



Environmental Democracy: Limping Along



Alternative report on
implementation of the
Aarhus Convention
in Bosnia and
Herzegovina



TRANSITION

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Report on implementation of the Aarhus Convention in Bosnia and Herzegovina (BiH) has been published in 2014 on the occasion of The 5th Meeting of the Parties to the Convention in Maastricht, The Netherlands. We appreciate the effort that has been made and do not want to duplicate the same work. Our intention was to establish a report which would include some critical findings and develop reflections on major shortcomings in practical use of the Convention by State officials in the decision-making, and also by the citizens in solving problems of their neighbourhoods, towns and villages.

When reading national legislation, one might feel that the struggle for environmental protection and right to live in healthy environment in Bosnia and Herzegovina is over and all problems are resolved. Closer inspection reveals that rules *on paper* often differ from their practical implication in reality.

Because of the initial lack of publicly available data, we tried to use the right to access information and asked dozens of State authorities for their records on public participation in decision-making. This attempt brought a gloomy result: a major part of offices ignored our request for information and thereby violated both the national law and international obligations of the country set by the Aarhus Convention.

Actual events, described in the case studies, are true indicators of the real situation of environmental democracy in BiH. Our goal was to report on some of the recent significant civil society campaigns in environmental protection and quality of life improvement. These cases reveal a picture of a surprisingly active civil society, well organized non-governmental organizations and enormous dedication and effort by the people. On the other hand, it also reveals cases of corrupt politicians, dismissive State officials, paralyzed decision-making structures and cynical private corporations.

Although the environmental democracy in Bosnia and Herzegovina is just limping along, outbreaks of active civil society show promise for improvement in the future. Our intention was to highlight such examples of good practice in relation to environment and human rights protection. In our opinion, citizens who do not cease to demand their rights do not only contribute to a better environment, but also to the overall improvement of the society.

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The content of this publication is the sole responsibility of the authors and in no way can be taken to reflect the views of the Czech Republic.

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Glossary

AC – Aarhus Convention

BD – Brčko District

BAM – Currency of Bosnia and Herzegovina, within the country called “konvertibilna marka”, KM (€ 1 is 1.9558 BAM)

BiH – Bosnia and Herzegovina

CO_x – carbon oxides

EBRD – European Bank for Reconstruction and Development

EC – Energy Community

EEA – European Environment Agency

EIA – Environmental Impact Assessment

EnvSec – Environment and Security Initiative

EU – European Union

EU IPA – EU Instrument for Pre-accession Assistance

EUSR – EU Special Representative

FBiH – Federation of Bosnia and Herzegovina

LoFAI – Law on Freedom of Access to Information

LrTAP – Long-range Transboundary Air Pollution

MoE – Ministry of Environment

MoFTER – Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina

MOP – Meeting of the Parties

NGO – non-governmental organisation

NIR – National Implementation Report

NO_x – nitrogen oxides

OG – Official Gazette

OSCE – Organization for Security and Co-operation in Europe

O₂ – oxygen

PM – particulate matter, “dust”

PRTR – Pollution Release and Transfer Register

RS – Republika Srpska

SAA – Stabilisation and Association Agreement

SO₂ – sulphur dioxide

WHO – World Health Organisation

IPPC – Integrated Pollution Prevention and Control

1.

Bosnia and Herzegovina: Basic facts about the country and its environment

Bosnia and Herzegovina is located in south-eastern Europe at the Balkan Peninsula. The country is inhabited by nearly four million people, comprising mainly of three “constituent peoples” – or ethnic groups – living side by side. Bosniaks are the largest group of the three, with Serbs second and Croats third. BiH is divided into two constitutionally created entities, the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), collectively referred to as ‘the Entities’; with each Entity occupying approximately half of the territory. In addition to the Entities, as of 1999, there is also a small self-governing Brčko District of BiH (BD).

Bosnia and Herzegovina has a long history marked by Ottoman raids followed by the Austro-Hungarian rule. After World War II, the agricultural country was industrialised under the auspices of socialist planning of a newly created State of Yugoslavia. The Bosnian economy started to be based on mining, metallurgy and the chemical industry. In addition, its safe position in the centre of Yugoslavia made it favourable for the development of Yugoslavia’s armament industry. It was not a profitable development; BiH contributed only by 12 % to Yugoslavia’s GDP. However, it produced almost 20 % of Yugoslavia’s overall pollution, mainly by air and water contamination.

The rather mountainous north-central part of BiH was strategically favorable for heavy industry with the naturally rich environment; tapped for water resources and mined for coal and limestone mines. However, the conditions were not conducive to the quality of life for the local communities. The industrial facilities and even the new cities were built in narrow river canyons and valleys. Due to adverse meteorological conditions, the air polluting substances, released from the chimneys of power plants, steelworks and coke plants, settled in valleys, and continue to poison the environment and its inhabitants to this day.

The country suffered extensive damage during the Bosnian War of 1992 to 1995. About 250,000 people lost their lives during the conflict, which also produced the first genocide since World War II on the territory of Europe. The economic damage of the war is estimated to be from 20.4 to 51 billion USD (in 2000). Most of the existing physical capital was destroyed and half of the population displaced. A substantial part of existing factories were destroyed or closed, while the GDP fell to 20% of its pre-war size, and the employment rate plummeted between 1992 and 1995¹.

¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/bk.html>

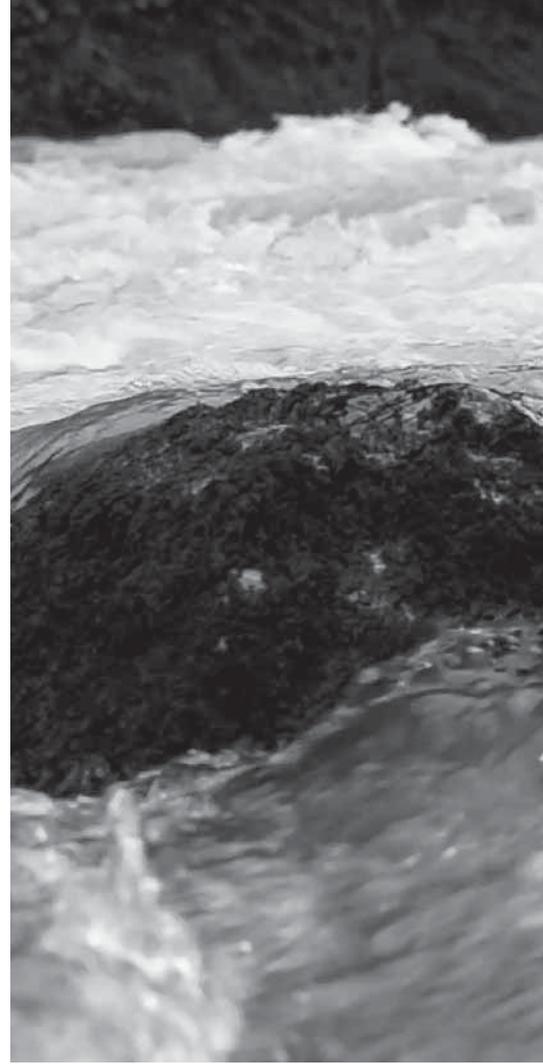
After the war, industrial production gradually began to recover, but without performing the necessary technical upgrades. **Air pollution** became the main factor in the drop of living conditions in Central Bosnia (see *the Chapter 1.1.*), mainly due to obsolete industrial facilities and the reluctance for necessary technical investments to achieve better environmental protection. In many cases, factories resemble the inventory of technical museums or abandoned ruins rather than production facilities. The steelworks in Zenica and the chemical industry in Lukavac and Tuzla can be characterised as three centres of industrial pollution in the country, in terms of air, water and soil pollution.

Sarajevo, the capital of the country, is often listed among the cities with the highest air pollution in BiH. Even though no heavy industry operates in the city, the combined factors of Sarajevo's location in a deep mountain valley, the over-reliance on private cars and decentralised modes of heating for family houses (coal, wood and occasional waste burning) make the living conditions adverse. Similar problems, but on a smaller scale, can be observed in other towns.

Another large source of pollution is the energy sector. Bosnia and Herzegovina is becoming an increasingly significant energy exporter and a substantial part of its electricity is still produced in coal or lignite fuelled thermal power plants, located in Kakanj and Tuzla in Federation of BiH and Gacko and Ugljevik in Republika Srpska. Obviously, coal mining has number of negative consequences for the environment and landscape. Recently, the government decided to increase its energy production by building new small hydropower plants that would also reduce the country's carbon emissions. However, BiH can be proud of its rich biodiversity and large areas of pristine nature, including unregulated water streams. Extensive construction of the dams would seriously damage the natural environment and increase the risk of flood damage, as was apparent during the floods in May 2014.

The introduction of progressive waste management remains a big challenge across the country. At present, the system is undeveloped and effective methods of waste separation, recycling and treatment are missing. In some areas, the waste management system serves less than 50% of the households and thus hundreds of illegal waste dumps exist. Such situations can cause serious pollution of water sources. Currently, the World Bank is providing USD 43.5 million, to fund a large project aimed at producing significant improvements to the waste management system. The project is scheduled for completion in February 2016.

Existing environmental, social and economic problems of the country are multiplied by the **complexity of multiple levels of government and administration**. Due to the



peace agreements – the Dayton and the Washington agreements – the country was divided in two Entities and ten Cantons (described in more detail in the following chapters) with different but often overlapping jurisdiction. For example, in the field of environment, 10 related ministries exist at the Canton level, 2 at the Entity level, 1 exists in the Brčko District and 1 at a State level. This situation makes it almost impossible for ordinary citizens to navigate administrative responsibility. The confusion often serves as a good excuse for politicians and responsible authorities to solve the problems by saying: “I am sorry, this is beyond my authority.” Two decades of practical experience under the current system of State administration – which is the most complicated in Europe – proves its ineffectiveness and need for extensive reform.

1.1

Air pollution in focus

In this report, we do not analyse all types of pollution in detail. It is beyond the scope of the research and scope of this paper, which is mainly focused on public participation in decision-making. However, we will briefly discuss air pollution as it is probably most noticeable type of pollution in all Central Bosnia; and secondly, it illustrates the overall existing problem of pollution from industries.

The most harmful to human health, according to EEA, is the **airborne particulate matter (PM)**, resulting from incomplete combustion of fossil fuels.² Some PMs are emitted directly into the atmosphere; others come about as a result of chemical reactions involving precursor gases, namely SO₂, NO_x or volatile organic compounds (VOCs). The

² http://www.eea.europa.eu/publications/air-quality-in-europe-2013/at_download/file

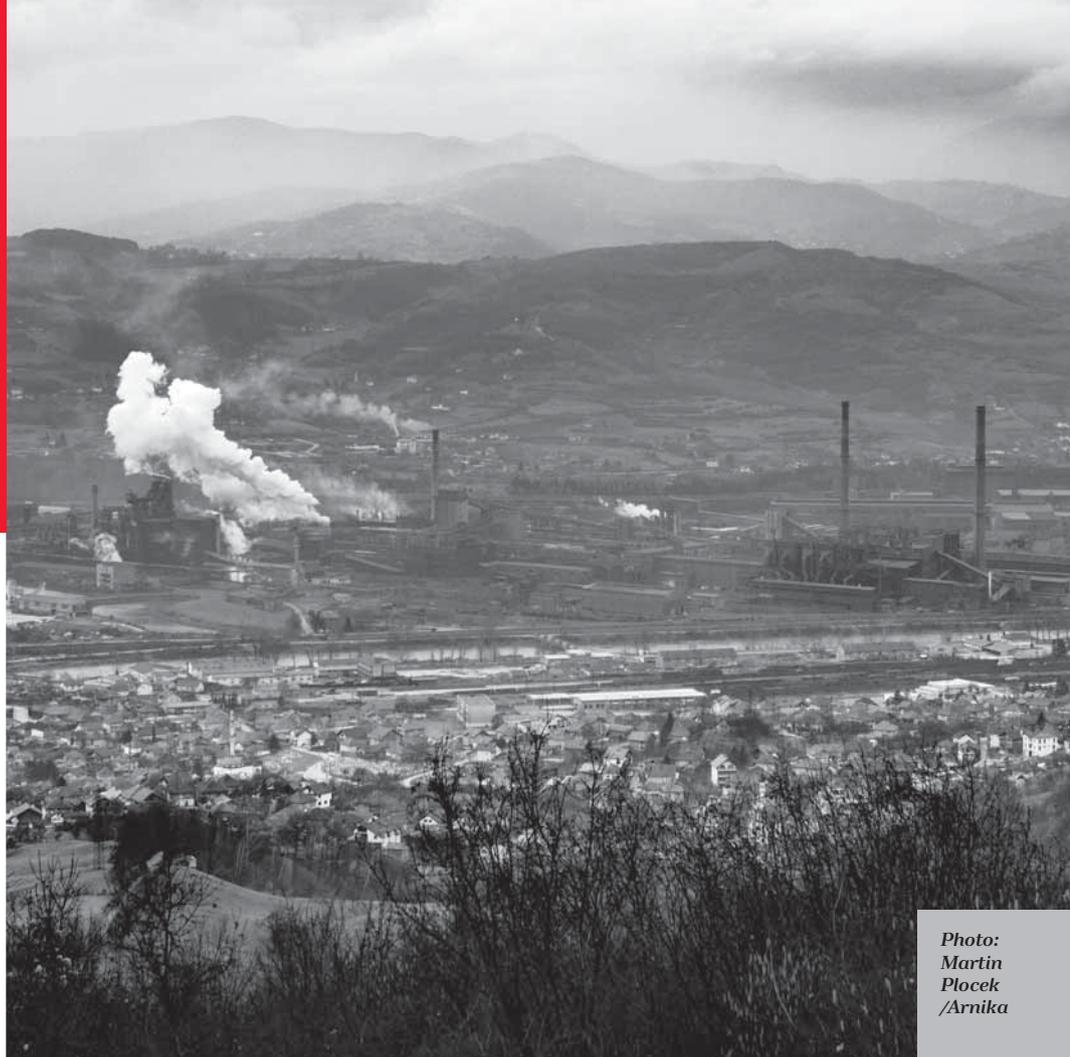


Photo:
Martin
Plocek
/Arnika

Air polluting substances

The combustion of fossil fuels, especially of coal, results in the emission of polluting substances into the atmosphere. These have numerous negative effects on human health and environment.

Particulate matter (PM)

Guidelines

PM_{2.5}: 10 µg/m³ annual mean
25 µg/m³ 24-hour mean

PM₁₀: 20 µg/m³ annual mean
50 µg/m³ 24-hour mean

(Source: WHO Air quality
guidelines, 2005)

Full view of the Zenica valley
where the ArcelorMittal
Steelworks is located.

particles bind various chemical pollutants on their surface – such as heavy metals, persistent organic pollutants or polyaromatic hydrocarbons such as benzene, which thanks to the small size of the particles better infiltrate the human body. Recently, the adverse health effect of PM-bound polyaromatic hydrocarbon benzo(a)pyrene is of increasing concern of European scientists and needs further studying.

There are different types of PM according to their aerodynamic diameter. There are coarse particles PM₁₀ of a diameter up to 10 µm, fine particles of PM_{2.5}, smaller than 2.5 microns in diameter which penetrate in thoracic region of the respiratory system; and even ultrafine particles of PM_{0.1} of a diameter up to 0.1 µm, which pass from lungs directly into the bloodstream.

According to WHO, there is a close, quantitative relationship between exposure to high concentrations of small particulates (PM₁₀ and PM_{2.5}) and increased mortality or morbidity, both daily and over time³.

According to the WHO Air Quality Guidelines, robust associations were reported between long-term exposure to PM_{2.5} and mortality. Health effects can be expected when annual mean concentrations are in the range of 11–15 µg/m³⁴.

Exposure to both coarse and fine particles can trigger respiratory and cardiovascular morbidity, such as aggravation of asthma, respiratory symptoms and an increase in hospital admissions; and even mortality from cardiovascular and respiratory diseases and from lung cancer⁵.

Further studies also suggests a possible link with PM and belated neurodevelopment, reduced cognitive function of children, diabetes, incidence of viral infections, conjunctivitis, intestinal infections, digestive problems, angina and pneumonia⁶. Ultrafine particles (PM_{0.1}) have recently attracted significant scientific and medical attention, but there is still generally not enough epidemiologic data.

Depending on their chemical composition, particles can also have an effect on the global climate in terms of light transmittance, albedo, cloud formation process, and so on⁷.

Nitrogen oxides (NO_x) and ozone (O₃)

Guideline O₃: 100 µg/m³ 8-hour mean

(Source: WHO Air quality guidelines, 2005)

NO_x emissions have adverse health impacts through the formation of ground-level ozone. Ozone is a special and highly reactive form of oxygen, consisting of three oxygen

³ <http://www.who.int/mediacentre/factsheets/fs313/en/>

⁴ http://whqlibdoc.who.int/hq/2006/WHO_SDE_PHE_OEH_06.02_eng.pdf?ua=1

⁵ http://www.euro.who.int/__data/assets/pdf_file/0006/189051/Health-effects-of-particulate-matter-final-Eng.pdf?ua=1

⁶ Dostál, M., Šrám, R. J., et al: (2010) Air pollution exposure during critical time periods in gestation and alterations in cord blood lymphocyte distribution: a cohort of live births. Environ. Health. 9(1) : 46-59. <http://www.ncbi.nlm.nih.gov/pubmed/8879999>

⁷ http://www.grida.no/publications/other/ipcc_tar/?src=/climate/ipcc_tar/wg1/232.htm

atoms. Ground-level ozone is formed as a result of complex chemical reactions between precursor gases, such as NO_x and VOCs. Once exposed to ozone, our bodies try to prevent it from entering our lungs. This reflex reduces the amount of oxygen we inhaled, leading to suffocation. Exposure to high concentrations of ground-level ozone is associated with more than 20,000 deaths in the EU-25 annually. Ground-level ozone has also environmental effects and together with other pollutants, e.g. sulphur dioxide and nitrogen oxides support corrosion on certain materials, such as copper⁸.

Nitrogen dioxide (NO_2)

Guidelines NO_2 : 40 $\mu\text{g}/\text{m}^3$ annual mean, 200 $\mu\text{g}/\text{m}^3$ 1-hour mean

(Source: WHO Air quality guidelines, 2005)

Recent indoor studies have provided evidence of adverse effects of nitrogen dioxide. Epidemiological studies have shown that bronchitic symptoms of asthmatic children increased in association with annual NO_2 concentration. Among others, reduced lung function in children and effects on respiratory symptoms among infants was observed. These associations can be partly explained by co-exposure to PM, but presumably also other components in the mixture (such as organic carbon and nitrous acid vapour).

Sulphur dioxide (SO_2)

125 $\mu\text{g}/\text{m}^3$ 24-hour mean, 350 $\mu\text{g}/\text{m}^3$ 1-hour mean

(Source: WHO Air quality guidelines, 2005)

Sulphur dioxide is emitted when fuels containing sulphur are combusted. The significant health effects include bronchoconstriction and increased asthma symptoms and are of particular concern for asthmatics at elevated ventilation rates, e.g., while exercising or playing. Other effects are mentioned when sulphur oxides react with other compounds in the atmosphere and particulate matter⁹.

Along with that, there are also proven non-health impacts with associated costs. SO_2 is the main pollutant contributing to acid deposition, and therefore it raises building and construction related concern. The secondary pollutants formed by SO_2 as well as NO_x have an acidification impact on terrestrial and aquatic ecosystems as well as on crops and construction materials, metals etc.

Combustion processes release a variety of other air pollutants and some of them, including some heavy metals and persistent organic pollutants, accumulate in the environment. This allows them to get into our food chain and ultimately end up on our plates.

⁸ Zakipour et al.: Atmospheric Corrosion Effects of SO_2 and O_3 on Laboratory-Exposed Copper, J. Electrochem. Soc. 1995 142(3): 757-760p.

⁹ <http://www.epa.gov/airquality/sulfurdioxide/health.html>

Limit values of selected pollutants which apply in the European union

Pollutant	Limit values in the EU
SO ₂	350 µg/m ³ (hourly) 125 µg/m ³ (daily)
NO ₂	200 µg/m ³ (hourly) 40 µg/m ³ (daily)
PM ₁₀	50 µg/m ³ (daily) 40 µg/m ³ (yearly)

Source: Directive 2008/50/EC:
Limit values for the protection of human health

Limit values of selected pollutants which apply in BiH

There is a gradual tendency to meet the EU limit values by 2021:

SO₂ – tolerance value (µg/m³):

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Hourly averages (not to be exceeded more than 24 times in a calendar year)	485	470	455	440	425	410	395	380	365	350
Daily average (not to be exceeded more than 3 times per calendar year)	125									
Yearly average	50									

NO₂ – tolerance value (µg/m³):

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Hourly averages (not to be exceeded more than 18 times in a calendar year)	290	280	270	260	250	240	230	220	210	200
Daily average	121	117	113	109	105	101	97	93	89	85
Yearly average	58	56	54	52	50	48	46	44	42	40

PM₁₀ – tolerance value (µg/m³):

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Daily averages (not to be exceeded more than 35 times in a calendar year)	72.5	70	67.5	65	62.5	60	57.5	55	52.5	50
Yearly average	47.2	46.4	45.6	44.8	44	43.2	42.4	41.6	40.8	40

Source: Regulation on the method of monitoring air quality and defining types of polluting types of pollutants, limit values and other air quality standards (Official Gazette of FBiH no. 1/2012)

1.2

Slow way to cleaner environment

The above tabled comparison demonstrates that level of air pollution in Bosnia and Herzegovina is significantly higher than in the European Union, as is State acceptance of the comparatively worse quality of the environment. At the current rate of ineffective environmental protection, the citizens of BiH will have to wait until 2021 to enjoy the same level of environmental protection as EU citizens enjoy this day. The situation is very similar in regards to the status of pollution for water and soil. As we describe in detail further in this report, lower regulatory standards are often abused by corporations to move dirty industries to BiH, avoid EU regulations and save money on investments in environmental protection. National companies also profit from low standards.

Although BiH is not EU member, that is not an adequate excuse for weaker regulations. If a factory invests in – for example – dust filters in the Austrian town of Graz, it should be able to make the same investment 500km away in Zenica, Bosnia. Moreover, pollution, especially air pollution creates transboundary impacts. Hungary has been complaining for years about the emissions from the thermal power plant in Kakanj, whose extremely high chimney protects Bosnian land, but readily transfers pollution neighbouring state. Also river Bosna, collecting sewage waters from dozens of Bosnian towns and factories (many of which still do not have appropriate wastewater treatment plants) transfers the pollution to neighbouring Croatia.

Short facts about BiH

Size

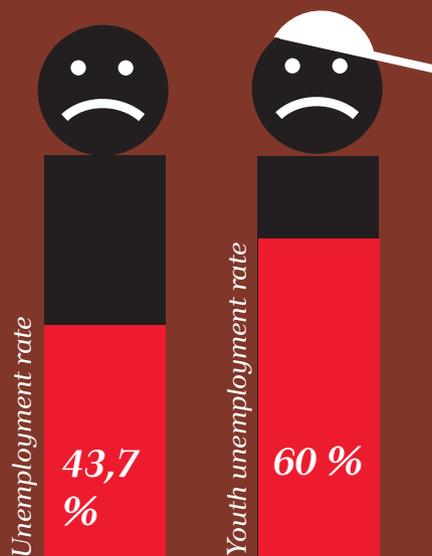
- Population is approximately 3.8 million, representing about 0.75 percent of the EU population (it ranks 29th position out of 54 European states according to population).
- Its size reaches 51,129 km² – BiH ranks 28th position in Europe.

Economy

- One of the lowest GDP of the 37 European countries (3,500 EUR per capita – about 28% of the EU average and 70% of the Western Balkans average).
- Unemployment rate is at 43.7% of the population.
- Youth unemployment rate is the highest in the world, stable at about 60%¹
- Average monthly wages are some 780 BAM, which is

¹ <http://data.worldbank.org/indicator/SL.UEM.1524.ZS>

the average of the Western Balkans (ranging from about about 960 in Montenegro and 700 in Serbia)² – while it is 1,916 across the EU

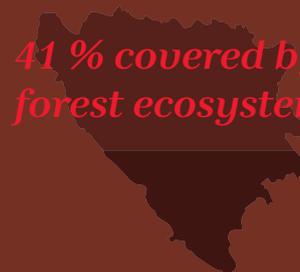


Quality of life

- Life expectancy: 76 years (Europe average 78 years).
- Corruption perception index – 72nd place out of 175 countries. (Same position as Serbia, behind Montenegro and Macedonia on 67th place, and far behind Croatia on 57th place.).
- One of the most mine contaminated countries of Europe. Total estimated mined land mass is 1,218.50 km² = 2.4% of total country size.

² <http://www.theglobalist.com/western-balkans-stalled-on-europes-edge/>

41 % covered by forest ecosystems



Nature

- Bosnia and Herzegovina ranks amongst the territories with the highest biological diversity in Europe, with a high number of endemic species.
- The name “Bosnia” comes from an Indo-European word Bosana, which means water. This is fitting as the country is covered with beautiful lakes, rivers and waterfalls.
- Short 23 km long coastline on the Adriatic Sea.
- The land is mainly hilly to mountainous, with an average altitude of 500 meters.
- 41% of the territory is covered by forest ecosystems.



72nd place at the Corruption Perception Index



Photo:
Martin
Plocek
/Arnika

The local kids playing in the vicinity of the Kakanj thermal power plant. The power plant with the Czech technology still does not have a system for clean-up of the smoke, and its emissions pollute distant regions even in Hungary.

2.

Governing system and Environmental law

2.1

Brief history of Bosnia and Herzegovina

The territory currently known as Bosnia and Herzegovina has an almost fully continuous history as a geopolitical entity from the Middle Ages to the present time. Between 1180 and 1463 it was an independent kingdom; from 1580 to 1878 it was known as Eyalet, the largest unit of the Ottoman Empire; from 1878 to 1918 it was a „crown land“ as part of the Austro-Hungarian Empire; and finally from 1945 to 1992 it formed part of the Federal Republic of Yugoslavia. Therefore, for approximately 650 years of the last 800 years, an entity titled 'Bosnia' has existed on the world map.

The modern era of its existence is marked by its declaration of independence in 1992 as the **“Republic of Bosnia and Herzegovina”** after a referendum in the former Yugoslavia. However, this referendum was followed by the three-and-half-year-long Bosnian War and was concluded through the signing of

Political map of Bosnia and Herzegovina



Source: Wikipedia.org

the Dayton Agreement in December 1995¹⁰, which included the Constitution of “**Bosnia and Herzegovina**” as its Annex IV. The Constitution establishes the political division of State Entities, the delineation of the inter-entity boundaries and the structure of Executive arm of government. Due to the complex ethnic situation in the country, and to avoid future conflict, the basic principle of the constitution and the government is an **equal representation of the three major ethnic groups – Bosniaks (Bosnian Muslims), Serbs and Croats**. These three groups are referred to as the **constituent people** of the country and none of them can be considered as a minority or immigrant group. To avoid confusion, this report will use the term ‘**ethnicities**’.

¹⁰ Frame Agreement for the Peace in Bosnia and Herzegovina, agreed on November 21 in Dayton – USA, officially signed on December 15, Paris, France.

On previous page:

The BiH parliament building in Sarajevo.

2.2

Administrative system today

Due to the emphasis on ethnic equality, the award of administrative positions must provide an adequate representation of all three ethnicities in every single level of government. **Thus BiH has a three-member presidency, 14 governments with a total of 170 ministries, where each minister and deputies must also represent the three ethnicities equally.**

In some cases, due to the equality principle, some important positions in State administration are not filled on merit by the best available professionals – simply because the most suitable expert does not have the required ethnicity.

The State administration's focus on its ethnic composition is also financially demanding, due to the resulting high number of employees. According to the statistics, the State, Entity, Cantonal and local governments and the Brčko District employ 184,148 people (both officials and politicians – which is about 4% of the population), with a continuous growth trend forecast. According to the International Monetary Fund, the total expenditures for the public sector in 2014 amount to 3.312 billion BAM for salaries and benefits, and 2.833 billion BAM for the material costs. **That's a total of 6.145 billion BAM which equals to 23% of total GDP.** According to data from the last audit reports published in 2013, the budget funds used 73 institutions, which contained a total of 22,039 employees. They spent a year in gross salaries and benefits around 522 million BAM¹¹.

The non-governmental "Agency for Local Development Initiatives" (ALDI) deals with the continuous increase in employment in the public sector in the Federation. The ALDI report says that from 2008 to 2011 the number of employees in the public sector in the Federation of BiH increased by 8,366 workers, and has exceeded the figure of 116,000¹².

¹¹ <http://www.vijesti.ba/kolumne-komentari/132363-Birokratsku-azdahu-placamo-6145-milijardi-godisnje.html>

¹² http://aldi.ba/documents/Izvjestaj_10GODINAPOSLIJE.pdf

2.3

The administration of environmental protection

According to the constitution in BiH, State level authorities are not directly responsible for matters of environmental protection. However, the Law on Ministries and other Administrative Bodies of BiH (Official Gazette of BiH (OG BiH 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09 and 103/09)), designates the Ministry of Foreign Trade and Economic Relations of BiH as the responsible State level public authority to conduct activities and tasks related to the definition of policy, basic principles, coordination of actions and harmonization of the plans of Entity authorities for both RS and FBiH and representation at the international level, e.g. creation of the reports on international treaties and organizations. According to the RS Constitution, RS institutions organize and provide for environmental protection. When it comes to the Federation of BiH, the Constitution of FBiH envisages that the Federation Government and Cantons share responsibilities in environmental protection. The Brčko District has residual power and authority outside the enumerated responsibilities of the State. As such, the Government of Brčko District has responsibilities that are entrusted to Entities, municipalities (and cantons in FBiH) when it comes to environmental protection.¹³

¹³ The second national report on Aarhus convention implementation in Bosnia and Herzegovina – 2013

2.4

National legal system

The Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina states that under:

- Article 8, the Ministry of Foreign Affairs of BiH Affairs has jurisdiction to implement the established BiH policies to foster international relations in accordance with positions and guidelines of the BiH Presidency and to propose positions on issues relevant to the foreign policy activities and international position of BiH;
- Article 9, the Ministry of Foreign Trade and Economic Relations of BiH is responsible for the development of the policy, basic principles, coordination of activities and harmonisation of plans of the Entity authorities and bodies, including international institutions in the fields of agriculture, environmental protection, development and use of natural resources and tourism. Within this Ministry, there is the Veterinary Office of BiH, as an administrative organization, and the Administration for Plant Health Protection of BiH.

The constitution in Article IV 4a provides for the regulation of environment by the State government, and at the Entity level and for the Brčko District, the environmental field is constitutionally regulated as specified below.

2.4.1. Republika Srpska

According to Republika Srpska Constitution, the Republika Srpska shall regulate and ensure the protection of the environment (Amendment 32, point 13), that is the environment protection and conservation scheme (Amendment 32, Paragraph 1, point 13 to the Article 68); it shall protect and encourage the rational use of natural resources in order to preserve and enhance the quality of life, protection and environmental restoration (Article 64); and individuals are entitled to live in a healthy environment, and everyone, in accordance with the law, shall be obliged to protect and improve the environment (Article 35), within their abilities. The Constitution stipulates that the law shall govern the protection, use and management of the property of **public interest**, as well as the payment of compensation for the use of property of public interest and urban construction sites.

2.4.2. Federation of BiH

According to the Constitution of the Federation of BiH, Title III, **Article 2 (c)**, the Federation Government and its 10 Cantons have joint responsibility for environmental policy. There is no explicit provision in the FBiH Constitution defining responsibilities for sustainable development; instead, in Title III, Article 1, (d) and (i), economic and energy policies are indicated as areas of the exclusive authority of the FBiH.

An extensive amendment to the environmental legislation is currently being approved in the Federation of Bosnia and Herzegovina.¹⁴ The first draft of the new Federal Law on Environmental Protection was released for public comments in the autumn of 2014 and it is currently progressing through the legislative process. Several NGOs submitted comments to the draft law regarding its inconsistency with the AC, commenting among other on access to information, establishing Integrated Pollution Prevention and Control, public participation in decision-making procedures and organization of public hearings.¹⁵ The Amendment is a significant opportunity for harmonization of national legislation with the EU Acquis and stronger protection of the environment. However, the final version of the draft law, which will hopefully incorporate the comments made during the public hearings organised the by Federal Ministry of Environment and Tourism, is still not ready for submission for parliamentary consideration (August 2015).

2.4.3. Brčko District of BiH

Article 8 of the Statute of the Brčko District of Bosnia and Herzegovina stipulates the jurisdiction of the Brčko District of BiH over environmental protection.

¹⁴ <http://aarhus.ba/sarajevo/en/657-zavrsene-javne-rasprave-o-nacrtu-zakona-o-zastiti-okolisa-federacije-bih.html>

¹⁵ <http://ekoforumzenica.ba/dokumenti/primjedbenaZZOFBiH2014.php>

3.

Aarhus Convention and BiH

The Law on Procedures of Concluding and Executing of International Agreements¹⁶ stipulates the process for concluding international agreements and the performance of obligations of the authorities in BiH, accepted upon signing an international treaty. The Convention became a part of the legal system of Bosnia and Herzegovina and all institutions established by BiH, Entities and Brčko District are legally obligated to implement the Convention.

Bosnia and Herzegovina acceded to the Aarhus Convention on 15 September 2008. The Convention's provisions are rather well transposed in the complicated, multi-level national legislation. The most effective mechanism to improve it is the harmonization of BiH law with EU Acquis, as part of BiH's EU integration process. However, the rate of implementation is unsatisfactory.

A number of projects were financed by international organizations and funds in previous years (OSCE, The Regional Environmental Centre for Central and Eastern Europe, EnvSec, EU IPA...) in order to improve practical implementation of the Convention, but there is substantial room for improvement. The government should ensure transparency and availability of information and include the public more in its decision-making at all administration levels, including use of remedies.

BiH is also a party to some international organisation, which however does not always ensure the best protection of the society and environment, as we illustrate in the following chapter.

*Aarhus Convention,
Convention
on Access to
Information, Public
Participation
in Decision-
making and
Access to Justice
in Environmental
Matters, 25/06/1998,
Aarhus – Denmark.*

*Accession to
the AC by BiH
on 15/09/2008,
publication in the
Official Gazette
BiH-IA* 8/08*

¹⁶ "O.G. of BiH", No. 29/00 and 32/13



3.1

The Energy Community

The Energy Community is an international organisation, which was established between the EU and a number of third countries to extend the EU energy market to other regions, especially South-eastern Europe. Under its Treaty, signatories commit themselves to implement the relevant EU energy *acquis communautaire*, to develop an adequate regulatory framework and to liberalise their energy markets. The original Treaty entered into force in 2006 and expires in 2016. Two years ago, the Ministerial Council of the Energy Community decided to extend the Treaty by ten years, which brought up the need for its revision. **Bosnia and Herzegovina ratified the Treaty on 20 September 2006.**

3.2

The Energy Community Treaty

The Bankwatch Network suggests inclusion of the following Directives:

The main critiques raised by civil society organisations refer to the Treaty's lack of social dimension¹⁷ and limited scope of the environmental acquis¹⁸. The current state of the regulation is inadequate to protect the environment and public health from the impacts of the energy sector and increases the likelihood of EU countries import energy produced at great costs to the communities and environment in countries in accession proces to EU and their neighbouring countries.

The Bankwatch Network suggests inclusion of certain EU Directives (see box on the following page) in order to ensure that the countries of the Energy Community are not left even further behind in the transformation into a low-carbon, energy-efficient, renewables-based society. The most important point in regard to the Aarhus Convention is the inclusion of **Chapter II of Directive 2010/75/EU3 on industrial emissions**¹⁹, which deals with the procedure for granting permits. It specifies not only access to information and public participation and access to justice, but also sets the best available techniques (BAT) as a condition for granting of environmental permits.

¹⁷ <http://www.epsu.org/a/6027>

¹⁸ <http://bankwatch.org/sites/default/files/briefing-FutureEn-Com-full-20feb2014.pdf>

¹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:334:0017:0119:en:PDF>

Chapter II of Directive 2010/75/EU3 on industrial emissions⁽¹⁾

This particular chapter replaces the IPPC Directive, whose importance is already recognised by the Treaty, and stipulates the use of best available techniques (BAT) which are the most effective techniques to achieve a high level of environmental protection, while accounting for costs and benefits. BAT is crucial because it details more substances than the basic emissions safeguards in Chapter III and helps to close the 'thermal efficiency loophole'. This Chapter also sets conditions for the granting of permits, environmental inspections rules regarding access to information and public participation in the permit procedures and access to justice.

Directive 2008/50/EC4 on ambient air quality and cleaner air for Europe⁽²⁾

Air pollution is a deadly problem in the Energy Community countries, and much of the pollution comes from the energy sector. Residents of places like Priština, Tuzla and Pljevlja are losing years of their lives due to this pollution. The Directive stipulates, among many other things, common methods for assessing air quality and ensuring that information on ambient air quality are made available to the public. Both are essential preconditions to ensuring that the situation is improved.

Directive 2008/105/EC5 on environmental quality standards in the field of water policy⁽³⁾

The energy sector has serious impacts on water bodies, especially the coal and oil sectors. In the coal sector, intakes for cooling water, thermal impacts of discharged water, and direct pollution of water from waste containing heavy metals and radioactive material are all important, as well as pollution from open-cast mining of high-sulphur coal. The Environmental Quality Standards Directive would provide clear public benefits by assisting in reducing such pollution.

Directive 2006/21/EC6 on the management of waste from extractive industries⁽⁴⁾

This Directive is clearly relevant to mining related to the energy sector in the Energy Community countries. The mismanagement of such waste may cause pollution of a trans-boundary nature, so implementing this Directive would ensure a minimum level of safe and responsible management of such waste and maximising its recovery throughout the region.

Directive 2001/42/EC7 on the assessment of the effects of certain plans and programmes on the environment⁽⁵⁾

According to the Directive the Strategic Impact Assessment is obligatory for plans/programmes which are inter alia prepared for energy sector and which set the framework for future development consent of projects listed in the Environmental Impact Assessment Directive. The Directive provides members of the public with opportunities to participate on the permitting and ongoing regulation of certain categories of activities.

Directive 2000/60/EC establishing a framework for Community action in the field of water policy

The Water Framework Directive is needed within the Energy Community Treaty to ensure that impacts such as water pollution from hydropower generation, but also extraction, cooling and processing in the coal sector, are not neglected in the Contracting Parties' energy sectors.

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

Energy investments, particularly in the hydropower or wind sector, can have a serious impact on natural habitats, flora and fauna, when not appropriately situated. The Directive allows the protection of priority species to avoid their deterioration and the significant disturbance of other species, by ensuring that energy installations are not built at the expense of the natural value of the region.

(1) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:334:0017:0119:en:PDF>

(2) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF>

(3) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0084:0097:EN:PDF>

(4) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:102:0015:0033:en:PDF>

(5) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0042:EN:HTML>

3.3

EU accession path

Since 2003, Bosnia and Herzegovina is a potential candidate for EU membership⁶.

Since then, the EU and Bosnia and Herzegovina have entered into a number of agreements on various issues, such as visa facilitation and readmission agreements (2008), Interim Agreement on Trade and Trade-related issues (2008). In 2010, citizens of Bosnia and Herzegovina were granted the right to travel to the Schengen Area without a visa⁷.

Currently, the relationship between EU and Bosnia and Herzegovina is governed by the Stabilisation and Association Agreement⁸, with the European Union, its Member States and Atomic Energy Community on

the one side and Bosnia and Herzegovina on the other side.

On 1 June 2015, after a long pause, BiH re-joined the other Western Balkans countries that are engaged in the Stabilisation and Association Process. Currently, Bosnia and Herzegovina and Kosovo are EU potential candidates.

The SAA was signed on 26 June 2008 in Luxembourg to be followed by almost 7 years governed under the pending Interim Agreement⁹ and finally entered into force only on 1 June 2015¹⁰. The significant gap between signing and entering into force was due to political reasons – the obligation to amend the constitution, commonly blamed on the Sejdic-Finci case as decided the European Court of Human Rights in Strasbourg¹¹. To set in motion a constitutional reform, including changing the election provision in BiH, took more time than expected. In December 2014, the Council agreed a renewed approach to BiH, without changing the EU accession conditions, including the implementation of the Sejdic-Finci ruling. It invited the High Representative and Commissioner Johannes Hahn to engage with the BiH leadership to secure its irrevocable written commitment to undertake reforms for EU accession.

By achieving the status of an EU Potential Candidate Country, BiH accepted an obligation to ensure that the SAA's existing and future legislation will be properly implemented and enforced.¹²

The EU continues to provide support for law enforcement through the office of the EU Special Representative/EU Delegation. The European Commission issues an annual Progress Report to assess Bosnia and Herzegovina's progress towards EU membership.¹³

⁶ http://ec.europa.eu/enlargement/policy/glossary/terms/potential-candidate-countries_en.htm

⁷ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm

⁸ <http://www.consilium.europa.eu/en/documents-publications/agreements-conventions/agreement/?aid=2008023>

⁹ <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=7061&back=7201>

¹⁰ <http://europa.ba/?p=31976>

¹¹ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1672883

¹² SAA, Article 70.1.

¹³ http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf

The Western Balkans countries entering the Stabilisation and Association process



Source:
Wikipedia.

The medium-term priorities of the European Partnership in the sphere of environmental protection are as follows: to continue implementation of legislation for the purpose of environmental impact assessment; to implement relevant international conventions (such as Aarhus and Espoo Conventions); and to ensure that the environmental requirements are included in the definition and implementation of other sectoral policies related to environment and Aarhus Convention, e.g. energy, transport, freedom of speech, justice and so forth.

3.4

Focal Points and Aarhus Centres

The first Aarhus Convention National Focal Point at the State level was at the Department for Environmental Protection at the Ministry of Foreign Trade and Economic Relations. This institution has only a limited staff and therefore the National Focal Point was later appointed to the Federal Ministry for Tourism and Environment; more precisely to one of the Assistant Ministers. It is clear that far too few staff were allocated to transpose the Aarhus Convention into national legislation and ensure its implementing in practice. In order to overcome the lack of staff and experience, the process was supported by the abovementioned internationally funded projects.

With the initiative and the financial support of OSCE, the first **Aarhus Centre** in BiH was established in 2012 in **Sarajevo**, to enhance practical implementation of the Convention, disseminate environmental information and support public participation in decision-making. Later that year, similar centres were founded in **Banja Luka** and **Tuzla** – both within existing NGOs. In 2013, the Sarajevo centre was transformed into an independent NGO. Finally in 2014, a fourth Aarhus Centre was established in **Zenica** – with the support of Czech NGO Arnika – Citizens Support Centre and with the financial contribution of the Czech Republic. All centres continue to be in operation (as of 2015), although after receiving initial financial injection from OSCE and foreign as well as national governments, now they have to secure further financing by themselves, which limits the extent of their activities.

3.5

National Implementation Report

In order to meet requirements prescribed by the Convention, Bosnia and Herzegovina has prepared two national reports on Aarhus Convention implementation, in 2010¹⁴ and 2013¹⁵, for the Conferences of the Parties. They both came to the conclusion that the Convention requirements are well transposed to the national legislation, but there are serious obstacles in proper implementation of all three AC pillars – many of them related to complex administrative structure of Bosnia and Herzegovina.

The Second National Report on AC Implementation in BiH – prepared together by the Federal Ministry of Environment and Aarhus Centre Sarajevo – gave a detailed survey of legislation and its conformance with AC. The conformance is described in the next chapter titled *Major shortcomings determined in the NIR 2013*.

In the following Chapter 3.7., *The report on the practical application of the Aarhus Convention in BiH in 2014*, we analyse another available report on the matter of the Implementation of the Aarhus Convention in BiH. For better understanding the requisites of the individual pillars of the Aarhus Convention, please see Chapter 4 of this report, *Aarhus Convention Pillars*.

¹⁴ <http://aarhus.ba/sarajevo/images/docs/izvjestaj%20o%20primjeni%20arhuske%20konvencije-lektorisano%20na%20bosanski%20jezik.pdf>

¹⁵ <http://www.fmoit.gov.ba/userfiles/file/Radna%20verzija%20Drugog%20NIR-a%20za%20javnu%20raspravu.pdf>

3.6

Major shortcomings of the NIR 2013

National Implementation Report 2013 comes to the conclusion – and we can only agree – that the legislative is rather aligned with AC, but the practical implementation is insufficient. A number of laws and regulations were transposed from EU legislation only on paper, with their practical implementation limping along.

Concerning the first pillar, free access to information in Bosnia and Herzegovina is regulated by the Law on Freedom of Access to Information BiH, which covers not only environmental but all other government held information. It is the only AC-related law at the State level, and all the other legislation is divided by the Entities. State level Law is directly applied in Brčko District.

Although there are ministries for environment (usually combined with other areas, such as tourism, spatial planning, transport etc.) at the Cantonal level, the 10 Cantons in Federation of BiH use the common environmental legislation of the federal level.

The NIR 2013 explains in detail how and where the AC provisions are implemented in the national legislation. As per the NIR 2013, the authors of this report agree that the Convention's provisions were incorporated to a significant degree. The NIR 2013 also claims, that the application of the law works without major problems. This conclusion is much more questionable. A more thorough investigation of the practical experience in applying and enforcing the law was one of the reasons for writing this report. Based on our research, we can conclude that in many cases the law is not enforced by the State authorities and it is also hardly enforceable by victims of the pollution or people harmed by industrial or construction projects.

Further, the experiences of some local NGOs reveal that the conclusions drawn in the NIR report 2013 are overly optimistic:

CLAIM 1: INFORMATION IS PROVIDED

- III.a: Civil servants are obliged to provide the information requested. Where such information is not supplied, the Law on Freedom of Access to Information and the Law on Administrative Procedures provide legal remedies in administrative proceedings, after which it is possible to address relevant inspectors and start proceedings before Courts in accordance with the Law on Administrative Disputes.
- EXPERIENCE: Unanswered requests often go unnoticed by senior officials with no measures planned to overcome this common problem. We suggest better tracking of in-

stances of no response; taking appropriate action against uncooperative junior officials; and, obviously, providing the information. We consider reporting these omissions in employee's final report at the end of the year as a vital tool to address this issue.

CLAIM 2: CIVIL SERVANTS ARE EDUCATED

- III.b: The ministries/departments of health and environmental protection are obliged to prepare annual education programs on environmental protection to educate the public sector and raise awareness about environmental issues.
- EXPERIENCE: To our knowledge, no program has been prepared or implemented.

CLAIM 3: ADVISORY COUNCIL OPERATES

- III.c: The Advisory Councils on Environment in FBiH and RS were established.
- EXPERIENCE: Information about their activities is not publicly available. The Council in FBiH has only one representative from academia and one representative from the NGO sector, who also has a political background. All the other members represent Cantonal ministries.¹⁶ The only purpose of the Council seems to be to provide funding to its members (25.000 EUR in FBiH for 2009 and 2012), as there is just a single document adopted by the Council so far, the "Code of Practice".¹⁷

The NGO community has already strongly criticised the ineptitude of the Advisory Council (as published in Section IV of the NIR 2013):

NGO sector representatives have stressed that a large number of institutions have not issued the free guide, which enables every individual access to information under control of a public authority. The Advisory Council for Environment was in a phase of restoration their function at the time of writing. NGOs also object to the selection of NGO representatives to the Advisory Council on Environment. The Advisory Council of RS was formed in December 2012. According to the NGO sector, this Council has not held a single session to date (April 2015). In selecting NGO members for the Council, the relevant body was guided by the principles of transparency, although the NGO representatives have had complaints in regard to the selection of members to the Council. In light of the objections from NGOs on the transparency in allocating funding from the FBiH budget to support the environmental projects, the public authorities should invest efforts to improve the award procedure in terms of public accessibility, provision of timely information and process of the criteria selection. Further, NGO representatives often find they are not informed in time about meetings to attend, leaving them with little time to prepare. NGO representatives also object availability of information on official websites of relevant bodies. In their view, the information is difficult to find and is permanently removed after a very short period of time.¹⁸

¹⁶ <http://www.fmoit.gov.ba/ba/clanak/521/odrana-ii-sjednica-savjetodavnog-vijea-za-okoliscaron-fbih> <http://www.fbihvlada.gov.ba/bosanski/zakoni/2009/rjesenja/299.htm>, <http://www.fbihvlada.gov.ba/bosanski/zakoni/2006/rjesenja/100.htm>

¹⁷ <http://www.hayat.ba/bih/37104-odrana-2-sjednica-savjetodavnog-vijea-za-okoli-fbih>

¹⁸ The second national report on Aarhus convention implementation in Bosnia and Herzegovina – 2013

Civil society has also long complained about access to justice:

Firstly, the position of non-governmental organisations (NGOs) is determined in the legislation. The BiH adopted the Law on Associations and Foundations, setting out rules on the establishment and work of NGOs.¹⁹ Similar legislation exists at the Entity level as well – hence, NGOs may be established at the State level or Entity level.

The Aarhus Convention is not directly applied in BiH, but it is well transposed in the legislation. Therefore, the courts in BiH apply the Aarhus Convention through the provisions of domestic law and the position of NGOs used to be determined by this as well.

However, in a recent case before the District Court of Banja Luka²⁰, the judgement of the Court ignores the nationally available legislation and refers to AC directly when stating reasons as to why NGO is considered an interested party and why it is authorised to submit a lawsuit.²¹

The issue is poor applicability of environmental laws in general, not only concerning the AC. Many citizens fear punitive consequences if they start a court proceeding against ministries or other authorities, and question the effectiveness of court-ordered protection in general. This is one of the major obstacles in implementing relevant laws, which goes hand-in-hand with the poor level of education among citizens and NGOs about their rights and means of employing them. The courts decide on the parties' submissions, but where a party is not knowledgeable about how to effectively use all of their rights, the case mostly results in an unfavourable decision.

The poor economic situation and high unemployment rate also contribute to the low level of willingness of the citizens to actively defend their rights. Court proceedings enquire fees being paid and are time-consuming. Such situations make any person or civil society organisation hesitate and think twice whether to instigate a court case. In order to address this issue, the NGO sector may wish to lobby the Government to amend the Law on court taxes to exempt NGOs from paying court fees.

To better understand why the enforcement of rights related to a healthy environment is faced with a number of difficulties in BiH, it is helpful to consider a statement made by the Prime Minister of the Federation BiH, Nermin Nikšić, at the launch ceremony of new dust filters at the blast furnace in ArcelorMittal, Zenica, in November 2013: „*We could send the (environmental) inspectors to close down this factory tomorrow, but we have to take care of 2,500 employees*”²². This approach indicates that the control mechanisms are probably often active only formally and politicians are well aware of it, or maybe even actively promote and support “selective justice”. Taking into account that the annual turnover of steelworks in Zenica constitutes up to one third of the state budget – and also considering the job numbers, it is not easy for the authorities to take an impartial stance. Regardless, the state should protect the rights of all its citizens and, as Bosnia and Herzegovina progresses in joining the EU, the enforcement of the law must certainly increase even in such politically sensitive cases.

¹⁹ Published in OG BiH No 32/1

²⁰ Judgement of the Banja Luka District Court, No 11 0 U 012628 13 U dated 09.02.2015

²¹ The second national report on Aarhus convention implementation in Bosnia and Herzegovina – 2013

²² <http://www.tv1.ba/vijesti/bosna-i-hercegovina/dogadjaji/13358-arcelormittal-zenica-otvorio-novo-postrojenje-za-zastitu-okolisa.html> (at 1:24)

3.7

The report on the practical application of the Aarhus Convention in BiH in 2014

In 2014, the Aarhus Centres Network issued the Report on the Practical Application of the Aarhus Convention in BiH through the experiences of civil society (The ACN Report).²³ Because it is one of few analyses on the topic, we would like to summarize its conclusions.

According to the ACN Report the case law in Bosnia is still underdeveloped: BiH has met the basic requirements of Aarhus Convention and is still evolving. To date, there are two national implementation reports that collected data from 30 institutions.

The report **sums up two points that are needed for better application of AC:**

- 1) Raising awareness of rights and obligations**
- 2) Comprehensive training of civil servants**

It also elaborates on each AC pillar, providing the following conclusions:

3.7.1. Access to environmental information

The Aarhus Centres collected requests, which were mostly regarding information about projects and plans (77%) and just a small part inquiring about the laws and policies (15%) and even less concerning the environmental situation (8%).

It also makes a mention on the breach of the legal deadlines where **in 40% of cases, there was a violation of the provisions laid down in terms of respecting legal deadlines for replies**, form solutions (lack of or inadequate reasoning, lack of guidance on appeals), and failure to respond (non-response).

In addition, the public authorities incorrectly determined the **exemption status** and refused delivery of information, thereby violating the procedure. The authorities have refused to provide the information only on the basis of opinions of a third party that appealed to the confidential commercial interests, when it is not in line with the concept of serving to **public interest** – tested in the light of the Law on Freedom of Access to Information BiH / FBiH / RS.

There were a mere 36 requests for information. But taking into account that they were submitted by only seven organisations, it highlighted their proactiveness. The report con-

²³ <http://www.aarhus.ba/vijesti/97-jacanje-demokratije-i-zastite-ljudskih-prava-u-oblasti-zivotne-sredine-okolisa.html>

cludes that **majority of responses were received in accordance with the domestic law** and the Aarhus Convention, and shows positive experience with requests for information. However, a closer inspection shows that the seemingly high level of compliance with legal provisions and reliability of the submitted answers is questionable as certain authorities have reportedly submitted false information.

The report elaborates on the violations of the right of access to information due to failure to respond or exceeding the legal deadlines. It states that the practice has shown that a number of bodies delivered answers to received Requests for Information **only after sending urgency, or appeals to the second instance body or Institution of Ombudsman and addressing the Directorate for Inspection**. The authorities who did not provide the information usually did not respond within the legal deadline of 15 days for providing an answer. The report concluded that the procedure of access to information can be extremely long, impractical and expensive with an uncertain outcome.

The report made the following recommendations:

- **Organize training of civil servants**, representatives of NGOs, judges, prosecutors, lawyers, court experts and inspectors on basic principles of the Aarhus Convention and the relevant legislation.

- **Establish united „Eco portal“** for the whole territory of Bosnia and Herzegovina, through which the public authorities in the field of environment can place all the information on laws and policies, plans and projects, decision making procedures, public debates and inspection in one place and publicly.

- **To build an interactive relationship between the governmental and non-governmental sectors**: this will enable better flow of information. This can be achieved through the establishment of a legal framework, which will serve the development of the government and non-government sector.

3.7.2. Public participation

Legal framework in this aspect is not well developed, and it is better regulated on the higher levels of government than on the level of municipalities. Common failure mentioned by the report is omitting public discussion in decision-making and not involving the public into the early stages of decision-making.

According to the surveyed NGOs, they have participated in majority of the public hearings (75%) that were open for them and claim to have understood their significant role in decision-making. The information about public hearings was predominantly found on the official websites of the authorities that were in more than three quarters of cases up to date and also in three quarter of the cases were found in the archive.

There were some shortcomings regarding the procedure of the consultation, the records from public hearing were mostly not available and in 86% of the cases there was only the possibility to submit written comments after the public debate.

The report concludes that the form of public participation is fully respected, since in most cases the public hearings were organized and public had access to information, and the public was adequately informed about it. However, the essence of public participation remains questionable because the consideration of public comments were neither provided nor published.

3.7.3. Access to justice

The network of Aarhus Centres was involved as an initiator in a total of **27 procedures** before inspection organs, appellate bodies, the Ombudsman and the judicial authorities. According to The CAN Report, the most frequent reasons for administrative disputes are unsatisfactory decisions of public authorities:

From 7 complaints, 3 were filed for failure to respond, and 4 because of a negative response of public authorities.

Furthermore, the network of Aarhus Centres was involved as an initiator in **15 proceedings** before inspection authorities for the purpose of carrying out supervision of the legality of companies and public authorities. A total of 10 applications were submitted against business enterprises due to the excessive environmental pollution, while three applications were submitted for purposes of investigating the legality of the work of public authorities and two applications were related to legality of the work of inspectors.

The effectiveness of the remedies often depends on the expert body that reviews appeals and on the tribunals. This can be explained by the fact that the lawsuits and remedies do not have the required effect when the judicial procedures are too long, because an appeal does not have a suspensive effect.

A major problem is seen in **exceeding the established deadlines** and the fact that the first-instance body mainly violated provisions of the Aarhus Convention on access to justice, because they often did not make a mention of the possible legal remedies in their solutions, which is their obligation as stipulated by Aarhus Convention.

The report **objected to the work of inspectors**, who do not inform the applicant about the undertaken inspections. The public therefore has less and **less confidence in the efficiency of court proceedings, as well as the work of inspection bodies.**

The experiences of the NGOs in the survey with of the third pillar of the Aarhus Convention are limited. But their recommendation to better efficiency is to establish a common register of **all cases of environmental processes on the courts in BiH.** Another point is to ensure better control by improving the surveillance of the Environmental Inspection.

Experience of the Aarhus Centres has shown that a number of public authorities respect the legal provisions only after the applying the legal steps, however, the procedures are extremely time consuming and require certain costs in terms of payment of court fees and legal advisor service.

4.

Aarhus Convention Pillars

4.1

Pillar I: Access to Environmental Information

As discussed above, free access to information in Bosnia and Herzegovina is regulated by the Law on Freedom of Access to Information of BiH (LoFAI BiH). Every public authority is obliged to provide access to information under its control and possession. For example, the Cantonal Ministry for Environment should provide the information about the facilities for which that ministry issued environmental permits; the National Hydrometeorological Agency should provide the information about air quality; the competent Water agency²⁴ should provide information about water permits, etc. However, the publicly available information is often limited, incomplete or hardly understandable by persons lacking the necessary technical expertise.

The law indicates that an applicant may access the information either on the premises of the public authority, make copies of the document, or be given a copy of the information requested. The information must be provided within **15 days** from the submission of the request. If the question is too complex or if there is a need to gather more documents, the deadline for providing the information may be extended to **30 days**. The applicant must be informed within a reasonable time of this procedure.

²⁴ Water Agencies are established at the Entity level. In the Federation of BiH there are two water agencies: the Agency for Sava River Basin catchment in Sarajevo and the Agency for Adriatic Sea Catchment in Mostar. In Republika Srpska, the public institution „Vode Srpske“ acts as the water agency in both river basins in RS.

In some cases, national legislation provides for a broader scope of accessible information, than what is required under the Aarhus Convention. For example, according to the AC, the public authority is obliged to consider a request and if the authority does not have the sought information, the request can be denied. According to the LoFAI BiH, the public authorities are **obliged** to forward such a request to the authority that holds the relevant information within an 8-day period²⁵.

Example: Trade secrets in the power plant project (Banja Luka)

Centre for Environment Banja Luka was trying to gather the information regarding the concession agreement of a small hydroelectric power plant "Medna" on the Sana River. When it asked for certain information from the Ministry of Industry, Energy and Mining of Republika Srpska, the request was denied, with a statement that the private investor considers the information its trade secret. Centre for Environment submitted an appeal. Afterwards the ministry tried to hand over a document that was totally censored. Again, it claimed that the censored parts represented trade secrets. Centre filed a lawsuit in July 2013 and only then the ministry changed its decision and handed over the entire document. Based on the information obtained, the NGO was then able to actively participate in decision-making procedures regarding environmental and construction permits and continue to protect the river's ecosystems.

²⁵ http://www.bhas.ba/dokumenti/zakon_o_slobodi_pristupa_informacijama_ba.pdf

4.1.2. Collection and dissemination of environmental information

In BiH, environmental information is made available to the public free of charge. Where a fee is charged, the LoFAI BiH limits the fee to reasonable costs of printing/photocopying. However, in practice, these requirements have not been complied with. For example, the Federal Ministry of Environment and Tourism operates the “public consultation” page of its website. Because the authority is responsible for the Aarhus Convention, members of the public are likely to look for information relating to projects subject to public consultation on the Ministry’s page. Yet, the page contains no information and has long been empty²⁶.

Except for this empty page, no other central government website exists for the provision of environmental information. Instead, there are only specific public registers tracking issued permits. For example, the Federal Ministry of Environment and Tourism operates the database of issued environmental permits,²⁷ and the Agency for Water runs the register of issued water permits.²⁸ This is clearly an inadequate approach. In the digital age, where website development and maintenance is well affordable, the state authorities should publish as much information online as possible.

Some municipalities (such as Sarajevo or Zenica) operate or finance local air monitoring stations and publish the data on measured pollution²⁹, or at least present data compiled by the Hydrometeorological Institute. This system of informing citizens was created in response to catastrophic air pollution in Central Bosnia and rising discontent amongst the citizens. The Institute itself also publishes nation-wide data on air quality online.³⁰

4.1.3. State of the environment report

In 2012, the Ministry of Foreign Trade and Economic Relations published a comprehensive report titled “State of the Environment Report of Bosnia and Herzegovina 2012”³¹, which most likely contains all available data on environment. Even though this report has certain shortcomings and imperfections, it is the first publication of its kind ever released in BiH – and a very important source of information. It would be highly beneficial if the Ministry published such a report regularly. Particularly as the Law on Environmental Protection of both Entities and BD, obliges the Government to prepare a ‘State of the environment report of Bosnia and Herzegovina at a minimum interval of two years. This would enable chronologic comparison of the progress and improvement of the content, as well as the actual condition of the environment.

²⁶ <http://www.fmoit.gov.ba/ba/page/85/sudjelovanje-javnosti>

²⁷ <http://www.fmoit.gov.ba/ba/page/86/registri-i-izvjescaronivanje#> http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mgr/Servisi/Poslovanje/Pages/Ekoloske_dozvole.aspx

²⁸ <http://www.voda.ba/rjesenja>

²⁹ For Zenica: <http://monitoring.zenica.ba> and for Sarajevo: <http://air-monitoring.ba>

³⁰ <http://fhmzbih.gov.ba/latinica/ZRAK/Z-zrak.php> and <http://www.rhmzrs.com/екологија/мјесечни-прегледи>

³¹ State of Environment Report of Bosnia and Herzegovina 2012: http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/library/environment_energy/state-of-environment-report.html

Report on the state of the environment and the air quality

The report comes to the general conclusion, that the access to information and timely information dissemination is unsatisfactory.

The report concludes with the following recommendations:

- 1) To strengthen the **institutional and legal framework to ensure reliable and timely data collection and application;** and
- 2) To strengthen **environmental monitoring.**

The authors of the report lamented the lack of accessible data in some sectors, hindering them from creating an overall comparison across sectors. The general lack of presentation and transfer system of the said data only aggravates the problem. Centralisation or better coordination among sectors is needed. Importantly, the report concedes that **'the greatest obstacle in environmental data gathering is an insufficient number of adequately equipped environmental laboratories, lack of trained personnel and means for regular monitoring.'**³²

Another recommendation is to strengthen the **environmental information management system.** Even though each Entity has its own Law on Environmental Protection and Law on Water that obliges regulatory and administrative bodies to make environmental data available, the information management system needs to be significantly improved. There are only a handful of formal mechanisms of information transfer between institutions dealing with environmental issues (long-term data collection and presentations are provided by the Entity authorities for statistics and the Agency for Statistics of BiH). Again, better coordination measures are needed between the various agencies responsible for environmental protection and regulation. Although steps for establishing an effective information system are provided in the Memorandum of Understanding on National Environmental Monitoring System (2004), signed be-

A closer reading of the chapter on "Air pollution provides a clearer picture of the challenges faced in the preparation of the report, leaving the conclusions drawn in the report open to challenge. The chapter presents various data sets on the environmental situation in Sarajevo, Banja Luka, Mostar and Tuzla. However Zenica, where large steelworks is located and which consequently has one of the highest rates of air pollution in the country, as shown by the monitoring stations in the town, has not been included in the report. It is not clear why the Air pollution chapter does not provide a complete picture of the situation.

³² *State of the Environment Report of Bosnia and Herzegovina 2012*, Ministry of Foreign Trade and Economic Affairs (2012), p 224

tween the Council of Ministers of BiH and the Government of FBiH and the Government of RS, defining coordination measures for better facilitation of the system are still necessary.

Another recommendation of the report also addresses the **shortcomings of the Pollutant Release and Transfer Registers (PRTR) system** in BiH. Although PRTRs have been installed in entity ministries, there has been little improvement in creating a comprehensive monitoring system, including the associated database. Practical implementation of PRTR development is facing a series of challenges, especially insufficiently trained personnel in companies and environmental government bodies.

This issue is further discussed in chapter 4.1.4, Pollutant Release and Transfer Register.

And lastly, BiH, as a country cooperating with the European Environment Agency (EEA) Network, should have an information system based on the **latest information and communication technology** (ICT) and should enhance its participation in the EEA Initiative on Shared Environment Information System which has still not been applied.

4.1.4. Pollutant Release and Transfer Register

In 2003, at the “**Environment for Europe**” meeting held in Kiev, BiH signed the Protocol to the Aarhus Convention on **PRTR**, and expressed an interest to conclude the ratification procedure in 2015 (as of August 2015, this has not been achieved). According to the Protocol’s provisions, the responsible authority (in this case Federal Ministry for Environment) has to annually collect data from owners of stationary industrial and agricultural sources of pollution and make the data publicly available (see a selected record of the PRTR Protocol’s provisions in the box).

Essential principles of PRTR system

Objective

The objective of PRTR is to enhance public access to information through the establishment of coherent, integrated, national pollutant release and transfer registers, which could facilitate public participation in environmental decision-making as well as contribute to the prevention and reduction of environmental pollution.

Core elements of a PRTR

- (a) Facility-specific operation with respect to reporting on point sources;
- (b) Accommodates reporting on diffuse sources;
- (c) Pollutant-specific or waste-specific, as appropriate;
- (d) Uses various types of information media, distinguishing among releases to air, land and water;
- (e) Includes information on transfers;
- (f) Based on mandatory reporting on a periodic basis;
- (g) Includes standardized and timely data, a limited number of standardized reporting thresholds and limited provisions, if any, for confidentiality;
- (h) Coherent and designed to be user-friendly and publicly accessible, including in electronic form;
- (i) Allows for public participation in its development and modification; and
- (j) Structured, computerized database or several linked databases maintained by the competent authority.

Design and structure

The register shall be designed for maximum ease of public access through electronic means, such as the Internet. The design shall allow that, under normal operating conditions, the information on the register is continuously and immediately available through electronic means.

Reporting cycle

The country shall ensure that the information required to be incorporated in its register is publicly available, compiled and presented on the register by calendar year. The reporting year is the calendar year to which that information relates. The required reporting shall be annual.

Public access to information

1. The country shall ensure public access to information contained in its pollutant release and transfer register, without an interest having to be stated, primarily by ensuring that its register provides for direct electronic access through public telecommunications networks.
2. Where the information contained in its register is not easily publicly accessible by direct electronic means, the country shall ensure that its competent authority upon request provides that information by any other effective means, as soon as possible and at the latest within one month after the request has been submitted.
3. The country shall ensure that access to information contained in its register is free of charge.

Example: A million euro secret

In 2009, the EU financially supported a project for the implementation of the PRTR Directive in BiH at a cost of 1,199,825 EUR¹. Since then, the owners of industrial facilities are requested to create an annual report on their emissions of pollutants for the preceding year and submit it to the Ministry by 30th June. The Hydrometeorological Institute has then 6 months to validate the submitted data, and all information is collected in a special database. The purchase of a new server and software were funded in the EU project, but only one employee of the Ministry has been entrusted with the password to enter the data. For the public, the information from the register is available only through a written request to the Ministry. Requests are usually answered with long delays, and applicants often receive the information too late to be able to use them for submissions in decision-making procedures.

In the US, Canada and many European countries, PRTR plays an important role not only in enabling easy access to information, and as a condition of public awareness and active engagement of the local citizens in debates about their environment and decision-making procedures, but also in ensuring transparency in decision-making. PRTR enables comparison of the environmental footprints of similar industries and it often helps to reveal unintentional releases of valuable materials from the production. Many companies themselves confirm that requirement to measure their pollutants release helped them recognize imperfections in production management, undertake technological measures, and make their operations more efficient and economic.

The EU-financed projects in Bosnia and Herzegovina should have the same objectives: use analogous measures and achieve similar results as the measures implemented within the EU. Therefore, it raises serious concern that PRTR in BiH is not publicly accessible yet, although it operates in electronic format and the database itself is also accessible via internet. This issue was raised by the authors in a letter of complaint to the Delegation of the European Union to Bosnia and Herzegovina and when they expressed their expectation that within a short time, the stakeholders shall undertake all measures to make the PRTR in Bosnia and Herzegovina publicly available.

¹ Project N. 2009/228-439, Publication reference EuropeAid/126648/C/SER/BA
Tender number: EC/BIH/08/013 – „Support to Implementation of the "Integrated Pollution Prevention and Control" Directive“

4.2

Pillar II: Public participation in decision-making

Public participation in decision-making has a potential to increase the democratic way of the state management and prevent social and political tensions. When the citizens know that their opinions are heard and considered, they also have a more positive attitude towards their government and state authorities. They naturally respect such decisions, in comparison to those made in societies where decision-making is not that transparent and manipulated on behalf of private or economic interests.

4.2.1 In which processes can the public participate?

The issue of participation of public in the decision and law making process must be analysed through all institutional levels in BiH. In short, regarding the State level, the **Parliamentary Assembly of BiH has the authority to invite the public** to comment on laws and their amendments or any other documents or decisions, before being adopted. However, the Parliamentary Assembly **is not obliged** to hold such public consultations or hearings.

At the Entity level, the Parliament of FBiH and Assembly of RS are obliged to organize public discussions when adopting laws in regular procedure. However, this obligation can be bypassed if the law is being adopted in irregular or urgent proceedings or during legislative emergencies. Although Rules of procedure of the Parliament/Assembly regulate specific situations when a law can be adopted during irregular/urgent proceedings, this tool is often misused. Thereby laws that should be adopted in regular proceedings are often passed in irregular/urgent proceedings, and it is questionable whether it is to avoid too much publicity and hinder public involvement in controversial cases. This also refers to the Cantonal level in FBiH.

Moreover, specific laws prescribe public participations in decision-making by certain State authorities, such as Ministries. Issue of compliance with this demand requires deeper analysis; therefore specific situations and cases of public participation in decision-making on environmental matters are described further in this publication.



Case study 1:

The factory stopped dusting

Lukavac / 2010 - 2012
Alternative Creative Centre

Lukavac, a town of 50,000 in central Bosnia, is one of the most polluted places in the industrial heart of the country. A coke plant, cement kiln, tailing ponds, coal mines, and hazardous waste landfill – these are only few examples of heavy industries that can be found in the area. The worst of the worst, strewing the city with tons of emissions every day, used to be the soda factory. Often in the morning, the whole town was covered in a layer of black dust. As there were no air pollution monitoring stations, the inhabitants could only guess the extent of the air pollution – although a bad smell hinted that the environment of the city was probably not very healthy.

The town itself emerged in 1893, when in the distant, free, uninhabited area of the Spreča River valley the foundations of the “First Bosnian Ammonia Soda Plant” were laid. The industry grew fast, as did the number of inhabitants of the town – and the amount of pollution.

It is hard to say that the politicians and officials did not take care of citizens at all. Maybe due to laziness, maybe incompetence, the town did not buy any air pollution monitoring system and decided to borrow some from more equipped private companies or state institutions in the canton. Unfortunately, they were not feasible more than twice per year. It is obvious, that random data was useless for any practical actions to protect public health.

Marching against dust

Similarly as in other towns in central Bosnia that time, people were technically living most of the year in alarmingly concentrated smog, but unaware of it. The only accessible source of data on air pollution was reports of the Cantonal Ministry of Spatial Planning and Environmental Protection – which is not an easy accessible source.

Frustration of the locals culminated in a protest march in 2010, where approximately 3,000 people

marched to the gate of the soda factory. Citizens demanded access to accurate information on environment in the town and placement of information board showing current levels of air pollution in the street. They also demanded that the company installs electric filters and that the town establishes an ‘Environmental Permits Supervisory Council’, which would involve one representative from the public.

Recovered foreign investments

At the time, the factory was already privatized and made a part of international Turkish-owned corporation, Sisecam. Its managers were frightened by possible damage of the company’s goodwill in the international market, and started to act.

Within just one year, an amount of more than 60 million euro was invested in advanced production technologies and environment protection facilities. In 2011, Sisecam Lukavac ranked as the ninth biggest investor in BiH and third in terms of investment for environmental protection and energy efficiency (according to Business Gazette, 2012). Positive impact on the company’s image was definitely much larger than possible saving in the operation of the obsolete factory.



Photo:
Ondřej Vlček /
Arnika

In 2012, town councillors revolted and refused to accept the annual report of the Cantonal Ministry of Spatial Planning on air pollution. The report stated that daily concentrations of pollutants in the air have not exceeded the emission limits within the year, despite several obvious accidental releases of emissions over the same time period. Thanks to this controversy, in 2014, the town's first monitoring station has been installed.

Even though the quality of air in the city substantially improved, other consequences of soda production are still waiting to be resolved – for example, a large tailing pond called the White Sea. Also the monitoring station does not work perfectly. Anyway, the citizens got access to the real data and started to be taken as relevant partners for the debate.

Due to constant complaints of the citizens and also councillors, the canton finally installed air monitoring station in one of the most polluted towns. Having information is the first step for being able to act. After demonstrations which attacked the image of the international corporation, the company was forced to invest in environment protection technologies. The company soon recognized that such investments helped consolidate goodwill better than anything money could buy.

“

Soda factory was built at Austro-Hungarian Empire; it was producing during Yugoslavia, during the war and after it. The life of the town – also concerning employment – is pretty much connected with soda production. But in the last few years, people also suffered the most due to the factory. At a certain point, we realized that we could not endure it any longer and we went out on the street. It helped. The factory management realized that there are people living around and that we have our minds, feelings and needs, but also power. Since that, their behaviour is gradually improving.”

*Emir Audić,
Centre for Flora
and Fauna Protection*



Decision making in BiH: In which processes public can participate?

Level of the state administration	Procedure	Responsible authority	BiH	FBiH	RS	BD
State	Adopting laws	Parliament	✓	—	—	—
Entity	Adopting laws	Parliament	—	✓	✓	✘
	EIA	Ministry (Department) with Competences for Environment	—	✓	✓	✓
Canton	Adopting laws	Assembly	—	✓	—	—

At the State level, there is no obligation for the Parliament of BiH to have for example public consultation on laws in its procedure, but they can decide in accordance with their Rules of procedure, for example to conduct a public hearing and include all interested parties.

At the Entity and Canton levels, regarding public consultation in Parliaments/Assemblies, there should be, according to the Rules of procedure public consultation held while adopting laws in regular procedures. However, very often there is a decision to adopt laws in irregular procedures, saying it is an urgent procedure.

4.2.2. Public participation in decision-making processes on specific activities

In relation to Pillar II, Bosnia and Herzegovina meets the requirements of the Aarhus Convention only partially³³. Currently, there are several serious obstacles. Even the official National Implementation Report 2013 admits that the criteria for public participation contained in the aforementioned national legislation have been lowered in comparison with those mentioned in Annex I of the Convention.³⁴ NIR rather sufficiently describes which acts implement the Aarhus Convention but it does not explain the multiple problems in their application.

4.2.3. Definition of the public concerned

The Aarhus Convention requires that the national laws of the member state define the concept of a 'public concerned'. These groups; usually civic associations, non-govern-

³³ Progress on monitoring of transposition and implementation of environmental acquis in BiH stated that EU Directive 2003/4/EC on Free Access to information was transposed by 50%; EU Directive 2003/35/EC on Public Participation was transposed by only 10%.

³⁴ The second national report on Aarhus convention implementation in Bosnia and Herzegovina – 2013

mental organisations (NGOs); are then granted specific rights in the processes of decision-making in environmental matters.

There is an associated concept in FBiH: **Article 4 of the Federal Law on Environmental Protection** gives the following definition of **“public”**: *„one or more natural persons, their associations, organizations or groups”*. The same article gives the definition of **„interested party/authority”**, as *„Natural or legal person or organization who lives or works in the area of influence, or an area that is likely to be affected”*.

4.2.4. Impairment of rights

The definition of **public concerned** is associated with the question of the so-called **“impairment of rights doctrine”**. In some countries it may be an obstacle to public participation, because non-governmental organizations do not have full rights in administrative procedures (sometimes they can enjoy only procedure rights, but not substantive).

Application of the principle of “impairment of rights” also restricts access to review actions and omissions of the state authorities by private persons if these actions do not have direct and immediate consequences on the personal rights of the plaintiff, but “only” impact the environment as a public interest.

However, in BiH, there is no such distinction between the rights of non-governmental organizations and civil persons. This means that anyone, both individual people and NGOs can participate in decision-making procedures, such as issuing environmental permits, zoning and building permits, etc., when invited to do so.

4.2.5. Public interest status

In BiH, **NGOs must be registered at the administrative level it expects to conduct its activities** (sometimes at multiple administrative levels). For example, if a particular NGO has members and/or activities at the National (State) level, it is registered at the **State** level with the Ministry of Justice of BiH. If the NGO acts on a local level, it is registered at the responsible **Cantonal** Ministry of Justice (FBiH) or Ministry of Justice of RS. These Ministries maintain the Registers where they list the civic associations and foundations enrolled by them.

The term ‘non-governmental organisation’, or ‘NGO’ is not a recognized legal term in national legislation in BiH. All existing NGOs can be registered either as **“associations”** or **“foundations”**. As determined by the Law on Associations and Foundations in its article 13: *“Registered associations may acquire the status of ‘association of public interest’ if its action goes beyond the interests of its members and if it is primarily for the public interest. This applies in general in the following areas: health; education; doctrine of social protection; civil society; human and minority rights; supporting the poor and socially disadvantaged; supporting the disabled, children and the elderly; environmental protection; tolerance; culture; amateur sports; freedom of religion and assistance to victims of natural disasters.”*³⁵

³⁵ Ministry of Justice BiH on Associations and Foundations: http://www.mpr.gov.ba/organizacija_nadleznosti/uprava/registracije/udruzenja/osnivanje/default.aspx?id=1936&langTag=en-US and Law on Association and Foundations: <http://www.mpr.gov.ba/biblioteka/zakoni/bs/Zakon%20o%20udruzenjima%20i%20fondacijama%20-%2032%20-%2001.pdf>

The state or authority gives some of its jurisdiction to an association or foundation of public interest, and the “**NGOs of public interest**” can enjoy advantages regarding taxation, customs and other benefits. This status does not have any implications in terms of participation in decision-making.

4.2.6. Commenting at an advanced stage of decision-making

Environmental protection oriented civic organisations can make submissions to relevant State authorities on proposals for projects, plans and programmes relating to the environment. However, the common problem they face is that authorities neglect the submissions and do not take them into consideration. The Aarhus Centres Network of BiH highlights that civil society members often participate in decision-making procedures on projects at very advanced stages of their approval, and the comments are then not taken into account as they “were expressed too late”. The reason why this occurs is sometimes the poor system of informing the public about public consultation on present projects, so the NGOs learn about a particular project or programme late and they enter the process belatedly. In other cases, administration procedure gives the public specific rights to access the decision making only at very advanced stage.

A solution might be legislative changes enabling comments and public participation in the earliest phases of drafting projects, like scoping and screening, and perhaps even inviting civil society to evaluate certain ongoing plans or programmes and develop studies on the effectiveness of the proposed or existing measures.

4.2.7. Public participation in preparation of plans and programmes

Plans with impact on environment are prepared in a variety of sectors. There are therefore a number of laws that address detailed requirements for conducting **Strategic Environmental Assessment (SEA)**.³⁶

At international level, the Espoo (EIA) Convention sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning³⁷. BiH accessed the Convention in 2009 (for more details, see chapter “**Transboundary impacts**” further on).

Strategic environmental assessment is regulated by the “Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context”, which was adopted in Kiev on 21 May 2003 (The Kiev/SEA Protocol).

BiH is a signatory of the Kiev Protocol since the beginning, 21 May 2003, and the Law on Environmental Protection in both Entities includes the main provisions from the Espoo Convention and the Kiev Protocol.

Strategic Environmental Assessment (SEA) is applied on plans and programmes

³⁶ E.g.:

- Law on Air Protection FBiH;
- Law on Waste Management FBiH (OG FBiH 33/03, 72/09) (LoWM FBiH)
- Law on Spatial Planning and Land Use of FBiH (OG FBiH No: 2/06, 72/07, 32/08, 4/10, 13/10, 45/10);

³⁷ The Espoo Convention and its Kiev Protocol: <http://www.unece.org/env/eia/eia.html>

and undertaken much earlier in the decision-making process as compared to Environmental Impact Assessment (EIA) on particular projects. Therefore SEA is seen as a key tool for involving public in decision making and ensuring sustainable development. The Kiev Protocol commits the authorities of the signatory countries to provide as much space as possible for public participation in decision-making and secure it in different sectors.

In BiH, SEA is conducted within development of various plans and programmes affecting environment (for example, strategies for the air quality protection, water basin management plans, spatial plans etc.). According to the law, the draft plan can be objected to by the individuals and legal entities; however, interest and **practical involvement of the public in SEA procedures is very low** so far (participation in decision making on particular projects noticeably prevails).

Legal framework for SEA is differently defined in each Entity of Bosnia and Herzegovina.³⁸

Republika Srpska

New Law on Environmental Protection in RS³⁹ contains detailed regulations on a strategic environmental assessment for plans and programmes of different areas. It is the basic legal act transposing requirements of the SEA Protocol into the national law. Secondary legislation on SEA has been adopted as well (Regulation on the Content of SEA Report⁴⁰; and Regulation on Criteria on Needs for Performing of SEA Procedure⁴¹)

Public participation is correctly prescribed, but implementation of the legislation is very weak.

Federation of Bosnia and Herzegovina

SEA in the Federation is prescribed by the Federal Law on Environmental Protection⁴². As mentioned above, currently FBiH is developing a new law, and the regulations might change.

Certain specific provisions related to the SEA and public participation are also set out in the Law on Spatial Planning and Land Use in FBiH⁴³.

4.2.8. Public participation in preparation of spatial plans

One of the important processes where strategies are adopted is spatial planning. Spatial plans determine building plots and areas that are banned from construction, defines permissible methods of land-use as well as capacities of possible constructions. They are frequently subject to changes, sometimes even on short notice, and their **impact on environment and local communities is obviously crucial**. As the spatial plans are approved by political bodies, they are subjected to enormous pressure from landowners, speculators, investors and developers.

³⁸ <http://www.unece.org/env/eia/resources/legislation.html>

³⁹ OG RS No 71/12

⁴⁰ OG RS No 28/13

⁴¹ OG RS No 28/13

⁴² OG FBiH 33/03 and 38/09

⁴³ OG FBiH 2/06, 72/07, 32/08, 4/10, 13/10 and 45/10

According to law, spatial plans must be prepared by an authorized agency and submitted to the relevant Ministry and then to the Parliament. The adopting procedure is identical to that followed for laws. Prior to their approval, the public consultation process shall be ensured. The public has the right to submit written comments and participate during public hearings; however these **possibilities often fall short in execution**, for lack of capacities on both sides:

* **Civil society:**

Spatial plan is obviously a large technical document, sometimes hardly understandable even to experienced NGOs and experts. Individual citizens as well as a majority of NGOs are usually lost and unable to formulate relevant comments. The only major exceptions are the cases when citizens are personally damaged (for example, when the use of their land is supposed to be changed, when there is some public infrastructure supposed to be constructed on their land, etc.), and people basically protect their own property or its value (“not in my backyard” syndrome).

* **State authorities:**

In addition to the fact that public consultations are often not advertised sufficiently, the time given to the public for submitting comments is quite short. Lack of awareness leads to lack of interest. In many cases, citizens notice that serious changes in spatial plan have been approved only when the construction has begun already – and that is too late. At that point of time, not only has the spatial plan been changed, but often zoning and construction permits have been issued.

Many measures can be taken to improve this situation. State authorities should go beyond the legal (minimal) demands and search for effective ways to involve citizens in preparing plans and strategies. Citizens should be more active and follow decision making procedures, especially at the local level (of their municipality). In both cases, large spaces are open for educational, advocacy and advisory activities of professional NGOs (especially existing Aarhus Centres Network).

4.2.9. Protection of “public interest”

Spatial planning should regard protection of “public interest”, which is rather vaguely defined by the law.⁴⁴ The concept was introduced to enable construction of important public projects, especially infrastructure projects such as roads, power lines, sewage pipelines etc. Declaring a project as a project with a “public interest” means that the property needed for construction is purchased by the state at a nominal price, preventing the owners from speculating, asking for inadequately high compensation or even blackmailing the State by obstructing public infrastructure projects.

The concept of “public interest” also enables expropriation in the cases of inability to reach agreement with the landowner. In the cases of “public interest” projects, there is a difference in the complaint procedure – the projects are implemented on the basis of “get compensated first, complain second”.

This concept is sometimes misused against the private ownership in order to enforce

⁴⁴ Law on Public Procurement BiH (SG 49/04), The Law on Expropriation FBiH (SG FBiH 70/07 and 36/10)

Example: Road expansion in Zenica

In order to expand one of the main access roads, the City of Zenica announced its intention to buy a private land. The owner offered the land for 2,000,000 BAM (around 1 million Euro), which the municipality regarded as 'too expensive'. The city council then declared the road construction a topic of "public interest" and therefore consequently much lower price for the land was paid.¹

¹ http://zenica.ba/fileadmin/user_upload/VijeceDoc/2013/8._sjednica/GGM_2_JAVNI_INTERES.doc

construction of controversial projects that are not necessarily in the interest of the public. The solution might be in legislative change that will specify cases of "public interest" more precisely, using clear or measurable criteria.

4.2.10. Environmental Impact Assessment (EIA)

The Environmental Protection Act RS and Law on Environmental Protection FBiH and pertaining Regulation of BiH stipulate the procedure for Environmental Impact Assessment for Republika Srpska and Federation of BiH respectively.

In both of entities, EIA procedure is carried out only by Entity Ministries of Environment. Cantonal or Municipal levels are not competent for EIA. Progress made in transposition of EU Directive 2011/92/EU on EIA is highly satisfactory in both of Entities.

Basic provisions related to EIA are incorporated in the entity Laws on Environmental Protection.⁴⁵ [1]

Specific provisions related to EIA are set out in the Regulations and Governmental Decrees issued by both entity ministries. These regulations determine the following:

- Projects and installations for which EIA is mandatory, and the criteria for determining the obligation and extent of EIA (OG RS 7/06)

⁴⁵ OG of Federation No. 33/03, OG of Republika Srpska No. 53/02



Case study 2:

The park is ours!

Banja Luka / 2012 - 2014
Centre for Environment

Municipality of Banja Luka surprised its citizens when in 2010, politicians decided to sell the public park in the centre of the city for 2.2 million euro to a private developer. Nobody asked the people for their opinion. On the contrary, people recently commented on the draft of a new spatial plan and demanded to preserve the park and take care of it. Full-grown trees had been cut down and popular walking and resting places turned into a construction site. Rumours appeared soon that Milorad Dodik, president of Republika Srpska, needs to laundry the money earned illegally during the war in 90's, and no force can stop him in his intentions.

The preparations for construction of the Republika Srpska Telecom Company building started in May 2012. In response, local citizens founded the "The Park is Ours" initiative and decided to show their power. According to the law, it is necessary to pass permitting procedure to organize gatherings at public spaces. Because citizens wanted to avoid the bureaucracy and did not intend to break law, they invented an original way of protesting.

Every day, a peaceful protest of "walkers" occurred in the city centre, not being considered as a demonstration by the law, but noticeable enough to show public opinion. "The walkers" continued for hundred days, ranging from a few hundreds up to three thousand. A petition demanding publishing of the project documentation and the contract between Banja Luka and Grand Trade (the developer) united 6,000 people. The initiative had over 40,000 followers on Facebook at the peak of protests.

Besides protest walks, citizens' initiative was highlighting the irregularities of the contract between the city and the private company, and illegalities in permitting the construction of 30,000 m² of business and residential spaces.

Police manoeuvres against walkers

Citizens were shocked again, when the State started to demonstrate its power against them. Special forces and riot police prevented people from marching to governmental buildings and gathering at the former park, although violence never appeared during the "walks".

Story of the closest neighbour of the park, owner of a car repair shop, remains especially painful. Mr. Željko Vulić lost the access road to his family house and business because of the construction. He was arrested while protesting against misappropriation of his land, demanding justice and restoration of the public road. Till recently, the courts neither recognized him as a victim of despotism nor was he compensated for the damage.

Powerful man on the run

Visitors of Banja Luka still find two sorrowful reminders of recent 'development' of the city. Just opposite to former Picin Park, only one of five originally protected aged oaks remain at the new residential complex: Stately, although dead, covered by knitted decorations, looking down at still unfinished



Photo:
Ondřej Vlček /
Arnika

concrete constructions. The second reminder is the commercial building itself: empty till recently, with the owner desperately searching for someone who will buy it.

Although the protests did not stop the construction, they mobilized thousands of citizens. "The Park is Ours" initiative transformed gradually into a collective movement aimed at broader structural changes such as greater government accountability and social and economic reforms.

Two years later, justice finally arrived to Banja Luka. The Grand Trade owner Mile Radišić was prosecuted and sent to prison in June 2014 for three years. He was found guilty of price manipulation, providing false information and abuse of power. Radišić asked the court for delay of the onset of punishment till he finishes his building. Court rejected his leave. Finally, Radišić fled the country a few days before he was supposed to start serving his sentence.

Citizens invented an original form of visible mass protest. To avoid violation of the law, they demonstrated by walking – and did not need a permission for gathering at public space. Although the protests and legal actions taken did not save the park, they strengthened civil society. Due to tireless pressure of the citizens, offenders were finally convicted. This gives hope that similar cases would not repeat.



“

The fact that a green park has been destroyed is the smallest problem. All people working both in the state and private institutions, who originally created the huge mass of protesters, were commanded to stop coming to the walks. Otherwise, they could lose their jobs. This shows in practice, on what level all our country works. The most important message of this case is that some five hundred people lost their fear of the state and the police, did not succumb to intimidation, and finally started to use their rights.”

Tihomir Dakić,
Centre for Environment

- Installations and facilities whose operation may be commenced only if the environmental permit has been granted (OG RS 7/06, OG FBiH 19/04)
- Specific requirements for submitting an environmental permit application for installations and sections for which environmental permits were issued prior to enacting the Laws on Environmental Protection (OG RS 24/06, OG FBiH 68/05)
- Time frame for applying for an environmental permit for installations issued with an environmental permit before the Law on Environmental Protection entered into force (OG RS 24/06, OG FBiH 68/05).

4.2.11. Public participation in EIA

Environmental Impact Assessment is probably among the most efficient decision-making procedures, as the scope and extent of public participation is large, thereby enabling active citizens to get involved with consummate ease. According to the law, authorities are obliged to conduct public consultations on the EIA. Public can participate in identifying potential effects a project may have on the environment, as well as participate in public hearings, submit comments and suggest ways on how to minimise or compensate for adverse environmental impacts. Within the commenting period, citizens can also present evidence and independent studies related to the impacts of assessed intent. The public possesses the same rights in administrative decision-making procedures.

Example: Baseline survey for the steelworks

Citizens of Zenica, where huge steelworks of Arcelor Mittal is located, actively participated in the EIA related to new environmental permits recently. One of their most important objections was that to date, no baseline survey that would summarize data on environmental situation, factory operation, economy, etc. was published. The Federal Ministry of Environment of FBiH simply ignored the demand and issued an environmental permit without the requested survey. And as giving explanation for rejecting particular comments is not required by the law, citizens could not effectively dispute the attitude of the Ministry.

Example: EIA step by step in Republika Srpska

In Republika Srpska, the Ministry of Environment involves the public into EIA procedure in collaboration with the Project Developer. Within 15 days from the date of submitting the request for approval of the study, the Project Developer is obliged to inform the public on the submitted request in one of the daily newspapers. **The Project Developer is bound to organise a public debate** and advertise it at least 15 days ahead. A representative of the Ministry responsible for environmental protection is obliged to participate in the public debate, and also facilitate it. Within 30 days, the public can submit their written comments. The Project Developer is obliged to submit the received comments referring to the request and the **impact study** and their preliminary expert opinion on the received comments to the Ministry within the following 15 days. The Ministry, within a timeframe they set themselves, but not longer than 15 days, shall deliver to the Project Developer its evaluation regarding the received comments which is followed by a phase of **'expert review'**. Finally, the Ministry issues **'decision on study'** within 60 days from the date of receiving the Impact Study in its final form.

Authorities are obliged to conduct public consultations on the EIA as a part of the process of issuing environmental permits. However, the process lacks a mechanism to ensure that any comments or objections are taken into account. The ministry even has the right to accept or reject the public comments and objections without reviewable justification (for more details, see chapter 4.2.2. Public participation in decision-making process on specific activities). Such situations where the comments of the people simply end up in a waste bin discourage citizens from broader participation in decision-making.

The EIA procedure is carried out in two phases:

- **Prior Environmental Impact Assessment (Screening and Scoping)**
- **Environmental Impact Assessment**

Prior Environmental Impact Assessment is initiated by submitting a Request for Prior Environmental Impact Assessment that the project developer submits to the Ministry responsible for environmental protection.

Environmental Impact Assessment is a phase where the public consultation is conducted and the process is more thoroughly explained on previous page in the example of Republika Srpska.

The Energy Community portal mentions some shortcomings on the compliance with EIA Directive, as the provisions on public participation cannot be considered as completely transposed given the wide range of possibilities for refusing access to environmental information and the very flexible possibility to charge applicants for such access.⁴⁶

Our recommendation concerning EIA is to enable participation of the public since the early stages of projecting, in scoping and screening, instead of only during mandatory public consultation period.

Relevance of EIA studies

Civil society organizations often complain that there is no adequate control over companies licensed to develop EIA studies. The main problem is that the EIA study is paid for by the investor, and he obviously has a great interest on good results. Thus, the licensed companies are responsible for the final “tone” of the assessment, and are consequently at the greatest risk of influence from the applicant.

4.2.12. Transboundary impacts

The Espoo (EIA) Convention sets out the obligations to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

The Convention was adopted in 1991 and came into force on 10 September 1997. Bosnia and Herzegovina became the 44th Party to the Convention on 14 December 2009.

The principles of the Espoo Convention and the Rio Declaration on Environment and Development (1992) state that:

- * **Environmental Impact Assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.**
- * **States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.**

4.2.13. Trans-Entity impacts

As already mentioned in the Aarhus Convention NIR 2013, the NGO representatives have repeatedly pointed out the problems they encounter when a project has an impact on cit-

⁴⁶ https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/Implementation/Bosnia_Herzegovina/Environment

Environmental permits enforcement

Nowadays, an industrial facility is obliged to obtain an environmental permit authorizing its operation and limiting impacts on the environment. In the case of more complex industrial plants, it can even be a series of permits. The procedure is regulated by a whole file of acts related to the environment¹ and the decision is issued by the Ministry of Environment of the respective Entity. Permits issued to facilities or their departments are valid for a period of 5 years.

In special cases, individual permits to the departments can be issued collectively and coordinated in one environmental permit. New permits have to be issued sooner than after 5 years in case of large changes in operation of the facilities or hardware of the facility itself; for example after installation of new production technology etc.

The permits can be withdrawn earlier, if the Environmental Inspection reveals that there are serious violations of the permit's conditions or relevant legislation in general. Such cases should theoretically lead to closure of the facility, as no facility can be operated without a valid permit. However, this competence is not broadly used. Several cases have been described by the

civil society, when neither the Environmental Inspection nor the Ministry of Environment were ready to intervene against legal violations when it came to large industrial companies employing hundreds or thousands people. Law enforcement is sometimes considered an exaggerated measure, as closure of larger factories would increase unemployment. In the generally poor economic situation of BiH, employment is a sensitive issue, as is protection of foreign investments. Thus, economic aspects sometimes prevail over environmental protection and law enforcement and injustice is silently tolerated. It is necessary to add that some citizens also tend to support such approach and prefer to live in dirty environment while having a working place and livelihood.

Introducing 'Integrated Prevention and Pollution Control (IPPC)'² into national legislation, which is mentioned by the international conventions and also by the new Law on Environmental Protection of FBiH, should rapidly increase the standard of issued permits and level of public involvement in decision-making. Integrated approach should significantly clarify the whole process and reduce the paperwork. Unfortunately, implementation of IPPC is delayed and date of its introduction remains unclear.

¹ The list of the corresponding acts: <http://www.fmoit.gov.ba/ba/page/83/okolisna-dozvola>

² The IPPC Directive of the EU: <http://ec.europa.eu/environment/archives/air/stationary/ippc/index.htm>

izens of the other Entity. In some cases, affected citizens are not invited to public hearings or the hearings are not held in their vicinity, although consequences of the given project could damage their environment.

Case study 3:

Rivers survive concreting plans

Republika Srpska / 2009 – 2014
Coalition for the Protection of Sana

Deep valleys, rocky cliffs, mountain streams, impermeable forests... Bosnia and Herzegovina owns real jewels of nature, still undiscovered by mass tourism. Some of the richest ecosystems of Europe can be found here, providing habitat to many rare species of animals and plants. Authorities exploited yet another potential of this virgin landscape. Since 2002, they issued more than a hundred permits to construct hydropower plants in canyons of many rapid Bosnian rivers in Republika Srpska. In Federation of Bosnia and Herzegovina, the situation is not any brighter. More than twenty civil society organizations rose and started to oppose the project that would destroy unique hot-spots of biodiversity forever.

Sana, Sutjeska, Bistrica and Trebišnjica – these four rivers are ranked as “first class” according to the water quality classification of Republika Srpska. Hydropower plants are either planned or already built on each of the 4 river. According to the civil society, the problem is not just the power plants themselves, but non-existence of transparent rules on where to build them and where to prioritize strict nature protection. Hydropower plants obviously change the water level, cause flooding of certain areas and draining of other, thereby largely disrupting local ecosystems.

Nature needs our protection

Number of planned hydropower plants revealed weak points of nature protection system. Some projects were located in protected areas, even within the territory of National Parks. Therefore, since 2009, the “Coalition for the Protection of Sana” started to campaign in two directions; firstly to stop construction plans and secondly to ensure effective protection of valuable parts of nature.

One of the first challenges of the project was to construct a hydropower plant ‘Medna’ on the Sana River. The Coalition filed a complaint against already issued environmental and construction permits and Environmental Impact Assessment (EIA)

and demanded that the Ministry of Industry, Energy and Mining of RS cancel the concession agreement.

Nevertheless, the construction works began in 2010 despite the disagreement of local residents, affected municipalities of Ribnik and Mrkonjić Grad and even the expert opinion of the Institute for Protection of Cultural, Historical and Natural Heritage of RS, discouraging the project.

Power plants at the court

Citizens did not give up. The Coalition submitted the lawsuit – and succeeded. Banja Luka District Court decided that EIA studies contain false information, and issued permits lost their validity. The investor – LSB Elektrarne – responded concisely. Without having necessary environmental and construction permits, the company started to construct the access road and deforest the land on the river bank.

The Coalition launched a petition against construction which attracted 8,000 signatories. In November 2010, it organized demonstrations to highlight violations of the law (Law on Environmental Protection, the Law on Spatial Planning and Construction, the Law on Concessions and others) and silent inaction of responsible authorities.

In 2013, LSB Elektrarne, tired of fighting with citizens and their advocates, sold the project to a Slo-

Let's protect Sana River! Blockade of intended construction site of the new hydropower plant.

Photo: Mićo Malinović / Centre for Environment

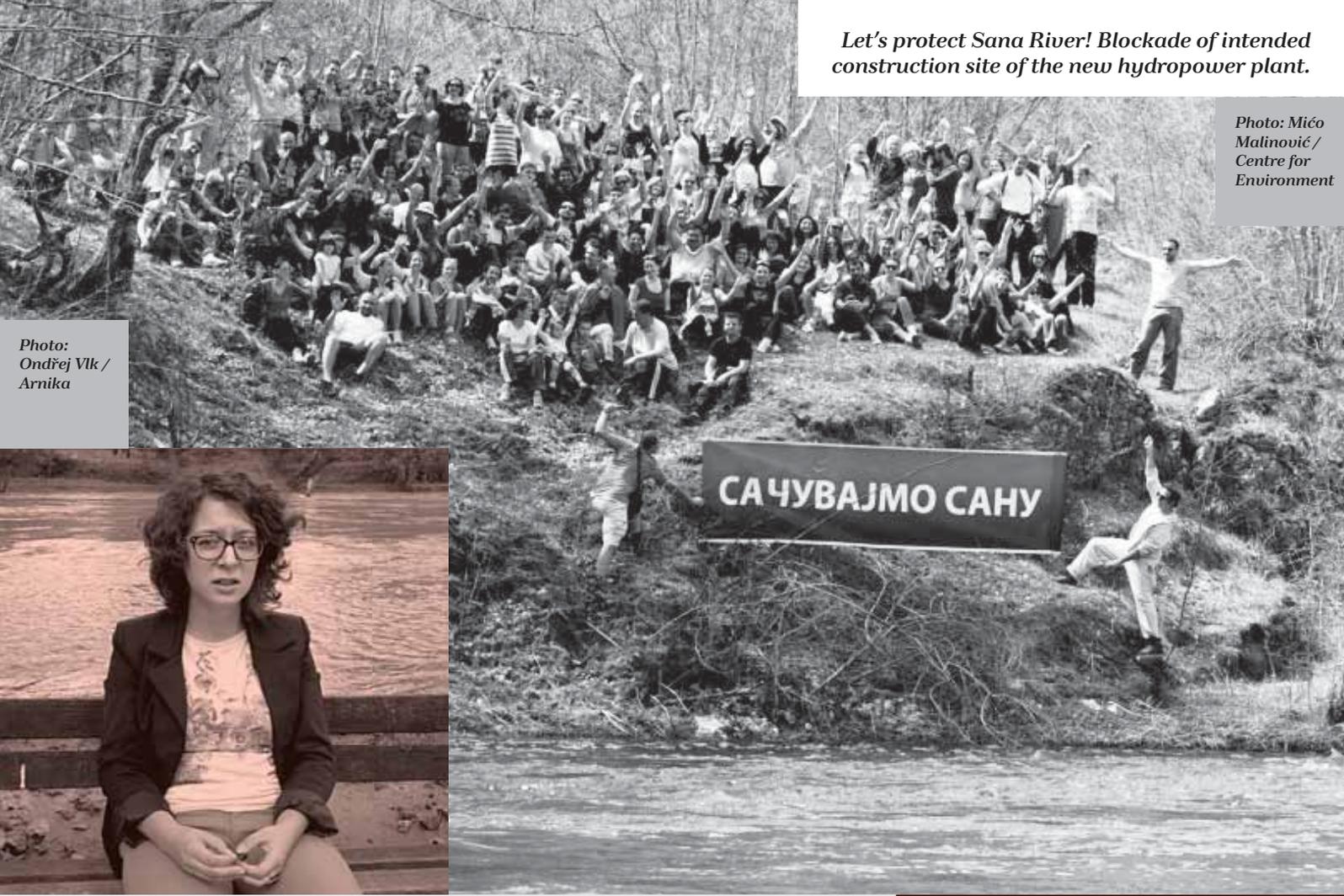


Photo: Ondřej Vlček / Arnika



venian company Interenergo owned by Austrian Kelag International. Since then, the investor does not perform any visible activity and its plans are not known to the public.

Fates of a majority of ambitious projects of hydropower plants are similar to Medna. Despite concerted pressure of investors and weakness of the authorities, plans have failed. Hundreds of partial permits have been issued, but only three power plants were constructed over last six years. There are two major reasons why. Firstly, it turned out that it is not that easy to avoid public disagreement and nature protection and secondly, effective use of legal tools by the citizens extends permitting procedures, delays construction and often forces the investor to give up on the project based on wobbly foundation.

Civil society used the advantage of synergy and established the coalition – thus, citizens got more power to oppose private companies. Participation in all decision making procedures and determination to defend the rights even at the court were essential for partial success. It showed that the investor broke the law and did not fill his obligations, but without active involvement of civil society, these illegalities would have been silently ignored by the state authorities.

“Bosnia and Herzegovina faces considerable risk of floods. We witnessed it recently: Extensive floods and landslides in 2014 caused larger damage than the war in 90’s. With increased water levels, concrete structures on the rivers can worsen problems. Moreover, we do not need new power plants – we are not lacking energy, our country exports it. For the future, preserving unique nature and bet on tourism, energy efficiency and renewable sources would strengthen our position in Europe much more than concreting our mountain canyons.”

Nataša Crnković,
Centre for Environment



Case study 4:

Steel sky brightens

Zenica / 2008 - 2015
Eko Forum Zenica

Pioneers of the steel industry believed that they could not find any better spot for constructing steelworks. River Bosna had enough water for cooling the machinery down; and iron ore and coal mines with limestone quarries were present in the neighbourhood. Their decision turned out to be very wrong given that the deep valley of Zenica works as a bowl holding all smoke and dust from the chimneys. The citizen's struggle for fresh air is not easy as they stand against the global number one steel producer owned by one of the richest people in the world. It owns 30 factories in Europe and 33 in the rest of the world and its wealth is larger than the cumulative budget of Bosnia and Herzegovina.

ArcelorMittal came in 2004 with the intention to restart integrated steel production in Zenica in privatised steelworks that were damaged and closed down during the Bosnian war. Some citizens got their working place again, but the most distinctive impact was an extreme level of air pollution in 2008, immediately after the integral production was restarted.

Doctors, engineers, professors and other shocked citizens established Eko-Forum Zenica - the most influential environmental NGO in town. They organized demonstrations and started to participate in official negotiations and decision making procedures.

The corporation had to obtain a series of 13 new environmental permits and develop an activity plan to protect the environment. ArcelorMittal promised that by 2012, its Zenica factory will follow the best environmental techniques and EU standards. Citizens actively participated and submitted dozens of comments to all documents, published for consultation in 2009.

Although the company was obliged to get necessary permits till the end of 2008, Federal Ministry of Environment, surprised by number of comments and depth of controversy, prolonged the deadline till 2011. Thus, the steelworks won several years of producing without having environment permits,

emitting tons of dust and chemicals out of its factory buildings. Environmental Inspection could not punish the polluter, as there were no binding limits set up on paper.

Weaker law, more pollution

Both steelworks and the town are located in a deep valley of river Bosna. In adverse climatic conditions, all the smoke from the chimneys of the factory covers the streets. During temperature inversions, common levels of the fine particles of dust in Zenica air are 30 fold higher than in centre of London, and the health of its citizens is under threat.

The rules and laws for environment and health protection vary from country to country, so do ArcelorMittal's obligations and behaviour. The levels of environmental pollution in Bosnia and Herzegovina would never be acceptable in Belgium or Germany.

Jammed permits

Fatal level of pollution forced the people to hold demonstrations again. More than 10 thousand gathered in the city centre and marched to the headquarters of ArcelorMittal in December 2012. They demanded to respect the same rules as applied in the EU countries, as the corporation originally promised.

“We survived the war, we will survive you too”. More than 10 thousand people protested against unbearable air pollution caused by the steelworks of ArcelorMittal in December 2012.



Photo:
Eko-Forum
Zenica



Photo:
Ondřej Vlk
/Arnika

History repeated itself. In December 2014, 5 out of 9 environmental permits for ArcelorMittal steelworks expired, but the authorities did not take any measures. Ministry for Environment did not initiate new permitting procedure; Environmental Inspection did not impose any fines.

Ministry of Environment started to slowly issue new environmental permits only in 2015, and Eko-Forum Zenica is participating again. On top of that, it decided to bring inactive officials to criminal responsibility. Some pollution victims also filed lawsuits. Although Zenica ArcelorMittal is far from following EU standards, determination of the citizens to lead battles on the legal field is a source of hope that the steel sky above Zenica will soon brighten.

Mass protests made the tragic pollution in Zenica internationally visible. Because the state authorities have been lax for many years, local people decided to combine private lawsuits of pollution victims, criminal charges against state officials and active participation in all decision making procedures. Extensive legal actions might force even such powerful company to start taking care of environmental impacts of its business.

“We observe an evident increase in respiratory and cardio-vascular diseases in our area, but chronic impact of pollution is much more dangerous. Also, the phenomenon of accumulation plays its role, when heavy metals, dioxins and other harmful chemicals permanently accumulate in the human body and slowly poison us. Because we permanently breathe dirty air, degenerative changes and malignant illnesses appear. It clearly means that we pass these serious diseases we suffer from to future generations. Fight for environment for is a fight for our health.”

Harun Drljević,
medical doctor,
Eko Forum Zenica

Photo: Onda.ba / Arnika

4.2.14. Public consultation in the environmental permits procedure

In accordance with the law, the public should be involved in environmental decision-making, particularly in the process of issuing environmental permits.

- * **In the FBiH**, the public can comment and make suggestions on the **EIA study** (Article 61 LoPE FBiH), which is part of the process of issuing environmental permits.
- * **In the RS and BD**, the public offers comments and submits its objections to the EIA study in a separate process.

Careful inspection of the legislation reveals some considerable differences in the way public consultations are organised in both Entities and BD:

- * **In FBiH** the public is informed about a **public consultation** 15 days before commencement. Suggestions and objections to the relevant Ministry can be submitted within 30 days of public consultation (Art. 62 and 61 LoPE FBiH).
- * **In the RS** (Art. 88 Law on Protection of Nature RS, LoPN RS) **and BD** (Art. 66 LoPN BD), members of the public can make submissions on an application for an environmental permit for a period of 30 days from the announcement.

These significant differences in the legislation concerning public consultation in decision-making between FBiH, RS and BD complicate the process.

4.3

Pillar III.: Access to Justice in Environmental Matters

4.3.1. Organization of the judicial power in BiH

The main role of **The Constitutional Court of Bosnia and Herzegovina** is to be the interpreter and guardian of the Constitution of BiH, as stated in Article VI, paragraph 3 of the Constitution (“The Constitutional Court shall uphold this Constitution”). It is also the highest judicial authority, since it has the appellate jurisdiction for appeals from any other court in Bosnia and Herzegovina (Article VI, paragraph 3.b), after they have used all other legal remedies.

The Court of Bosnia and Herzegovina was established on 3 July 2002 by the Parliament of Bosnia and Herzegovina with the Law on the Court of BiH and endorsed on 12 November 2000 by the High Representative for Bosnia and Herzegovina. The jurisdiction of the Court of BiH is regulated by the Criminal Procedure Code of BiH and the Law on the Court of BiH. To promote and enforce the overarching objective of rule of law, the Court of BiH carries out the important role of ensuring consistency of standards in court proceedings. In terms of the Aarhus Convention, the Court of BiH has jurisdiction over misconducts of institutions at the state level. For example, the Court of BiH has jurisdiction over instances where an institution at the state level fails to provide information according to the law.

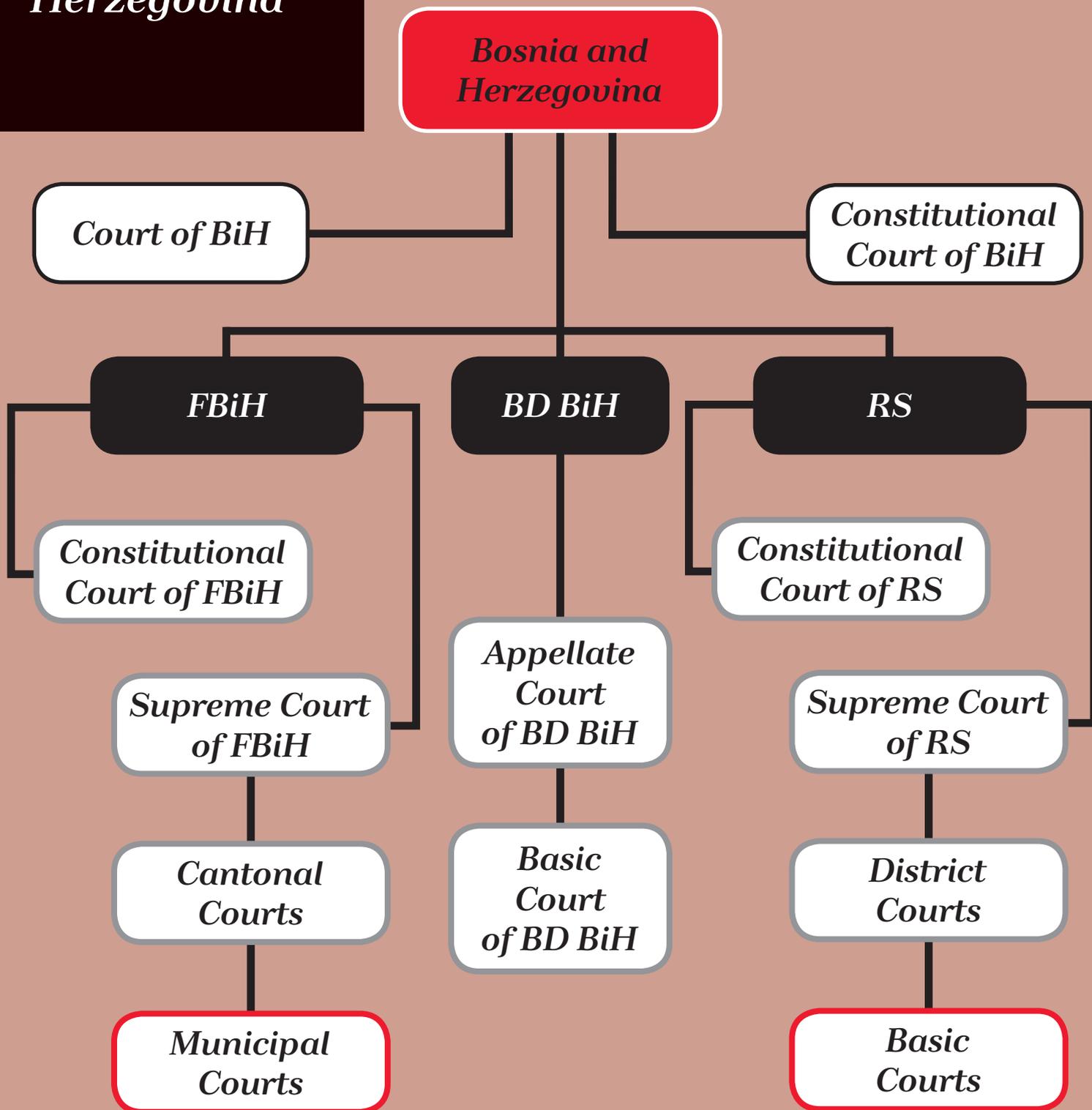
At the Entity level, are the institutions of the **Supreme Court of Federation Bosnia and Herzegovina**, the **Supreme Court of Republika Srpska** and the **Elementary Court of Brčko District**. There are five District Courts in Republika Srpska⁴⁷. In the Federation of BiH, there are nine Cantonal Courts⁴⁸. The lowest level courts are called Municipal Courts in FBiH and Basic Courts in RS. It is common procedure to start the appeals at the lowest level which is often the Municipal/Basic Court, before proceeding to the Cantonal/District Court, if necessary. The final decision can be made by the highest level courts.

However, for administrative disputes, which are the most important in terms of the practical application of the Aarhus Convention, the proceedings start at Cantonal/District

⁴⁷ The District Court in Trebinje, the District Court in Eastern Sarajevo, the District Court in Doboje, the District Court in Bijeljina and the District Court in Banja Luka.

⁴⁸ The Cantonal Court in Zenica, the Cantonal Court in Tuzla, the Cantonal Court in Sarajevo, the Cantonal Court in Odzaki, the Cantonal Court in Novi Travnik, the Cantonal Court in Mostar, the Cantonal Court in Livno, the Cantonal Court in Gorazde and the Cantonal Court in Bihac.

*The chart
of courts of
Bosnia and
Herzegovina*



Source: Analysis of Court Decisions in the Area of Environmental Protection in Bosnia and Herzegovina (The Analysis of Court Decisions report) 2012, http://www.oscebih.org/documents/osce_bih_doc_2015020514260562bos.pdf

Court and the mechanism is regulated by the Law on Courts of FBiH⁴⁹ and RS⁵⁰. There is no appeal mechanism for this court decision in administrative disputes, according to the Law on Administrative Disputes. However, other legal remedies may be sought at the Supreme Courts.

4.3.2. Legal standing and fees

The initial court fee to commence proceedings depends on the estimated value of the court case. The taxes for the administrative suits are 100 BAM (about 50 EUR).⁵¹ The attorney fees are determined according to the attorney chamber tariff, but can be negotiated.⁵² The appeal fee is the same as the initial fee needed to start the court case. This fee must be paid by the appellant. There are cases when the appellant can be exempt from the fee, in part or whole. Only physical persons that can prove economic hardship (unemployed, ill persons, disabled, etc.) can be exempt and each request is decided on individual basis.⁵³ The appellant also bears cost of producing evidence in the proceedings – after the court decides the case, the successful litigant has the right for reimbursement.

The total **cost of producing evidence** in a typical litigation on administrative decision in environmental issues is quite high. The courts only accept evidence documents produced by an accredited body and such costs are often beyond the possibilities of NGOs and even more so the individual citizens. Above that, there are no certified experts for many specialized topics related to environment residing in Bosnia and Herzegovina at all, and seeking suitable experts or companies abroad is mostly unrealistic. Reports of foreign experts will in the most cases require costs for official translation, travelling and housing.

The system of payments with uncertain total cost of the litigation and possible additional costs for ensuring the evidence are often seen as one of major obstacles in seeking the use of the legal remedy by citizens and NGOs as well.

4.3.3. Relationship between participation in decision-making and access to justice

Recently, a noticeable trend enabling NGOs to defend their rights at the courts in administrative disputes has emerged. Centre for Environment from Banja Luka was recognized as a party authorized to submit a lawsuit directly based on provisions of the Aarhus Convention. The court referred to the fact that Centre for Environment is an NGO that deals with environment protection and therefore it falls within the definition of **‘public concerned’**, **not regarding the fact if they took part in previous administrative proceedings.**

⁴⁹ Law on courts of FBiH (2005)

<http://vsud-fbih.pravosudje.ba/vstv/faces/vijesti.jsp?id=34148>

<http://www.fbihvlada.gov.ba/bosanski/zakoni/2005/zakoni/28hrv.htm>

⁵⁰ <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/006%20-%20Judiciary%20System/RS%20Law%20on%20Courts%2011-04.pdf>

⁵¹ <http://pravosudje.ba/vstv/faces/taxCalculator.jsp>

⁵² http://www.advokat-prnjavorac.com/advokatska_tarifa.html

⁵³ <http://www.besplatnapravnapomoc.rs/prilozi-saradnika/oslobodenje-od-placanja-sudskih-troskova-parnicnog-postupka/>

Case study 5:

Taming dirty energy

Tuzla / 2006 2014

Centre for Environment and Energy

Modern history of Tuzla is tightly connected with unmissable presence of local coal power plant the biggest one in the country. The Tuzla Thermal Power Plant, with capacity of 715 MW, has been gradually built between 1959 and 1978 and towns of Tuzla and Lukavac are dependent not only on its electricity, but also heating. The giant, consuming from 3 to 4 million tons of lignite annually, is surprisingly not equipped by desulphurisation filters. Thus, 50 million tons of sulphur dioxide and tens of tons of dust are released into the atmosphere annually. In 2013, people finally lost their patience and started to fight for a more civilized energy production.

Tuzla power plant belongs to the state-owned company Elektroprivreda and the government should not earn money by poisoning its citizens. The city's population suffering from respiratory diseases and cancer is more than Bosnian average. According to the report of Centre for Ecology and Energy, estimated reduction of life expectancy per person in Tuzla reaches 3.2 years, and the power plant is linked with to 4,918 years of life lost across Europe each year.

Industry captains came to the conclusion it is still not enough. In 2013, Elektroprivreda reconstructed Block unit 6 – replacement of electrical filters was supposed to reduce emission of the dust particles and prolong service life of all factory for 15 years. In the same year, the company announced the plan to construct new production unit 7 with 450 MW of capacity for 1.6 billion BAM (0.8 billion euro).

Citizens in the streets

The citizens eventually lost their patience and organized a protest meeting at the gate of the power plant. They demanded more investments to the technologies to reduce air pollution, to the infrastructure of neglected town and also to improvement of living conditions in general. As the company was not able

to meaningfully explain reasons for construction of new production unit, people rejected the project and demanded its administrative termination. It became clear that there is no need for more energy in the country, and the company only wants to get more incomes by increasing export. More than 5 thousand people signed the petition containing these demands.

Poisonous defaulters

Dispute between Elektroprivreda and Tuzla Canton started 12 years ago over compensation payments for air pollution, set by cantonal law. The energy company was obliged to pay 150 thousand BAM every month for its power plant emissions since 2002, but it did not. In 2006, the case got the court. It decided in 2009 in favour of the canton and ordered the power plant to pay total debt of 7 million BAM (3.5 million euro).

The same situation – debts on compensation payments for pollution, indifference of the company, and the litigation – repeated again in 2014, the year of mass public protests against pollution. That time, the debt amounted already 14 million BAM (7 million euro). Tuzla Canton left the courtroom as the winner for the second time.

**Demonstration at the gate of Tuzla power plant:
Stop poisoning us! citizens demanded.**



Photo:
Ondřej Vlček
/Arnika

Photo:
Centre for
Ecology
and Energy,
Tuzla.

Money collected from industrial polluters end up in the cantonal budget, from which they are distributed to the municipalities for their infrastructural and public welfare projects. Thus, dirty industries contribute at least somehow to poor public budgets.

The case got large publicity in mass-media, and joint effort of the citizens and the canton resulted in debates on the floor or parliament. Its members started to review entire system of payments for pollution. In summer 2014, parliament adopted new law on compensation fees.

Due to political unrests in 2014, production unit 7 is still not built. Moreover, Hitachi decided to pull out the investment and nowadays, consortium of Chinese companies is the sole bidder for the project. Its completion remains a question.

Local non-governmental organization produced comprehensive report that calculated real costs of energy production. Shocking figures on damage to the environment and public health encouraged citizens to mass protests. Cantonal representation was active and sued the energy company for not paying enough for emitted pollution. The case became one of major reasons for adopting new law on compensation fees by the parliament.

“
People grown in socialism are not used to fight for their rights. Also we have got the government used from the previous system that citizens are passives. At the third side stands the industry, happily get used to apathetic authorities and timid public. They are absolutely indifferent to what the people think or say about them. So they keep exhaling to the air whatever, without bearing responsibility. But the situation gradually changes. The people are beginning to understand that they have right to demand healthy environment for them and their children.”

Džemila Agić,
Centre for Ecology and Energy

Photo: Ondřej Vlček / Arnika

The same argument has been used in another case where the NGO did not take part in public hearing, but made submissions to a specific study related to an on-going project. Based on reference to the Aarhus Convention provisions, the NGO's comments had to be considered by the state authorities.

4.3.4. Analysis of Court Decisions

According to the 'Analysis of Court Decisions in the Area of Environmental Protection in Bosnia and Herzegovina', produced by OSCE BiH in 2012, there were 15 cases of legal actions in administrative procedures in the country, with an even number i.e. seven decisions being overruled and seven accepted while the first instance and appellate decisions were annulled. There were in total 5 decisions on legal actions regarding exemptions in administrative proceedings and all of these five actions were overruled rendering that the public authorities have acted correctly.

The report concluded that in 2012, there was no judgement issued concerning the right to access environmental information and that the only judgement that concerned the environmental protection was issued by the District Court in Banja Luka. It referred to the Environmental Impact Study of a small hydropower plant on the Sana River. This Lawsuit was rejected as unfounded.⁵⁴

These numbers distinctly show that the use of the legal remedy is not very often in BiH in the environmental area and that there is still a lot of scope for evolution of these mechanisms. Unfortunately, no similar report has been issued, it was therefore difficult to compare and validate observed trends and conclusions made (we tried to compile our own statistics for details, see the following chapter, Analysis of the statistics of the state authorities). It can be noted first-hand that very few administrative disputes ended up in court in 2012, and therefore can be assumed that the public does not use legal remedies often.

⁵⁴ http://www.oscebih.org/documents/osce_bih_doc_2015020514260562eng.pdf

5.

Analysis of the statistics of the state authorities

While compiling this report, we have encountered a problem due to non-existence of data documenting the practical application of the 'right to access the information' and 'participation of the civil society in decision-making'. To overcome this vacuum, we sent out requests for information to 19 selected state authorities and courts of different levels in Bosnia and Herzegovina in the spring of 2015.

It was the first attempt of its kind to put together such long-term statistics and obtain figures showing the ground reality. Until now, neither the state authorities nor NGOs have ever taken up systematic collection of such information. No analysis exists (except for the OSCE BiH report from 2012, described in Chapter 4.3.4. Analysis of Court Decisions). Without this first-hand knowledge of the real situation it was difficult to determine what specific measures would help to improve the quality of environmental democracy in accordance with the Aarhus Convention.

5.1

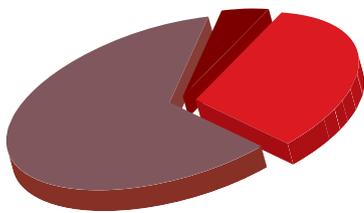
Respecting right to access the information

Answers to request for information

It was an unpleasant surprise that as many as 30% of the addressed authorities did not respond to the request at all, in breach of the Aarhus Convention as well as national law⁵⁵. This experience confirms repeated complaints of the civil society that their letters are often thrown down the table.

The requests concerned firstly general issues of functioning of the civil society – we were especially interested how many NGOs are active in selected areas. Secondly, we focused on issues related to the Environmental Impact Assessment process.

⁵⁵ Municipality of Zenica, The Chairman of the City Council, The president of the Commission for Environmental Monitoring, Cantonal Court at Mostar, Federal Administration of Inspection and The Cantonal Ministry of Trade, Tourism and Environmental Protection at Hercegovina Neretva



- responded partly (1)
- not responded (6)
- responded (12)

State authority	Response
Federal Ministry of Justice	✓
Ministry of Justice BiH	✓
Ministry of Justice (Zenica-Doboj Canton)	✓
Federal Ministry of Environment and Tourism	✓
Ministry of Spatial Planning, Transport and Communication and Environmental Protection (Zenica-Doboj Canton)	✓
Ministry of Spatial Planning, Transport and Communication and Environmental Protection (Zenica-Doboj Canton)	✓
Ministry of Spatial Planning and Environmental Protection (Sarajevo Canton)	✓
Ministry of Spatial Planning and Environmental Protection (Tuzla Canton)	✓
Ministry of Trade, Tourism and Environmental Protection (Herzegovina-Neretva Canton)	✗
Cantonal Court Zenica	✓
Cantonal Court Sarajevo	✓
Cantonal Court Tuzla	✓
Cantonal Court Mostar	✗
Federal Administration of Inspection	✗
Municipal Court for minor offences, Zenica	✓
The City of Zenica	✗
Chairman of the City Council, Zenica	✗
Chairman of the Commission for Environmental Monitoring, Zenica	✗
Federal Ministry of Environment and Tourism, BiH	partly

5.2

Detailed analysis of the obtained data

Question 1: Number of non-governmental organizations operating in Bosnia and Herzegovina

Explanation: To be able to evaluate responses to particular questions and overall situation, it is essential to learn and understand the extent of civil society and how large is the segment of those dealing with environmental protection.

Respondents:

- BiH: Ministry of Justice BiH
- FBiH: Federal Ministry of Justice
- Zenica-Doboj Canton: Ministry of Justice

Submitted Questions:

- How many NGOs or foundations are recorded in the register of your office?
- How many of them deal with environmental protection?
- How many of them have a seat in the Zenica-Doboj canton?
- How many of them have a seat located directly in Zenica?

We have received the following answers:

- **The register of the Federal Ministry of Justice** lists 1,676 associations and 154 foundations. In their response, Ministry of BiH divided the organizations in detail. It has 1,684 associations, 128 foundations, 54 foreign and international associations and 25 such foundations and 43 foreign and international NGOs registered. This division is not entirely understood.
- **The Federal Ministry of Justice** was able to distinguish how many of these associations deal with the protection of the environment, specifically:
 - Centre for ecology and culture ‘Aliz Bosniak’ from Kakanj,
 - Ecologic youth association ‘ECO NOVA’ with a seat in Zenica
 - Youth in education, sports, culture and ecology from Visoko.
- **According to the Federal Ministry of Justice**, 40 associations operate in the Zenica-Doboj Canton from which 29 are based in Zenica.
- **The Cantonal Ministry of Justice of Zenica-Doboj** did not take into account a part of the request for information and answered only that in Zenica-Doboj Canton there

are 743 associations registered and 756 in Zenica. 160 organizations from the register handle the field of Environmental protection.

- **Ministry of Justice of BiH** does not keep record of this information.

Question 2: Requests for information

Explanation: Free access to information on the environment is crucial for claiming the other rights arising from the Aarhus Convention. Without adequate and consistent information it is not possible to participate effectively in decision-making. Our analysis is therefore focused on the extent to which the public in BiH use this right.

Respondents:

- FBiH: Federal Ministry of Environment and Tourism,
- Zenica-Doboj Canton: Ministry of Physical Planning, Transport and Communications and Environmental Protection
- Sarajevo Canton: Ministry of Physical Planning and Environmental Protection
- Tuzla Canton: Ministry of Physical Planning and Environmental Protection
- Herzegovina-Neretva Canton: The Ministry of Trade, Tourism and Environmental Protection

Submitted Questions:

- How many requests for environmental information have you received in the period 2009-2014?
- In how many cases have you met the applicant's request and provided information on the environment in full extent?
- In how many cases have you refused to provide information?

We have received only two answers to this particular request by the authorities:

- **Tuzla Canton: Ministry of Physical Planning and Environmental Protection** received 20 requests for information, which allegedly have been fully answered.
- **Sarajevo Canton: Ministry of Physical Planning and Environment** received only 2 requests, which they also allegedly fully handled.

The provided information shows that requests for information are not very frequently used tool. In combination with the lack of information that is generally accessible it is a big problem and a complication in the process of involving the public in decision-making pertaining to environmental issues.

A partial solution to the problem would certainly be to launch a consistent awareness-raising campaign and in particular active publication of as much information as possible as well as facilitating the online access to information.

Question 3: EIA process and participation in the proceedings

The EIA is a key process in which, in accordance with the provisions of the Aarhus Convention, the public should be effectively and actively engaged. Yet, it is especially this area, where citizens and the civil associations and foundations encounter a number of obstacles. This makes the actual effective participation considerably more difficult. Therefore, we wanted to determine whether the authorities actually record the data on the

assessment and if it is possible to determine to what extent are the public involved in these processes. However, the result of this part of the analysis is affected by the lack of the provided information.

We turned to the same offices with the following questions:

- How many environmental impact assessments have there been done and in how many cases was there held a public hearing of the project and documents related to it?
- How often have the members of public expressed themselves in these processes?
- Were the comments of the public taken into account and how have they been reflected in the outcome of the assessment?
- How many positive opinions on the Environmental Impact Assessment have been issued in the period of 2009–2014?
- How many negative opinions have been issued (meaning that the intention was not granted with an agreement)?

This part of the analysis suffers due to significantly higher pending requests for information and also from the inability to obtain information because such data is not recorded. Moreover, the answers of the authorities were not formulated so as to fully answer our questions.

- **Federal Ministry of Environment and Tourism** only said that in the period 2004-2014 it has accepted 1,033 applications for authorization of environmental permits and issued 801 such permits. No further information was obtained.
- **Zenica-Doboj Canton: Ministry of Physical Planning, Transport and Communications and Environmental Protection**, replied that according to their responsibilities, there are no permits, which would require assessment.
- **Sarajevo Canton: Ministry of Physical Planning and Environmental Protection, and Tuzla Canton: Ministry of Physical Planning and Environmental Protection** replied similarly.
- **Herzegovina-Neretva Canton: The Ministry of Trade, Tourism and Environmental Protection** did not respond at all, thereby significantly violating the applicant's right to information on the environment. This is an alarming result, taking into consideration the lack of disclosure about the EIA process.

We believe that based on these results of requests for information, in BiH it is absolutely essential to create a system with remote access to information, which would disclose any document of all aspects assessed in the EIA process. These systems seamlessly operate in several countries and enable citizens to obtain the necessary information without having to refer to the authorities who are not able to provide answers.

Question 4: Participation in decision-making

In addition to the EIA process related issues, we also inquired about issues related to public participation in decision-making; participation in administrative permitting procedures with environmental impact. The tool used to highlight public opposition to major issues is a petition. Therefore, we asked the authorities about their experience.

We turned to the same authorities as for Question 2 and 3 (see above) with the following questions:

- How many public hearings were there organized in the procedure for issuing environmental permits in the period of 2009-2014?
- How many of these public hearings were attended by any non-profit organization?
- How many petitions relating to the protection of the environment have you received in the period 2009-2014? What was the subject of a petition?
- In how many cases have you accepted the petition and in how many rejected?

Unfortunately, authorities basically did not respond to these questions; they either did not react or responded only partially.

- **Zenica-Doboj Canton: Ministry of Physical Planning, Transport and Communications and Environmental Protection**, performed 5 public hearings in the entire period of five years (!), of which 3 are now completed and 1 still going on (we received no more detailed information about last one).
- **Sarajevo Canton: The Ministry of Physical Planning and Environmental Protection** performed only one public hearing and **Tuzla Canton: Ministry of Physical Planning and Environmental Protection** performed 3 of which NGOs participated in only 1. Some authorities argue that NGOs are not interested in the public discussion, but this is essentially a result of very weak and inadequate disclosure of information about it.
- According to the provided information, Authorities solved a total of 6 petitions.

Question 5: Access to justice

Access to justice is actually the most essential pillar of the three pillars of the Aarhus Convention. Without effective judicial protection, the other rights remain toothless and ineffective tools. In many countries, especially in post-communist countries of Central Europe such as the Czech Republic, Poland or Slovakia, the right to information and participation in the proceedings was gradually strengthened through judicial decisions. The practices of the authorities were improved purely due to interventions by the court. Therefore, we inquired on how do the selected courts in BiH function and we turned to four selected courts at the Canton level, all from the FBiH.

Respondents:

- Zenica Cantonal court
- Sarajevo Cantonal court
- Tuzla Cantonal court
- Mostar Cantonal court

We asked the following questions:

- How many lawsuits were there regarding a review of the approval or rejection opinion of the EIA study in the years 2009–2014?
- How many lawsuits related to environmental protection do you register, which allow (§ 68 and § 71 Law on protection of environment FBiH) in the years 2009–2014?
- In how many of those cases, a violation of the Law on protection of environment has

been found in the 2009-2014? In how many cases was cancelled the original administrative decision concerning the environment?

- How many lawsuits were concerned about the refusal to provide information on the environment by the administration?

The courts were requested to provide a copy of any issued decision. Unfortunately, none of the above information has been provided. The reason stated was simply unavailability of information.

Given this and other shortcomings observed in the system throughout the analysis, we believe that the only solution to this inadequate access to information (on the basis of which we cannot even evaluate the effectiveness of access to justice and whether the case law strengthens or weakens the position of the public) is that all decisions of higher courts should always be published online, with an option to search this database for specific requirements. Such a practice is completely normal in many European countries. Its importance lies also in the possibility of obtaining an effective argument for the subsequent cases of public participation in environmental decision-making. Without the presence and functioning of a basic online database – either on the EIA process or of judicial decisions, the effective participation of citizens is quite impossible.

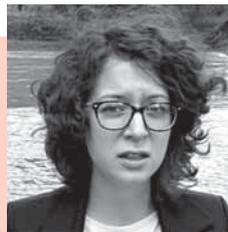
6.

Analysis of experience of NGOs

Our challenges due to lack of information were not just restricted to State Authorities but also extended to activities concerning the civil society. Therefore, besides asking the state authorities for data, authors of this report also undertook a survey among selected and interested environmental NGOs working in BiH on their experience with access to information, public participation in decision-making and access to justice. In total, 12 NGOs were addressed, while the selection criteria were sufficient capacity, professional approach and history of practical work.

Overview of the participants of the survey

Representatives of 7 organizations from different regions agreed to be interviewed and provided their experience and personal insight to the topic.



Nataša Crnković
BANJA LUKA
Centre for Environment



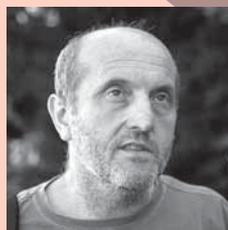
Emir Avdić
LUKAVAC
Association for Protection of Flora and Fauna



Denis Žiško
TUZLA
Centre for Energy and Environment



Samir Lemeš
ZENICA
Eko Forum Zenica



Anes Podić
SARAJEVO
Eko Action Sarajevo



Sabina Jukan
SARAJEVO
Aarhus Centre Sarajevo



Alenka Savić
TUZLA
Centre for Development and Support

6.1

Detailed analysis of the obtained data

6.1.1. Question 1: Evaluation of the level of environmental democracy

Questions asked:

- How do you assess environmental democracy in BiH?
- What do you consider crucial for this and what might bring improvement?

All respondents agreed on the opinion that there is, theoretically, a lot of space for public participation in decision making, which is provided by the law. They all however complain that in practice, procedures are often omitted, the public is denied its rights, and there is no control over manipulation of results of the public discussions. Across the country, there are considerable differences among the various authorities that deal with the field of environment; some respondents claimed that they can see an improving trend. Education of both the general public and NGOs on one hand and the authorities on the other is emphasised as an underestimated tool which could help to overcome the difficulties.

6.1.2. Question 2: Access to information

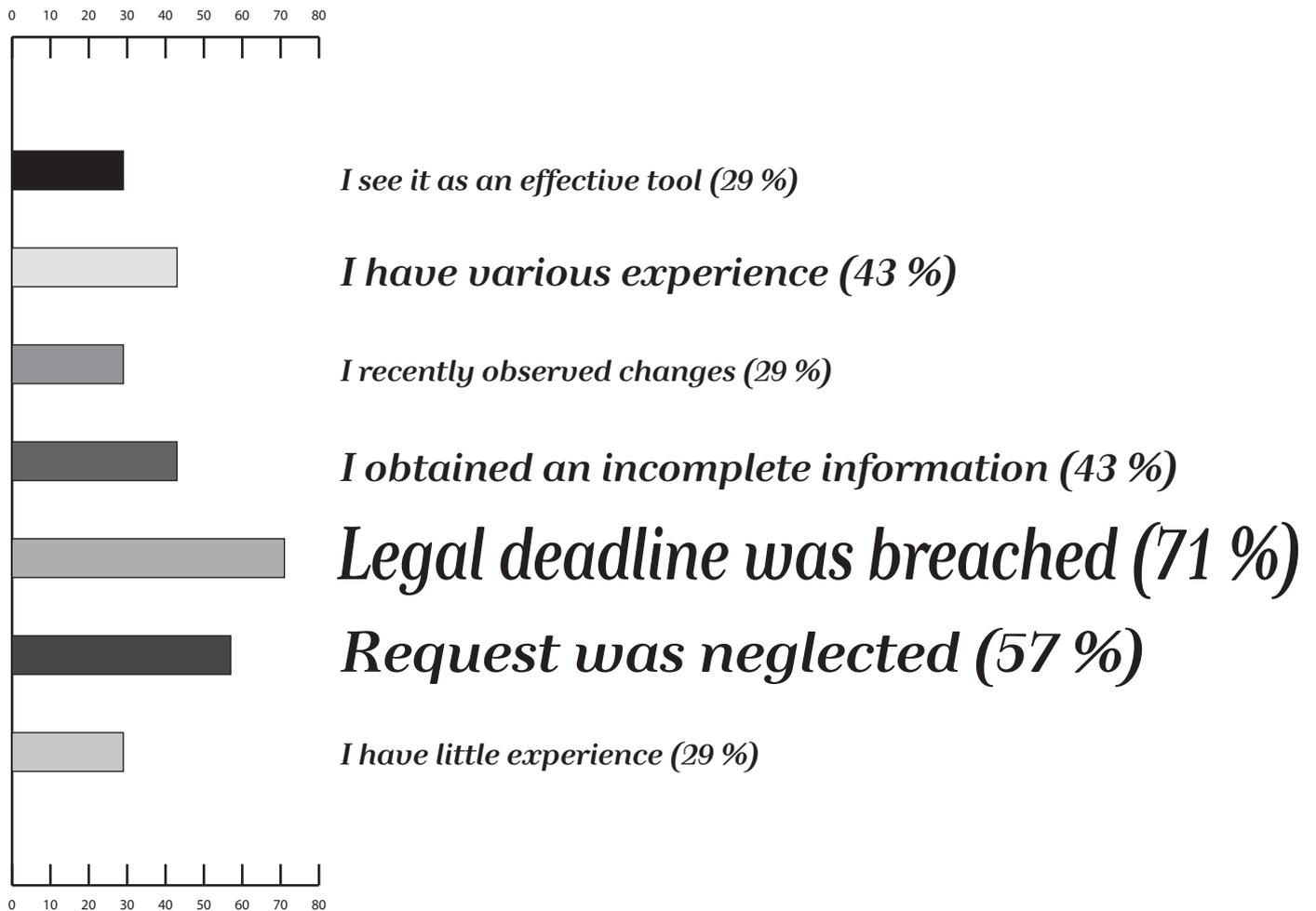
Questions asked:

- What experience does your organisation have with requests for information?
- What experience does your organisation have with accessing information online?

Question 2A: Request for information

The experience is very varied. Some NGOs have not requested the state authorities for information according to the law on Free Access to Information at all, some have sent several requests and for others it is a vital tool for enabling their work. Those who requested the authorities for information stated they have frequently met with obstructions and clear breaching the law. Not respecting the legal deadlines or denying information based on unfounded reasons is very common. Although the sample size is not big enough to draw clear conclusions, 5 out of 7 respondents stated experience with such unlawful behaviour, which is alarming. Concurrently, NGOs have also noticed slight positive shifts. Still more, authorities are aware of their obligation to provide the information on request.

Experience with request for information



Violation of the Free Access to Information Act

More than two thirds encountered with violations of the right to access information on environment.



Encountered with breaching of the Act



Answer to the request obtained according to the Act

Answered requests for information



We obtained an answer in about 50%



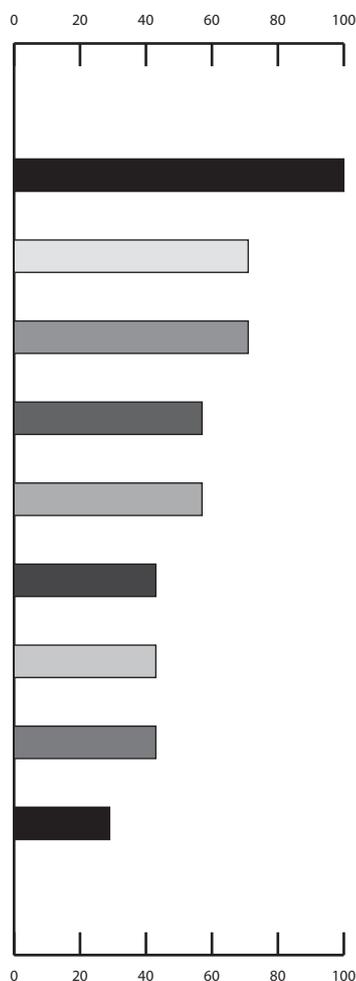
We obtained an answer in about 80-100%



We have little experience with request for information

Question 2B: Official online information sources

NGOs agreed that basic information on environment, including the legislation, can be found online and access to it is to some extent free. Information on the state of environment in the form of a databases occur just locally while nationwide information systems in general are very rare and do not cover all important areas. One mentioned example is Pollutant Release and Transfer Register (PRTR) that was still not launched, contrary to repeated promises of the authorities and substantial expenditure. Advertising, invitations to public hearings and publishing summarized information on EIAs suffer serious deficiency. The more specific information users need to get, the harder is to find it online. NGOs state that it is difficult to find an official website where all expected information will be found and more importantly be true. Almost half the respondents suspect the authorities of manipulations and one even revealed publication of false information. NGOs advise extensive revision of the system of publishing information online and creation of the still absent, but necessary, information portals as well as better system of information exchange across the country's complex administration system.



Encountered a problem with access to online information (100 %)

Official information generally accessible (71 %)

Only incomplete information available (71 %)

Hard to find 100% O.K. website (57 %)

Getting information is problematic (57 %)

Authorities influences "tone" of the information (43 %)

Better regulation for online publishing needed (43 %)

I can see progress (43 %)

Better communication in the administration structure needed (29 %)

6.1.3. Question 3: Public participation

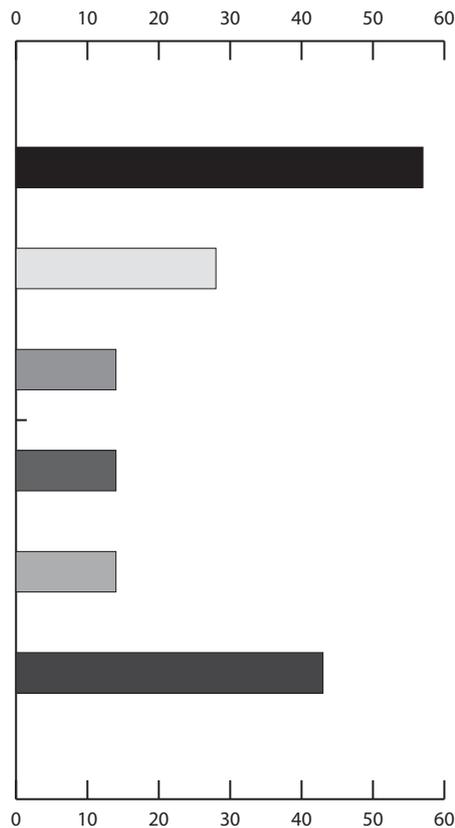
Question asked:

- What experience does your organisation have with participation in decision-making?

Most NGOs claim to have participated in all decision making whenever an opportunity has provided itself (in their fields of interest). A vast majority do have experience with the Environmental Impact Assessment process and many of them have experience with public participation in other processes, like spatial planning or granting environmental permits. . It is surprising that none of the respondents have participated in procedures such as issuing environmental permit, zoning or construction permitting, which are among the most common. Only one NGO took part in development of a new law and another in preparation of an official environmental strategy at a local level.

However, 30% of respondents feel that involvement of the public in decision-making on environmental issues is broadly regarded just as a formality by the state authorities and politicians alike. The biggest problem mentioned is that the offices often reject the comments of the public, but rarely explain why. Establishing clear rules for dealing with the comments is seen as a crucial step. Making public consultation more transparent would motivate the people thereby making the decision making process more effective.

NGO experience with participation



Environmental impact assessment (57 %)

Spatial planning (28 %)

Concession agreement (14 %)

Law preparation (14 %)

Local environmental action plan (14 %)

International project (43 %)

6.1.4. Question 4: Petitions

Question asked:

- What experience does your organisation have with petitions?

Most NGOs (5 out of 7 respondents) do have practical experience with petitions and (4 out of 5) consider them as a good tool for informing and involving public in campaigns for better environment. At the same time, petitions are considered to have very limited legal relevance; they serve much more as a lever of public pressure than real legal tool. Respondents are quite sceptical about the effectiveness of petitions in relation to their objectives.

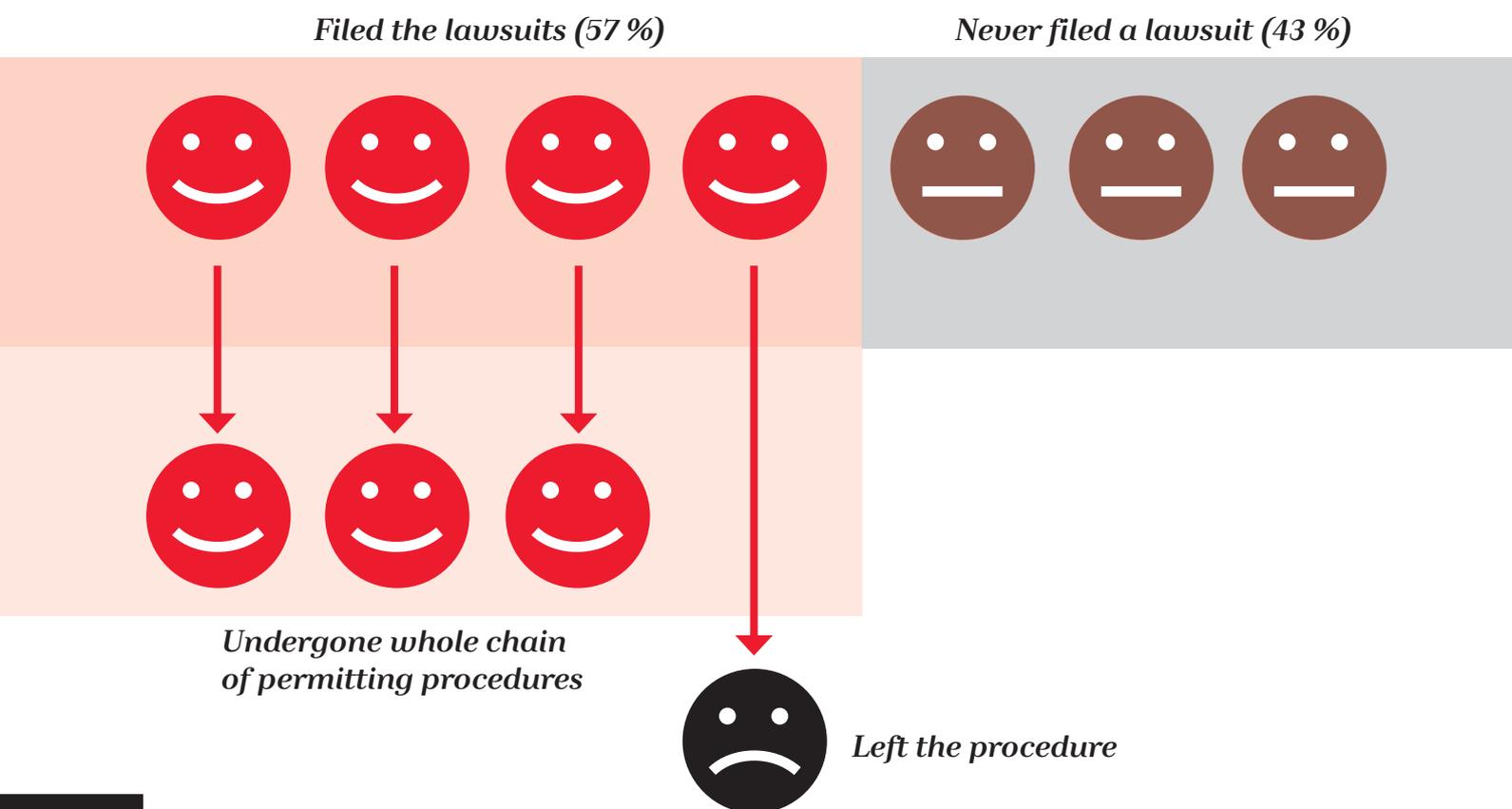
Question 5: Access to justice

Question asked:

- What experience does your organisation have with access to environmental justice (appeals, lawsuits)?

The survey showed that legal proceedings definitely do not belong among commonly used tools by the civil society. Only 4 out of 7 respondents stated they have ever filed a lawsuit against administrative decisions or damage to the environment. Five respondents are convinced that the right for justice is generally not used much due to complicated and lengthy procedures and lack of consultancy capacity (i. e. lawyers experienced in procedural law and solving environmental cases. It is evident from the answers that NGOs understand the significance of filing lawsuits as a possible way of problem solving; having said that, they seem to underestimate the power of the judicial system. This attitude may spring from the distrust of the courts, which are suspected of corruption and being dependent on political and economic interests. Finally, there are some successful examples of litigation and Aarhus Centres Network could play an essential role in promoting justice to the society at large.

Experience with access to justice



7.

Aarhus Convention Compliance Mechanism

Article 15 of the Aarhus Convention on review of compliance, requires the 'Meeting of the Parties'(MOP) to establish "optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of the Convention". First MOP was held in 2002 in Italy, where the first Compliance Committee¹ was elected.

Members of the ACCC are proposed by the Parties and are elected by the MOP, but serve in a personal capacity and do not represent the countries of which they are nationals. For the period from 2014-2017, the Committee consist of 9 members. Sessions of the Committee are in general opened for the public while experts and representatives of the state or civil society are often invited to provide the Committee with their knowledge or explanations.

The compliance mechanism may be triggered in four ways:

- (1) A Party may make a submission about compliance by another Party;
- (2) A Party may make a submission concerning its own compliance;
- (3) The secretariat may make a referral to the Committee;
- (4) Members of the public may raise issues concerning a Party's compliance with the convention.

In addition, the Committee may examine compliance issues on its own initiative and make recommendations; prepare reports on compliance with or implementation of the provisions of the Convention at the request of the MOP; and monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention.

¹ The Compliance Committee: <http://www.unece.org/env/pp/cc.html>

7.1

Power of the compliance mechanism

When the Committee receives communication for not complying with particular Aarhus Convention provisions of a certain State, it firstly reviews the claim and investigation (with varying length and procedure) starts. Within the process, the ACCC certainly asks the State concerned for its explanation.

At the end of investigation, the Committee issues a decision with a detailed explanation. The findings and recommendations on the compliance by individual Parties are submitted to the MOP (held every 3 years) for endorsement. If a Party was found in non-compliance by the Committee, the MOP may adopt a decision concerning that Party's compliance. In cases where the some country consistently fails to improve the situation and solve its non-compliances, the MOP can issue a "warning". That is the most powerful tool to punish careless governments – because the Aarhus Convention does not include any mechanism of financial sanctions and its adoption is voluntary. Anyway, knowledge of a lack of democratic culture and violations of international obligations in the public domain often lend a bad reputation due to which countries keep striving to avoid such controversies.

7.2

ACCC work in figures

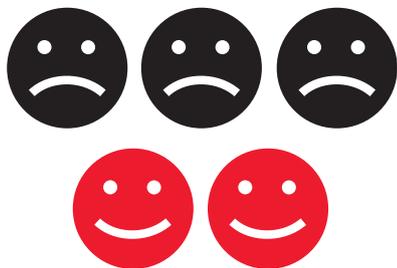
Since its establishment, the Committee has reached a number of findings with regard to compliance by individual parties. The Committee's considerations with regard to specific provisions of the Convention have been compiled in a brochure (first and second edition) issued by Resource & Analysis Centre "Society and Environment"².

It is no secret that a major part of the raised issues is submitted by NGOs. The figures largely show level of activism in particular countries – and the difference is quite startling. Although the United Kingdom leads the chart (17 communications), most countries remain with only few cases (Kazakhstan – 5, the Czech Republic – 3, Turkmenistan – 1, Croatia – 1).

² <http://www.rac.org.ua/en/activities/publications/cc-case-law/>
<http://www.rac.org.ua/en/activities/publications/cc-case-law-2nd/>

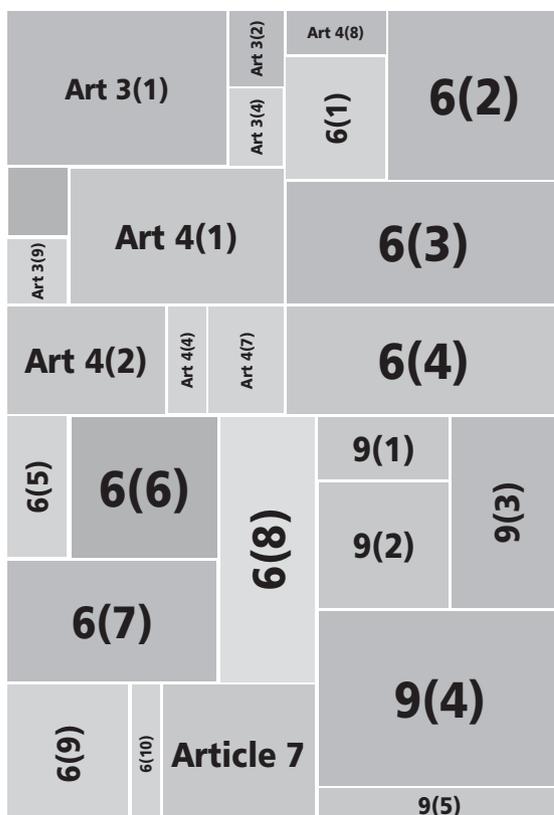
Findings adopted

Number of findings adopted by the Compliance Committee



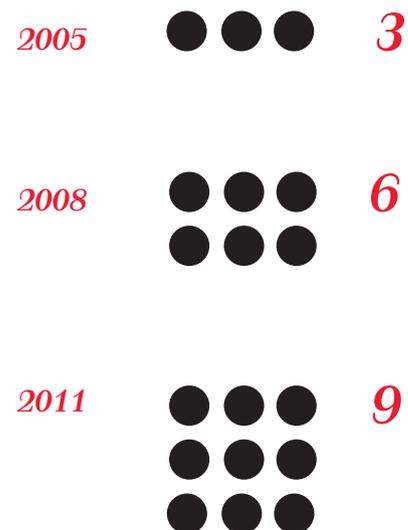
3 out of 5 found non-compliance

Articles of the Convention found in non-compliance to date



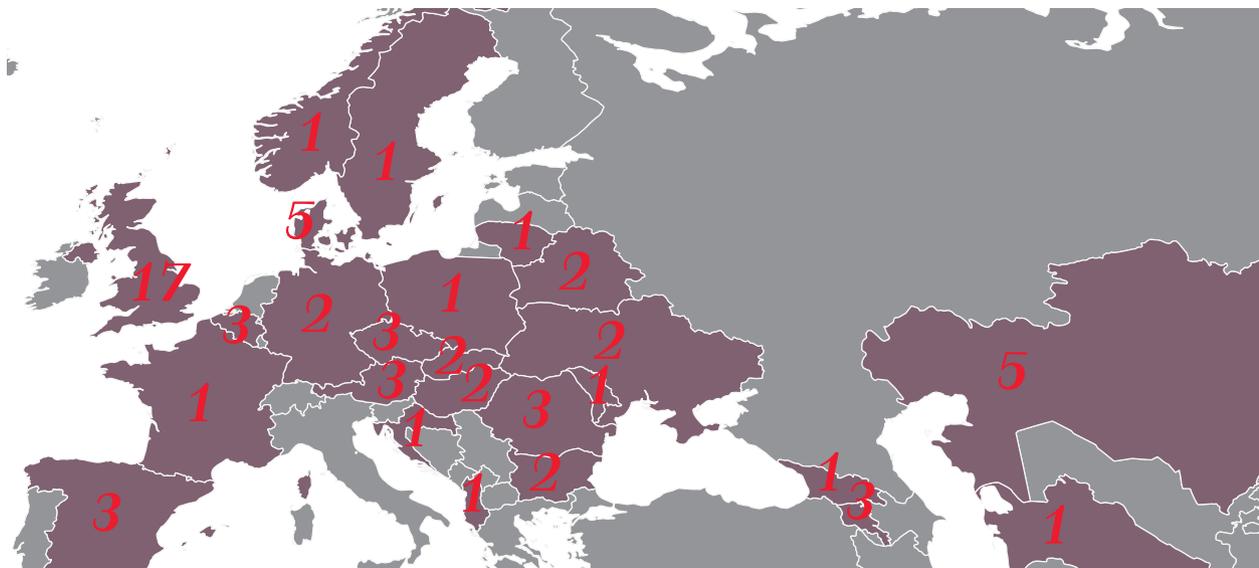
Decisions

concerning compliance by individual Parties adopted at each MOP:



Which Parties' compliance has been considered so far?

The Compliance Committee has considered admissible communications towards the following countries.



7.3

BiH and Compliance Mechanism

Although we revealed large violations or disregard of the Aarhus Conventions provisions in Bosnia and Herzegovina that are described in this study, no communication has been submitted from the country. It is especially surprising, because the NGOs are fully aware that behaviour of their state does not comply with the international obligations of the country. Anyway, BiH is still waiting for its first communication.

8.

Conclusions and recommendations

8.1

Stakeholders



Society



Administration



Legislation

Legislation

Essentially, provisions of the Aarhus Convention “on environmental democracy” are well transposed in national law. Although Bosnia and Herzegovina is not an EU member, its legislation copies Acquis Communautaire and therefore is quite similar. It in itself helps to transpose the Convention, which is integrated in the EU legal framework. One of biggest threats for the period of “waiting for accession” represents international economically motivated agreements lacking environmental and social aspects – namely The Energy Treaty being in force until 2026. On one hand, it supports transposition of part of EU legislation (e. g. EIA Directive), on the other hand, some important regulations are omitted (e. g. IPPC Directive). BiH nowadays really serves as an extraction and (dirty) production base of foreign or multinational corporations that benefit from industrial tradition

and cheap labour, but misuse proximity to the EU together with redundancy to follow strict EU standards. At the same time, adoption of some important regulations was incomprehensibly postponed – namely Long-range Transboundary Air Pollution Convention and EU Directive on Integrated Pollution Prevention. Transposition of regulations for protection of the environment must not be neglected.

Administration

Complex and ineffective state administration continues to be a persistent, well known and crucial problem. Authorities usually keep tossing issues like hot potatoes, and nobody feels responsible. An unstable political situation deepens the problem. Citizens do not understand functions of different offices and are often rejected. Our research revealed alarming levels of ignorance of the 'Free Information Act' and even more startling was the lack of information which authorities use, collect and create. It raises doubts over their competences and a question how can they ever work properly. BiH does not have enough resources for so extensive state bureaucracy, and many agendas are personally and financially underestimated. For example, there are 14 different ministries for environmental protection in the country with different, but overlapping jurisdiction. According to the IMF, the total expenditure for the public sector in 2014 amounted to 6.145 billion BAM (about 3 billion euro) which equals 23% of total GDP. Practical activity of the state authorities considerably differs from what the law states: Deadlines are often not respected, interests of different stakeholders are not treated equally, and nobody stimulates public involvement in the decision-making process. The country suffers from widespread corruption. Ability and willingness to enforce the law and control compliance with valid decisions and regulations are very limited. Authorities most often start to act only in response to concentrated public pressure. To overcome this real paralysis of the state, radical transformation of the administration system seems to be necessary. Education of the officials and severe punishment of illegalities are logical parallel measures.

Society

Pollution levels and destruction of the environment is alarming. The number of participants during recent demonstrations for a clean environment proves that the people are not indifferent, but on the contrary very angry. A respectable 10 thousand people marched against pollution of the air by ArcelorMittal Zenica in 2012. In spring 2014, massive protests against two decades of political inertia engulfed most of the country, demanding ouster of compromised politicians. However, when it comes to use of legal instruments, the citizens remain surprisingly passive and resigned to their fate. Only few well-established NGOs have enough know-how and capacity to follow the events continuously, learn the procedures, participate in decision making and demand enforcing of the law. In the society prevails a feeling that solution is in sight but the people cannot affect the result. Anyway, examples of successful cases exist. It is the task of NGOs to promote them more widely and offer their fellow citizens hope and optimism. We noticed in our analyses that civil society sometimes wins environmental cases by using non-legal actions connected with public pressure. If they will complement their creative campaigns by legal tools, they could touch far greater heights.

8.2

Process



Justice



Participation



Information

Information

The fundamental problem is that the state does not operate integrated websites where interested public can find data on environment, plans, announcements, decisions, invitations for public hearings, etc. On-line sources function only in some regions, partly, and by far do not cover all important areas. One example for all: the Federal Ministry of Environment of FBiH created a database of pollution releases from about 300 industrial sources and the EU supported creation of public website by almost 2 million euro in 2009 – nevertheless, the information is still hidden from the citizens. Providing information on request (binding by law) is in a sorry state, although some authorities do provide the information with no restrictions and delays. Based on our indicative survey, we estimate that roughly 30% of the public institutions breach their obligation and do not respond to the citizens who raise questions. The system of sorting, filing and processing information in the state institutions seems inadequate. It is reflected by the fact that requested authorities are often not able to provide the information they should undoubtedly possess or have control over. The only recommended solution could be an immediate launch of on-line information sources and their gradual improvement and filling. Experience shows that websites are the cheapest and the most effective way to ensure information flow between the state and the citizens.

Participation

Comprehensive official data on intensity of public involvement in decision making procedures do not exist. Moreover, emerging bits of information are confusing. For example, Federal Ministry of Environment and Tourism of FBiH accepted 1,033 applications for environmental permits between 2004 and 2014. But Environmental Ministry of Zenica-Doboj Canton in FBiH performed only 5 public hearings between 2009 and 2014. These figures simply do not match. From available sources we can estimate that broader public participation is very rare. A common problem is the failure to inform the public in a timely manner about the ongoing administrative processes. Individual citizens participate only exceptionally, and the

tool is generally used only by NGOs. These are limited in territorial coverage, scope and topics, so many decisions are issued without any involvement of the public. It is even worse that the public is obviously invited in very advanced stages of the projects preparation, and comments come too late to be able to influence substantial issues. Authorities often refuse suggestions of the public, but they are not obliged by the law to explain their reasons. Such procedure undermines the trust of citizens towards the state and discourages people from broader participation. These issues need to be solved by amendment of respective legislations.

Justice

In comparison with the EU countries, litigation is an almost completely unused tool – although it is just court decisions which have power to decide who is right and radically change the situation. Official data does not exist. According to the OSCE report, in 2012, there were only 15 available cases of legal actions in administrative procedures in whole country, while comprehensive data for 2012 the same as for other years are not accessible. In post-communist countries of Central Europe such as the Czech Republic, it was mere judicial decisions that gradually managed to enforce the right to information and participation in decision making and improve the practice of the authorities. One of the crucial problems is lack of education on person's rights. Another serious problem is cost of producing evidence in litigation, as the courts accept only documents produced by certified experts. But the most important is that both NGOs and individual citizens should overcome their fear of courts and accept the lawsuits as another tool of their work. In coming years, civil society simply should take the path from dissent and protests to much more active use of existing legal tools and judicial protection of its interests.

About us

Arnika – Citizens Support Centre (Czech Republic)

Arnika – Citizens Support Centre has many years' experience of promoting informational openness, supporting public participation in decision making and enforcing environmental justice. The Centre was established in 1996. We carry out public campaigns to promote positive legislative changes or to stop attempts to narrow space for public participation in decision-making. Every year, its experts help the civil society organizations and municipalities to solve tens of cases throughout the Czech Republic. The Centre also participates in international projects focused on environmental protection and strengthening implementation of Aarhus Convention in Central and Eastern Europe, Caucasus and Central Asia. Arnika is a member organization of The Green Circle – Association of NGOs of the Czech Republic, European Environmental Bureau and European ECO Forum.

Eko-Forum Zenica (Bosnia and Herzegovina)

The civic association Eko-Forum Zenica was established in 2008 as a reaction to the immense environmental pollution that resulted from the re-opening and purchase of the steelworks in Zenica city by the Mittal multinational consortium. The first actions of the association were intuitive but Eko-Forum gradually became professionalized through the years and gained the respect of citizens and State institutions. Today it has some 2,000 members and supporters with its office located in a representative space in the city centre. The members are specialized in various fields connected to environmental protection, such as health protection, air monitoring, waste management, water protection, information technologies and media. Eko-Forum is in regular contact with other nongovernmental organizations operating in the canton and other parts of the country.

*Want to know more?
Follow us...*

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Front Cover Photos:

December 2014 Demonstrations organised by Eko-forum Zenica. Eko-Forum Zenica. About 400 people showed support to the legal actions against ArcelorMittal.

Middle right: Martin Plocek, Arnika – Zenica Steelworks.

Top, middle left, bottom: Adnan Dzonlić, Eko-forum Zenica

Back cover Photos:

River Sana, a future Nature Park where the campaign of the Centre for Environment is focused both on nature protection and stopping the plans for the construction of a small hydro power plant close to the spring of the Sana river.

Top: Mićo Malinović, CZZS / Bottom: Martin Plocek, Arnika

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