concerning is the failure to implement key principles of the Aarhus Convention, especially the direct recognition of standing for organizations meeting national law criteria, even though these principles are formally incorporated into legislation. Finally, although certain mechanisms for public participation and access to information are technically available, their implementation is often slow, inefficient, and prone to arbitrariness. The absence of an obligation for authorities to consistently interpret and apply norms related to the public interest, as well as the lack of clear criteria for recognizing the active standing of environmental organizations, seriously undermine legal certainty and the effectiveness of these instruments.

The analysis of the normative framework and practice in the field of administrative litigation shows that the existing Law on Administrative Disputes is insufficiently aligned with both the principles of the Aarhus Convention and the standards relating to active standing, as well as with the Law on Administrative Procedure and specific environmental protection laws. The Administrative Court's practice in the "Gondola Kalemegdan" case represents a positive example of interpreting regulations in accordance with the Aarhus Convention and international practice, providing a basis for developing standards in this direction, but such cases remain exceptions. The misalignment between the Law on Administrative Disputes and the Law on Administrative Procedure particularly regarding the definition of standing to participate in proceedings - and the lack of clear criteria lead to legal uncertainty and arbitrariness in the actions of authorities and courts. This hinders the effective exercise of the right to access justice in environmental protection matters and undermines the institution of administrative litigation as a mechanism for reviewing the legality of decisions concerning the public interest.

In conclusion, the analysis of environmental organizations' experiences indicates that civil society organizations in Serbia play an active yet challenging role in environmental protection, using various legal and institutional mechanisms amid numerous obstacles that limit their effectiveness. Administrative procedures are the most commonly used, but experiences with institutions are often negative, while civil and criminal proceedings are rarely employed due to the under-recognition of environmental organizations' roles, as well as inefficiency and institutional passivity.

Administrative disputes are rarely initiated, and international mechanisms and courts remain largely underutilized due to legal complexity, financial barriers, and lack of capacity. Independent institutions are somewhat more accessible but lack enforcement power, which diminishes their influence. Overall, the findings point to the need to strengthen institutional accountability, improve coordination among authorities, increase access to legal aid, and strategically empower organizations to effectively use all available mechanisms for environmental protection. The focus group held on April 14, 2025, further highlighted deeply rooted systemic deficiencies within Serbia's institutional framework for environmental protection. Participants particularly emphasized institutional inefficiency and lack of transparency, from the passivity of environmental inspection and the slowness and indecisiveness of prosecutors to the lack of specialization within the judiciary. Complaints are often dismissed without explanation, inspectors declare themselves incompetent, and in some cases, the identities of complainants have been revealed, further discouraging citizens and civil society organizations. The lack of coordination among competent authorities and the absence of monitoring of enforcement measures further undermine institutional credibility. Penalties for polluters are often minimal or symbolic, even in cases of repeated offenses, while court documents are frequently anonymized to such an extent that public oversight becomes impossible. Simultaneously, organizations lack continuous legal and expert support, and specialized knowledge in environmental law, urban planning, and environmental protection is rarely available within institutional frameworks. A particular challenge is the hostile environment for environmental activism, with focus group participants reporting cases of threats and intimidation, especially in politically sensitive cases. Without serious and systemic reforms, particularly in inspection supervision, judicial specialization, formal recognition of procedural standing for civil society organizations, and the establishment of sustainable legal support models, environmental rights will remain declarative, and institutional responses will be merely symbolic. The focus group thus confirmed the urgent need for reform and the crucial role of civil society organizations as the last line of defense of the public interest in environmental matters.

A comparison with EU practices and standards indicates that Serbia must urgently undertake measures to improve the procedural rights of environmental organizations in order to ensure the effective implementation of the Aarhus Convention principles and fulfill its obligations within the European integration process.

6.2 OVERVIEW OF IDENTIFIED GAPS

General gaps

- Lack of visibility of environmental organizations within the procedural law of the Republic of Serbia: There is no specific regulation that defines these organizations and regulates their status, nor is there harmonization of existing regulations. This is necessary due to their unique position aligned with the interests they represent. General regulations do not provide sufficient participation or party status to these organizations. Applying general norms places them in an inadequate position.
- Significant inconsistency and lack of systematization in regulations, especially those relating to administrative procedure and administrative disputes.
- Insufficient cooperation and trust in institutions on the part of environmental organizations.

1. Civil Litigation (The Law on Obligations, Article 156)

- Limited application of actio popularis (environmental lawsuit) in protecting the public interest.
- Almost non-existent case law developing and confirming this legal instrument.
- Practice focuses primarily on property rights rather than environmental rights.
- There is no efficiency and visibility, making this mechanism ineffective.

2. Criminal Proceedings

- Environmental organizations have no procedural role or protection in the process.
- Lack of institutional response—passivity of the competent authorities.
- There is no obligation to communicate with organizations reporting criminal offenses.
- Difficulties in monitoring proceedings and lack of transparency (case law is inaccessible).
- Creates a sense of discouragement and inefficiency in protecting environmental interests through criminal proceedings.
- Penalties for polluters are minimal and lack a deterrent effect.
- Document anonymization prevents public oversight.

3. Administrative Procedure

- Rare application of Article 44, Paragraph 3 of the Law on Administrative Procedure in favor of environmental organizations as representatives of the public interest.

- Administrative authorities predominantly interpret Article 44, Paragraph 1 rather than Paragraph 3.
- Unsynchronized legal framework - certain laws use varying definitions of "interested public."
- Difficulties in reviewing laws and their application due to misalignment between the Law on Administrative Procedure and the Law on Administrative Disputes.
- High criteria for proving "legal interest"; arbitrary interpretation of standing.
- Requests are often rejected without explanation; participation rights are limited.
- Formalism in public consultations undermines participatory rights.
- Inconsistent practices and lack of communication and coordination among administrative bodies.
- Lack of specialized knowledge in environmental law and administrative procedures.

3.1. Free Access to Public Information

- Existing mechanisms for access to information and public participation are formally available, but:
  - their implementation is slow and arbitrary;
  - authorities have no obligation to interpret and apply them consistently.

4. Administrative Litigation

- The Law on Administrative Disputes is not aligned with the Aarhus Convention.
- There is a gap between the Law on Administrative Disputes and the Law on Administrative Procedure regarding the definition of active legal standing.
- There is a lack of clear criteria for environmental organizations' participation in litigation ("Gondola Kalemegdan" stands as a rare positive example).

5. Institutional Practice and Coordination

- Authorities and courts disregard special and supranational regulations.
- Procedures take an excessively long time.
- Institutions (inspections, prosecutor's offices, courts) are inefficient and lack transparency.
- There is a lack of specialized knowledge in environmental law.
- Inter-institutional coordination and monitoring of measure implementation are weak.

6. Capacities of CSOs and Access to Justice

- Lack of permanent legal and expert support.
- Insufficient financial resources.
- Lack of legal knowledge and limited availability of specialized expertise.
- Hostile environment for activism – cases of threats and intimidation, especially highlighted in politically sensitive cases.
- Pressure and exposure of activists discourage their work.

6.3 RECOMMENDATIONS

1. AMENDMENTS AND CHANGES TO LEGISLATION

- **Amend the Law on Civil Procedure:**
  - Revise provisions regulating party status to grant environmental organizations the status of parties representing the public interes;
  - Harmonize the Law on Civil Procedure and the Law on Administrative Disputes to explicitly recognize environmental organizations as plaintiffs or parties.
- **Consider regulating the status of environmental organizations in criminal proceedings in accordance with the latest EU Directive**[71] to improve their formal position in criminal cases. According to the Directive, this includes a mechanism for protecting environmental defenders and whistleblowers (Article 14): The Directive requires member states to ensure fundamental rights and protections for environmental defenders, whistleblowers, and cooperating individuals in the context of criminal proceedings. This protection provides defenses against retaliation and provision of necessary support and assistance to those who provide evidence or otherwise cooperate in the investigation, prosecution, or trial of such offenses. Furthermore, in line with Article 15 of the Directive, the procedural status of environmental organizations in criminal proceedings should be strengthened.
- **Amend the Law on Administrative Procedure** to clearly and operationally define the concepts of "collective interest" and "broader public interest," as well as to introduce direct recognition of party status for organizations meeting specific criteria.
- **Amend the Law on Administrative Disputes**:
  - to explicitly recognize the standing (active legitimacy) of environmental organizations that meet the conditions prescribed by national legislation, fully in line with the Aarhus Convention.

71 Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024.

- **Harmonize all special laws** regulating the participation of the interested public in environmental procedures.
- **Consider defining environmental organizations:** through a special regulation or amendments to existing laws, it is necessary to clearly specify the criteria that organizations, informal groups, and other forms of association must meet to be recognized as entities representing broader or collective interests, thereby granting them active legal standing in proceedings before administrative bodies and courts.

2. ENHANCED IMPLEMENTATION OF LEGISLATION

- **Guide judicial practice through instructions and recommendations:** The Administrative Court should adopt rulings defining clear guidelines to assist judges in interpreting norms on active legal standing in line with the Aarhus Convention objectives and established case law of the Administrative, Constitutional, Supreme Courts, and the European Court of Human Rights (ECtHR).
- **Consider issuing an official interpretation of Article 44, paragraph 3 of the Administrative Procedure Act** by the competent ministry to ensure uniform understanding of the terms "collective interest" and "broader public interest," aiming for direct recognition of party status for organizations meeting specific criteria.
- **Support the development of good practice models and guidelines** based on European examples, including recommendations from the Aarhus Convention Compliance Committee, to progressively introduce a system where public participation is actually binding rather than merely formal.
- **Develop binding guidelines for administrative bodies** detailing the application of public participation norms and recognition of procedural rights of environmental organizations, including the obligation to justify any denial of party status.
- **Introduce an internal manual for administrative bodies** and organize training on interpreting provisions of the Law on Administrative Procedure, relevant special laws, and the Aarhus Convention to ensure consistent law application and reduce arbitrariness.
- **Prepare national guidelines for initiating environmental lawsuits**, providing practical tools for CSOs to effectively utilize available instruments in civil litigation.
- **Promote proactive disclosure of information and strengthen the Commissioner for Information:** public authorities must comply with the obligation of proactive information disclosure, while the Commissioner's mandate and capacities should be enhanced. Consider revising penalties for officials in state bodies to encourage compliance.

- **Ensure information accessibility for the interested public:** establish an obligation for competent authorities to transparently inform the public about the progress and outcomes of criminal proceedings related to environmental offenses, especially where other crimes are subject to similar transparency. Develop databases and mechanisms to monitor the outcomes of reported environmental criminal cases.

3. TRAINING AND NETWORKING

- **Foster networking and cooperation between environmental organizations and prosecutors** at local, regional, and national levels.
- **Engage all key environmental protection stakeholders at the local level.**
- **Provide training and capacity-building for judiciary representatives and officials involved in various proceedings:** judges, prosecutors, judicial associates, prosecutorial assistants, inspectors, police, administrative bodies, and lawyers. Organize continuous education on the role of environmental organizations in court and administrative disputes and proceedings, as well as on international standards for access to justice in environmental matters.
- **Training for CSO:** Organize systematic training for civil society organizations working on environmental protection.

Implementing these recommendations would address identified shortcomings, enabling more effective oversight of administrative acts, enhancing legal certainty, and improving the position of environmental organizations in proceedings crucial to environmental protection.