



Environmental democracy in Bosnia and Herzegovina

Aarhus Convention shadow implementation report
Bosnia and Herzegovina
2021

ENVIRONMENTAL DEMOCRACY IN BOSNIA AND HERZEGOVINA

Aarhus Convention
shadow implementation report
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TRANSITION

List of abbreviations:

BD	Brčko District
BiH	Bosnia and Herzegovina
CZZS	Center for Environment
EIA	Environmental impact assessment
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
IPPC	Integrated Pollution Prevention and Control
NGO	Non-governmental organization
OSCE	Organization for Security and Cooperation in Europe
PRTR	Pollutant Release and Transfer Register
RS	Republika Srpska
SEA	Strategic environmental assessment

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English: <http://english.arnika.org/bosnia-and-herzegovina>

Bosnian/Croatian/Serbian: <http://eko.ba>, <http://aarhus.ba>, <http://rijekebih.org>

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INTRODUCTION

The second shadow report about the implementation of the Aarhus Convention in Bosnia and Herzegovina (2021) is the result of a joint work of Czech NGO Arnika, the Center for environment from Banja Luka and association Resource Aarhus Center in BiH¹, which together strive for environmental preservation in Bosnia and Herzegovina. The report follows in parallel the fourth national Report on the implementation of the Aarhus Convention in Bosnia and Herzegovina for the period 2017-2020 and from the viewpoint of organisations working in the field shows the application of the Aarhus Convention in practice. This report complements the state of the environment as presented by the authorities in Bosnia and Herzegovina, providing an overall picture of the application of legal regulation and relations of various governmental levels towards citizens and civil society organisations in an effort to protect the environment.

Thanks to close co-operation of the civil society organisations, a major contribution to the making of this report was provided by environmental associations of the EkoBiH network and the Coalition for the BiH river protection², as well as individuals from Bosnia and Herzegovina and the Czech Republic who contributed to it with their own expertise. Information was also obtained from institutions at state levels, namely from judicial and executive authorities. Data for 2017-2020 produced within the scope of work of civil society organisations and authorities in Bosnia and Herzegovina were also used in this report.

The concept of this report is set out differently in comparison to the National report accompanying the implementation and application of each article of

the Aarhus Convention to the domestic legislation. By this report civil society organisations are emphasising practical application of three pillars of the Aarhus Convention (*access to information, public participation in decision-making and access to justice*), with specific examples of violations and non-application of the law. The report also incorporates cases of persecution of activists since such government's treatment of citizens has been lately occurring on a regular basis. The report is partly based on the implementation of the law during the state of emergency in Bosnia and Herzegovina declared due to COVID-19.

Although much of the Aarhus Convention has been implemented through domestic legislation – environmental protection laws, the same problems that were present in practice and application of the Convention still arose during the making of the first shadow report. Under different influences, whether political or economical, the application of the Aarhus Convention is still lagging behind looking at those 20 years that have passed since the law on freedom of access to information at all levels had been enacted. Ignorance and the lack of capacity of state clerks in the course of access to information procedures, inadequate advertising in public audit procedures, and protracted judicial and administrative proceedings, and the lack of coordination between municipal, city, cantonal and entity authorities are just some of the hindrances that have been continually repeating year after year. Certainly one of the biggest deficiencies in terms of access to information and information transparency is the absence of a pollutant register, which is hindering progress in the field of environmental preservation. This report points to all these long-observed problems.

¹ Arnika Association (<http://english.arnika.org>), CZZS: Center for Environment (<http://czzs.org>), Udruženje Aarhus Centar u BiH (<http://aarhus.ba>).

² Rijeke – BiH (<http://rijekebih.org>), Ekobih (<http://ekobih.ba>).

ADMINISTRATIVE AND LEGISLATIVE FRAMEWORK

1) Administrative framework

Bosnia and Herzegovina is a federation with a complex governance structure composed of two entities (Republika Srpska, Federation of Bosnia and Herzegovina) and one district (Brčko District). Republika Srpska is an administrative unit, divided into 64 municipalities or cities. The Federation of Bosnia and Herzegovina consists of 10 cantons and is divided into 79 municipalities. Each administrative unit, whether an entity, district or canton, has its own executive authority (government), which has an administration body responsible for environmental issues.

Institutions in charge of environment

Environmental matters in Bosnia and Herzegovina are within the competence of different institutions. Agenda of each institution is determined by environmental protection laws and preservation and natural resources use regulations. Given the complicated administrative division, there are 12 ministries responsible for environmental protection in Bosnia and Herzegovina, 4 agencies dealing with water use and protection, and several dozen ministries that are indirectly linked to environmental protection, preservation and natural resources use. Such a complex apparatus suffers from frequent slips and oversights that are directly reflected in the civil sector work on environmental protection. As each administrative unit (canton, entity) has its own environmental regulation, Bosnia and Herzegovina features a plethora of laws governing (directly or indirectly) the environment area. Laws and standards are interpreted

differently, thus creating legal uncertainty for civil society organisations in exercising rights under the Aarhus Convention.

2) Legislative framework

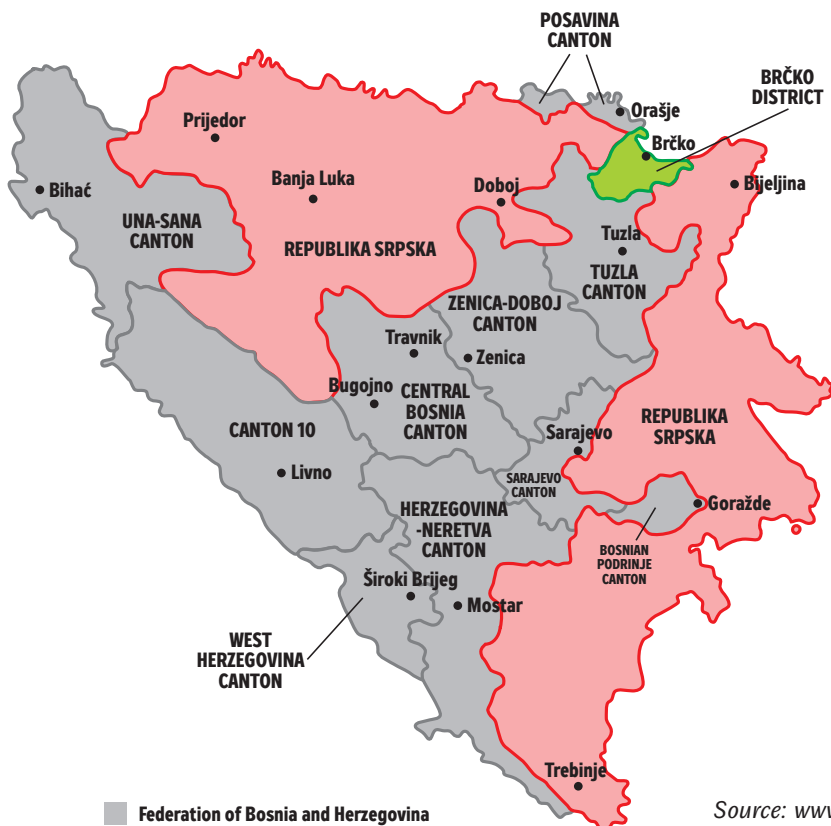
Several sets of environmental laws (water, air, chemicals, waste, etc.), whose alignment with European directives is expected in the upcoming period, as it was described in the first shadow report,³ are already being implemented in Bosnia and Herzegovina (its entities and Brčko District) as a catalyst playing a key role in preserving the environment. In this field, civil society organisations are actively involved in practical implementation of all three pillars of the Aarhus Convention, by informing authorities of their observations and, based on that experience, suggesting improvements in practice and procedure.

What is new?

The year 2020 and the first quarter of 2021 were marked by the adoption of amendments to the Environmental Protection Law in RS ("Službeni glasnik Republike Srpske", No.70/20) and the enactment of the new Environmental Protection Law in FBiH ("Sl. novine FBiH", No.15/2021). These legislative changes led to further implementation of the Aarhus Convention into domestic legislation, mostly as regards the application of the second pillar – public participation in environmental decision-making. Both laws have gone through the necessary procedure for public participation by comments, opinions and suggestions on draft laws and proposals, thus providing transparency in the adoption of a respective regulation.

³ Arnika, Center for Environment, Aarhus Convention Implementation Report 2017, available in English and Bosnian at <https://unece.org/unece.org/environment-policy/public-participation/2017-reports-international-regional-and-non-governmental-organizations>

Administrative map of BiH



Source: www.wikipedia.org

The proposal for amendments to the Environmental Protection Law of RS was ready for adoption at the Republika Srpska National Assembly in February 2020. However, due to COVID-19 the law was passed in July 2020. In the drafting process and later by giving propositions, civil society organisations, gathered around the Eko BiH network, actively made their contributions through the Banja Luka Center for Environment by engaging in suggestions and opinions.

On the contrary, the adoption of the Environmental Protection Law of FBiH lasted seven years because, starting from 2014, the Environmental Bill of the FBiH had been 'trapped' in a very slow legislative procedure of the Parliament of the Federation of Bosnia and Herzegovina.

In September 2019, on behalf of the Eko BiH Network, the associations Aarhus Center Sarajevo in BiH, the Center for Environment and the Center for Ecology and Energy, as part of the Eko BiH Project, launched the Initiative for the adoption of the FBiH Environmental Bill. The initiative consisted of collecting signatures from the public in Sarajevo, Zenica, Kakanj, Tuzla, Jablanica and Mostar. More than 1,000 people signed, which only confirmed that better environmental protection in BiH is much needed. After the initiative was implemented, at the end of September 2019, during the fifth regular session of the FBiH House of Representatives, FBiH Environmental Bill was enacted. However, even after numerous reminders by the Eko BiH Network during

Institutions in charge of environmental decision-making

Bosnia and Herzegovina	Republika Srpska	Federation of Bosnia and Herzegovina	Brčko District
Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina (BiH MoFTER)	Ministry of Urban Planning, Construction and Ecology	Federal Ministry of Environment and Tourism	Department of Spatial Planning and Property-Legal Affairs
Bosnia and Herzegovina Authority for Plant Health Protection	Ministry of Agriculture, Forestry and Water Management	Federal Ministry of Water, Agriculture and Forestry	
Veterinary Office of Bosnia and Herzegovina (BiH VO)	Ministry of Health and Social Welfare	Federal Ministry of Health	
Agency for Statistics of Bosnia and Herzegovina (BHAS)	Ministry of Energy and Mining	Federal Ministry of Energy, Mining and Industry	
Ministry of Communications and Transport of Bosnia and Herzegovina (BiH MoCT)	Ministry of Transport and Communications	Federal Ministry of Transport and Communications	
Inter-entity body for environment	Ministry of Trade and Tourism	Federal Ministry of Urban Planning	
Inter-Entity Water Management Corporation Advisory Commission	Fund for Environmental Protection and Energy Efficiency of the Republic of Serbia	Federation of BiH Environmental Protection Fund	
	Republic Hydrometeorological Institute	Federal Institute for Hydrometeorology	
	Public waters of Republika Srpska	Sava River Basin Agency	
	Republic Institute for the Protection of Cultural, Historical and Natural Heritage	Adriatic Seema Water Agency	
	Local administrative units	Federal Bureau of Agropedology	
	City Environmental Departments	Cantonal Ministries responsible for environment and water in 10 cantons of the Federation of BiH	

Basic laws applied in the field of environment

a) Republika Srpska

Field	Law / By-laws
Concessions	Law on Concessions ("Official Gazette RS", No.59/13, 16/18 and 70/20)
Environment	Law on environmental protection ("Official Gazette RS", No. 71/2012, 79/2015, 70/20)
Water	Law on Waters ("Official Gazette" No.50/06, 92/09, 121/12)
Energy	Electricity Law ("Official Gazette", No.8/2008 - revised and reduced text, 34/2009, 92/2009 and 1/2011)
Construction	Law on Spatial Planning and Construction ("Official Gazette RS", No.40/2013, 2/2015 – decision of the Constitutional Court, 106/2015 and 3/2016 – corrigendum, 104/2018 – decision of the Constitutional Court and 84 / 2019)

b) Federation of Bosnia and Herzegovina

Field	Law / by-laws
Concessions	Law on Concessions of the Federation of BiH ("Official Gazette FBiH", No.40/02, 61/06)
Environment	Environmental Law ("Official Gazette FBiH", No.15/2021)
Water	Law on Waters ("Official Gazette FBiH" No.70/06)
Energy	Electricity Law ("Official Gazette FBiH", No.66/13, 94/15 and 54/19)
Construction	Decree on the United Methodology for the Preparation of Physical Planning Documents ("Official Gazette FBiH", No.63/04, 50/07)

c) Brčko District

Field	Law / by-laws
Concessions	Law on Concessions of Brcko District ("Official Gazette DB", No.41 / 06, 19 / 07.02 / 08)
Environment	Environment Protection Law ("Official Gazette DB" No.24/04 1/05, 19/07 and 9/09)
Water	Law on Water Protection ("Official Gazette DB", No.25/04, 1/05 and 19/07)
Energy	Electricity Law ("Official Gazette DB", No.36/04, 28/07, 61/10 and 4/13)
Construction	Law on Spatial Planning and Construction ("Official Gazette DB", No.29/08, 18/17, 48/18, 10/20, 29/20, 40/20)

2019 and 2020, the FBiH Parliament House of Peoples did not put the Bill on its agenda. For this reason, on 5 June 2020 (the World Environmental Day) as part of the project "Think of Nature!", the associations of Aarhus Center of BiH organised peaceful protests outside the FBiH Parliament building in order to call on delegates of the House of Peoples to finally put the Bill on their agenda and adopt it. During 2020, representatives of the associations of Aarhus Center of BiH in Sarajevo held a series of meetings with delegates of the House of Peoples to lobby for the adoption of the Bill. A peaceful gathering was also organised in early November 2020 as part of the "Eko BiH" project when a roundtable on the topic was organised: "Vote for the environment!" in order to remind citizens to take that into consideration while voting for those candidates who really intend to improve and protect the environment. Another peaceful gathering took place in December 2020 during the eighth session of the FBiH House of Peoples. At the end of January 2021, the FBiH Environmental Bill was unanimously adopted."

Amendments to the Republika Srpska Environmental Protection Law ("Službeni glasnik" 70/20)

The focus of the adoption of amendments to the Environmental Protection Law 2020 was on defining public participation in accordance with Article 4 of Aarhus Convention in terms of introducing the public to early stages of the legislative procedure. Amendments to the Law further elaborated on the public participation in the process of pre-assessing impact on the environment and approving the Environmental Impact Study, as well as in a small part on public participation in the issuance of an environmental license.

In addition to these amendments, it is important to point out that the Amendments to the Law abolished the participation of the Environmental Protection Association in the Advisory Council (*Article 32 of the Law, and Article 5 of legislative amendments thereof*) and shortened the deadline for commenting on the Environmental Impact Study from 30 to 15 days (*Article 70 of the Law, and Article 18 of legislative amendments thereof*). In addition, the new amendments specify that the rights under the third pillar of the Aarhus Convention (access to justice) can only be exercised by associations founded at least two years before (*Article 42 of the Law and Article 6 of legislative amendments thereof*), and the public was expelled from the process of delivering its opinion before deciding to make a strategic assessment (*Article 52 of the Law, and Article 7 of legislative amendments thereof*). The law also directly implements a particular provision of the Convention on Environmental Impact Assessment in a Transboundary Context, the so-called Espoo Conventions, relating to public participation in these procedures (*Article 79 of the Law, and Article 21 of legislative amendments thereof*).

As for the access to justice, the new amendments defined the right of the public interested to file an appeal or lawsuit in an administrative dispute, while according to the valid legal decision in a concrete case only representatives of the stakeholders are entitled to do so. These amendments removed the legal obstacle for associations to have access to justice, although in practice they have consummated this right in specific proceedings.

Under the new amendments, in the environmental impact assessment procedure and the process of approving the Environmental Impact Study, the Ministry has made an obligation to inform the public and the public interested through the website about initiated procedures, to allow participation of the public in-

Changes in environmental laws in Bosnia and Herzegovina

Aarhus Convention Pillars	Republika Srpska Environmental Law (Službeni glasnik RS 71/12, 79/15, 70/20)	Federation BiH Environmental Law (Službene novine 15/21)
I. Access to information		
Right to information about the environment	Article 35-39 of the Law	Article 38-39 of the Law
II. Public participation in decision-making		
1. Environmental impact pre-assessment procedure		
Public participation in decision-making – general provisions		
Informing the public and those interested in this question about the submitted EIA applications	Article 65, paragraph 4 and article 13 of the amendments to the Law	It is not directly prescribed, but Article 40 is applied.
Providing a copy of the EIA applications to the public interested	Not prescribed	Article 70, paragraph 1 of the Law
Revealing the EIA applications on the website	Article 65, paragraph 4 and Article 13 of the amendments to the Law	Not prescribed
Obligation to organise public hearing on the EIA applications and documentation and the possibility of submitting public opinions and	Article 65, paragraph 4 and Article 13 of the amendments to the Law	Article 70, paragraph 1 of the Law
Providing a Decision to the public interested that was part of the public hearing	It is not directly prescribed, but Article 62 applies.	Not prescribed
Publishing a Decision on the obligation to build an impact study on the Ministry's website	Article 66, paragraph 7 and Article 14 of the amendments to the Law	Article 72, paragraph 4 of the Law
2. Environmental impact assessment procedure		
Informing the public interested in the submitted Application for the impact study approval	Article 69, paragraph 3 and Article 17 of the amendments to the Law	It is not directly prescribed, but Article 40 is applied.
Handing in the electronic copy of the Study to the public interested and publishing it on the website	Not prescribed	Article 75, paragraph 2
Obligation to organise public debate, public view and the possibility of submitting an opinion	Article 69, paragraph 3 and Article 17 of the amendments to the Law	Article 76, paragraph 1
Publishing the notice about public debate on the Ministry's website after revealing it in the daily press	Article 69, paragraph 3 and Article 17 of the amendments to the Law	It is not directly prescribed, but Article 40 is applied.
Providing the Decision to the public interested that took part in the commenting	It is not directly prescribed, but Article 62 is applied.	Article 79, paragraph 3
Revealing the Decision of Study Approval on a website	Article 73, paragraph 14 and Article 20 of the amendments to the Law	Article 79, paragraph 4
3. Ecological Permission procedure		
Informing the public and the public interested of the submitted Ecological Permission Application in the daily newspaper – obligation of the Ministry	Article 88, paragraph 1 of the Law	Article 88, paragraph 1
Informing the public and the public interested of the submitted Ecological Permission Application through the Ministry's website – obligation of the Ministry	Article 88, paragraph 1 of the amendments of the Law	Article 88, paragraph 1
Informing the public and the public interested of the submitted Ecological Permission Application through the advertising panel – obligation of the local self-government unit	Article 88, paragraph 2 of the amendments of the Law	Not prescribed
Informing the public and the public interested of the submitted Ecological Permission application through the local government unit's website – obligation of the local self-government unit	Article 88, paragraph 2 and Article 24 of the amendments of the Law	Article 88, paragraph 2.
Obligation to organise public view	Article 88, paragraph 3 of the Law	Article 88, paragraph 3.
Submission of opinions, remarks and suggestions from the public interested	Article 88, paragraph 4 of the Law	Article 88, paragraph 4.
Placing an Ecological Permission draft on a website	Not defined	Article 88, paragraph 5.
Informing the public interested about the prepared Ecological Permission through the daily newspapers and on its website – obligation of the Ministry	Article 90, paragraph 4 of the Law	Not defined
Informing the public interested about the prepared Ecological Permission through the daily newspapers and on its website – obligation of local self-government units	Article 90, paragraph 5	Not defined
Giving Ecological Permission to an interested public involved in the commenting process	It is not directly prescribed, but Article 89 is applied.	Article 90, paragraph 1
III. Access to justice		
Right to file an appeal or lawsuit in an administrative dispute	Article 42, in addition of paragraph 3 of the amendments to the Law	Article 42

terested in the process of pre-assessing the environmental impact by organising public hearing and enabling comments of the interested public, as well as publishing the Decision on its website. The law does not contain a provision that defines precisely the way, in which the Decision on the mandatory environmental impact assessment and the Decision approving the environmental impact study should be provided to the public interested who participated in the public view so that they can exercise the right to remedies, and in this regard the general provisions of the Law on General Administrative Procedure should be applied (Article 62 of the Environmental Protection Law).

In the chapter, which regulates the process of issuing an Environmental License, the Law is determined to inform the public and the interested public about the initiated environmental licensing process through the Ministry's website and local self-government unit. The law does not contain a provision that defines precisely how environmental licenses are provided to the public interested who had participated in their procedures, and in this regard the general provisions of the General Administrative Procedure can be applied (Article 89 of the Environmental Protection Law). Description of these changes by articles is provided in table.

Environmental Protection Law of the Federation of Bosnia and Herzegovina ("Službene novine FBiH", 15/21)

The process from the draft to the adoption of a proposal lasted several years and involved many changes in order to eventually result in the enactment of the Law, which will largely implement the provisions of all three pillars of the Aarhus Convention. The Law described in detail the procedure of the environmental impact pre-assessment, approval of en-

vironmental impact study and process of the environmental permission issuance. The Environmental Protection Law (FBiH) largely monitors amendments to the Environmental Protection Law (RS), in terms of access to information, public participation in environmental decision-making and access to justice, with small differences that are mainly technical in nature.

Thus, the law does not recognize directly informing the public of the submitted Application for an impact pre-assessment, nor of the procedure for the Impact Study approval; for this reason the provision of Article 40 of the Law will be applied that defines public participation in the decision-making process. The law does not contain provisions about placing documentation on the website in the pre-assessment process due to public view, nor how to deliver the Decision to the interested public involved in the prior impact pre-assessment process, while for the approval process of the impact study it is prescribed to deliver the Decision.

The Law now contains provisions, which regulate more detailed public participation in the process of the impact pre-assessment, thus defining the submission of a copy of the Application to stakeholders, organising public view of the documentation with the possibility of giving an opinion and publishing the Decision of composing the impact study obligation on the website. In the process of assessing impact, the law prescribed submitting an electronic copy of the Impact Study to the interested public and its publication, the obligation to organise a public debate and public view with the possibility of commenting, the delivery of a Decision granting a study to the interested public involved in the procedure, as well as publishing the Decision of the study approval on website.

In the process of issuing environmental license, the public interested is informed of the submitted Application in the daily newspapers and on the web-

site, the draft Environmental License is placed on the website, and the Decision, as it was in the Approval process of the Impact Study, is being sent to the stakeholders who participated in the procedure. Description of these changes by articles is provided in table 2.

Conclusion

As to both Environmental Protection Laws one can say that they are in concordance with the provisions of the Aarhus Convention. Differences exist and they vary mainly around methods used to inform the public about initiated procedures, as well as around different definitions of the ministries' obligations. Nevertheless, compliance with all three pillars of the Aarhus Convention was achieved by adopting Amendments in Republika Srpska and by adopting the new Law in the Federation of Bosnia and Herzegovina, although it is not a real indicator of its implementation in practice. The difficulties in applying the Aarhus Convention that civil society organisations encounter in their work reflect the real state of affairs with the same problems repeated for many years, which will be explained more in the next chapter.

IMPLEMENTATION OF THE AARHUS CONVENTION PILLARS

Work analysis

For the purposes of data collection and preparation of the report, the Questionnaires attached to this Report were used. Questionnaires were sent to government bodies, i.e., courts, the Ombudsman in BiH, as well as to the networks of organisations dealing with the environment, i.e., the EcoBiH network and the Coalition for River Protection. Out of 30 questionnaires sent to those institutions, including BiH Ombudsman, answers were submitted by 9 institutions, and out of 9 inquiries sent to the courts in BiH, answers were submitted by two courts. From environmental associations, 9 responses were received, including Aarhus Centers in BiH (Banja Luka, Sarajevo, Tuzla and Zenica), which play a key role in environmental protection. The questionnaires requested information on the application of all three pillars of the Aarhus Convention in practice and they differed depending on whether they were sent to institutions, courts, the BiH Ombudsman or associations.

Questionnaires sent and received

Authorities	Number of sent questionnaires	Number of received questionnaires
Bosnia and Herzegovina	8	3
Republika Srpska	10	4
Federation Bosnia and Herzegovina	11	1
Brčko District	1	1
Courts in BiH	9	2
Total	39	11

In the following text, the application of all three pillars of the Aarhus Convention in domestic legislation will be briefly explained with a detailed analysis of the received data.

1) Access to information

In Bosnia and Herzegovina, environmental information can be obtained under the following two laws: The Law on Freedom of Access to Information⁴ provided access to all information for all natural and legal persons, regardless of the citizenship of a natural person/seat of the legal entity, without stating the reasons for requesting information. The requested information may refer to public bodies, namely executive, legislative, judicial,

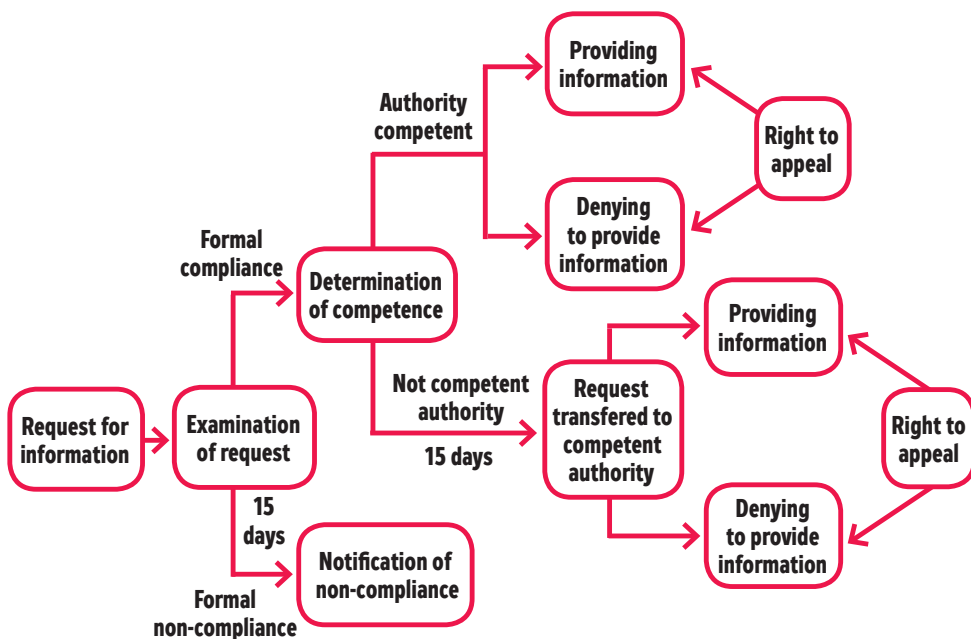
4 The Law on Freedom of Access to Information article 4: („Official Gazette of RS”, No. 20/01); („Official Gazette of FBiH”, No. 32/01, 48/11); („Official Gazette of BiH”, No. 28/00, 45/06, 102/09, 62/11, 100/13).

and bodies performing a public function in accordance with the law, to any other administrative body or legal entity owned or controlled by a public body.

The same provisions are included in the Laws on Environmental Protection⁵ with more detailed exceptions, under which information cannot be obtained. In addition to the general exceptions set out in the Freedom of Information Laws – exceptions to public authority functions, exceptions to confidential commercial interests and exceptions to privacy – the differences in the exceptions set out in

5 Law on Environmental Protection, Articles 64 and 80 („Official Gazette of RS”, No. 28/07, 41/08, 29/10) Law on Environmental Protection, Article 36 and Article 61 („Official Gazette of FBiH”, No. 33/03, 39/09) Law on Environmental Protection, Articles 59 and 66 („Official Gazette of BD BiH”, No. 24/04, 1/05, 19/07 and 9/09).

Access to information procedure



Source: HAVRÁNKOVÁ, Šárka. *Access to Information and Public Participation in Environmental Decision-Making in Bosnia and Herzegovina*. Prague: Arnika, 2016.

environmental laws relate to: confidentiality of trade-related information and industries and information on emissions that are important for the protection of the environment, if it is determined by a special regulation with the aim of protecting economic interests and intellectual property rights. If it determines an exception, the public body that has the information must carry out the procedure of examining the public interest, i.e. determining whether or not the publication of the information would be justified by public interest.

By submitting a request for access to information, whether according to the laws on freedom of access to information or the laws on environmental protection, an administrative procedure is initiated under the *lex specialis* provisions of those laws; thus, in the case of initiating this procedure, different deadlines for providing the requested information from the competent authorities apply.

These deadlines enable the information seeker to exercise their right of access to justice in a faster manner if the information is denied or they are not satisfied with it. In response to the competent authority, the dissatisfied party may file a complaint with the second instance body or initiate an administrative dispute, where procedures then continue to be conducted according to the laws governing general administrative proceedings and administrative disputes.⁶

⁶ Administrative dispute law BaH („Official Gazette of BiH“, No. 19/02, 88/07, 83/08 i 74/10) Administrative dispute law FBiH („Official Gazette of the Federation of BiH“, broj 11/05) Administrative dispute law RS („Official Gazette of RS“, No. 109/05 i 63/11) Administrative dispute law Brčko District BiH („Official Gazette of the Brčko District of BiH“, No. 04/00 i 01/01).

2) Public participation in decision-making

Public participation, as prescribed by the Aarhus Convention, refers to specific activities (Article 6), plans, programmes, policies (Article 7), preparation of executive regulations or generally applicable legally binding normative instruments (Article 8). All three referred articles stipulate that public participation must be ensured at an early or appropriate stage of the procedure when all options are still open. Thus, this regulation gives the public the opportunity to influence final decisions on environmental issues. In Bosnia and Herzegovina, i.e., its entities and the Brčko District, the Aarhus Convention has been implemented almost completely in relation to the decisions of the competent authorities according to the laws on environmental protection, so public participation is envisaged in the early stages of the Environmental Impact Study, and in the stages of approving the Environmental Impact Study and issuing the environmental permit. The public is also directly involved in the adoption of water acts according to the laws governing the field of water.⁷

The legislation of Bosnia and Herzegovina, the Entities and the Brčko District, does not omit the application of Article 7 of the Convention, which stipulated that the public must be involved in the early stages or when possible in the adoption of programmes, plans and policies. The application of this article is included in the adoption of strategies in the field of environment, through appropriate laws or bylaws, and citizen participation is prescribed when it comes to the adoption of spatial (planning) documentation.⁸ Unfor-

⁷ Water act, article 124 („Official Gazette of FBiH“ No. 70/06) Water act., article 130 („Official Gazette of RS“ No. 50/06, 92/09, 121/12).

⁸ Law on Spatial Planning and Construction, Article 47 („Official Gazette of RS“, No. 40/2013, 2/2015 – decision of the Constitutional Court, 106/2015

tunately, the application of this article is not adequately enabled in the adoption of concession policy strategies, thus preventing the direct participation of citizens in the creation of these policies, when it is still possible to influence government decisions at an early stage.

Drafting, proposing and enacting regulations (Article 8 of the Convention) also included public participation. The public is enabled to participate in the preparation of draft laws, for the adoption of which relevant ministries are responsible, and for the adoption by the same parliaments / assemblies of administrative units. The public is also allowed to participate in the drafting of bylaws prepared and adopted by the competent ministries or local governments. Certainly, in such situations there are exceptions that refer to matters of urgent nature, so the public is excluded from participation during the passing of laws that are adopted in urgent procedure, although the adoption of such laws requires public participation.

3) Access to justice

The judicial system in Bosnia and Herzegovina consists of a series of lower and higher courts that follow the administrative division of Bosnia and Herzegovina. In the field of environment, in accordance with the provisions of the Aarhus Convention, the second instance bodies (entity and cantonal ministries) are competent to decide on appeals of dissatisfied parties, as well as courts (district/ cantonal), before which an administrative dispute is initiated against government decisions upon the Request for access to information or in proceedings according

and 3/2016 – corrigendum, 104/2018 – decision of the Constitutional Court and 84 / 2019), Decree on the Unified Methodology for the Preparation of Physical Planning Documents („Official Gazette of the Federation of BiH“, No. 63/04, 50/07). Law on Spatial Planning and Construction, Article 37 (Official Gazette of BD No. 29/08, 18/17, 48/18, 10/20, 29/20, 40/20).

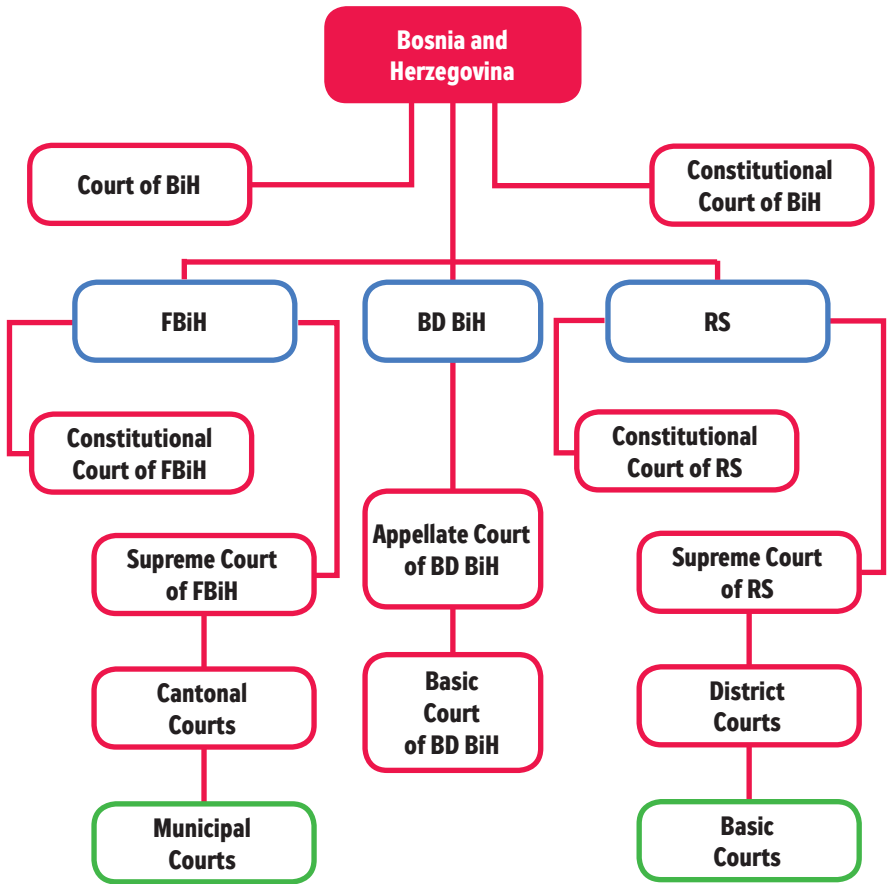
to the provisions of the Law on Environmental Protection.

The right to access to justice in environmental matters in Bosnia and Herzegovina is regulated in two ways. According to the current legal regulation, access to justice in administrative proceedings initiated by submitting a Request for Access to Information against an act of a government body. Another aspect of access to justice refers to the initiation of administrative disputes, filing lawsuits in administrative disputes and exercising rights in judicial – administrative supervision. According to the current regulation, an administrative dispute can be initiated after the completion of the administrative procedure initiated by the Request for Access to Information or counter-acts approving the Environmental Impact Study or issuing an Environmental Permit. Furthermore, it can be initiated against the decisions of the courts deciding in an administrative dispute; further use of extraordinary legal remedies, a request for extraordinary review of the court decision and a proposal to repeat the proceedings decided by the Supreme Courts are allowed.

I. Analysis of the answers to questionnaires sent to civil society organisations

The questionnaire for associations was conceived in relation to the practice gained so far, so it elaborated on the issue of access to information in terms of the number of sent, approved, partially approved, unanswered (silence of the administration) and rejected requests. The questionnaire further elaborates on the issue of public participation in decision-making, namely: participation in the procedure of approving decisions on environmental impact studies, the procedure of issuing environmental permits, the procedure of adopting spatial planning documentation and participation in other

Judicial system of BiH



Source: *Environmental Democracy: Limping Along*. Arnika, Eko-forum Zenica. Prague/Zenica 2015.

procedures important for the environment. The issue of access to justice refers to the data generated in the second-instance appeal procedure, thus requesting data on the number of appeals against decisions or silence of the administration, data on adopted appeals or information received, data on rejected appeals, ongoing appeals and the number of lawsuits filed in an administrative dispute. The issue of access to justice also refers to the data that arose in the initiated admin-

istrative disputes against the decision of the public body, the data on the adopted and rejected claims, and the data on the ongoing proceedings. The requested data also include the number of submitted requests for review of court decisions, the number of submitted proposals for retrial, the number of submitted complaints to the Ombudsman in BiH, as well as how many times the services of lawyers or attorneys were utilised.

a) Access to information

	Number of Request for Information sent	Information received fully	Information received partially	Administrative silence	Access to information denied	Appeals filed against the decision or against the administrative silence	Appeal upheld and information received	Appeal rejected	Appeal proceedings pending	Number of lawsuits filed in an administrative dispute
2017	83	62	7	4	1	6	8	1	0	0
2018	285	112	4	10	6	11	10	1		1
2019	225	143	41	16	20	59	53	1		
2020	360	296	24	56	4	25	22	3		1

If we look at the data obtained from the associations regarding the implementation of the first pillar of the Aarhus Convention (right to access information) we can see the real picture of the work of these associations in an effort to protect and preserve the environment. In the period from 2017-2020, the legal activity of the association grew every year, and the bodies responsible for providing information, according to the obtained data, showed a higher level of application of the competent laws and readiness to provide information.

Thus, in 2017, out of 83 requests, 62 requests were approved, while 7 information was partially approved with legal exceptions. In 4 cases, authorities did not provide any answer (silence of the administration), while in only one case the request was rejected. Similar situations were repeated in the following years; in 2018, 285 requests were submitted, of which 112 were approved in full, 4 in part, while in 10 cases the situation of silence of the administration arose, and 6 requests were rejected. In 2019, 225 requests were submitted, 143 received a response, 41 received a partial response, in 16 cases we found silence of the administration, while in 6 cases access to information was denied.

For 2020, which was the most active and also successful year in terms of responses received, out of 360 submitted requests, 296 requests were received, 24 requests for information were partially approved, while 56 cases resulted in administrative silence, and in 4 cases the request for access was rejected.

However, the data on appeals indicate that there is a relationship established between employees of individual institutions at all levels in Bosnia and Herzegovina and citizens' associations, in which employees misapply the law or for unknown reasons do not respond to requests for access to information. For this reason, associations are forced to exercise the right from the third pillar – the right to access justice, which is exercised under the provisions of other laws. In most cases, such a second-instance procedure is resolved favourably, because failure to provide information is legally unfounded, but the time of receiving information is prolonged, which is the consequence of inadequate training of officials.

Thus, in 2017, 6 appeals were filed in the second instance against the decision or in the procedure of silence of the administration, while in 8 cases the second instance body annulled the decision and

approved the information, and only in 1 case the appeal was rejected.

For 2018, it can be said that it was more active; 11 appeals were filed in the second instance against the decision or administrative silence, and in 10 cases the appeal was approved, while in 1 it was rejected.

A major turnaround in obtaining information occurred in 2019, caused by non-application of the law by officials;

in 59 cases an appeal was filed in the second instance against the decision or administrative silence, and in 53 cases the appeal was accepted, while in 1 case the appeal was rejected.

For 2020, 25 appeals were filed in the second instance against the decision or administrative silence, while in 22 cases the appeal was accepted and in 3 appeals it was rejected.

b) Public participation in decision-making

	Participation in drafting regulations at the level of BiH	Participation in drafting regulations, etc. at the level of RS / FBiH	Participation in drafting regulations, etc. at the cantonal level	Participation in drafting regulations, etc. at the city / municipal level	Participation in the procedure of approving the decision on the environmental impact study	Participation in the process of issuing an environmental permit	Participation in the procedure of adopting spatial planning documentation	Participation in another procedure important for the environment
2017	2	15	2	2	2	3	3	6
2018	0	5	1	10	1	5	2	2
2019	0	9	1	3	7	9	2	1
2020	1	19	4	3	6	21	2	10

As mentioned earlier, public participation in decision-making can be viewed in terms of specific activities, plans, programmes, policies and the preparation of executive regulations or generally applicable legally binding normative acts. The data obtained from the association speak of activism of the civil society, which is becoming more active every year, thereby influencing important decisions related to the environment.

In 2017, the civil sector participated in the drafting of regulations at the BiH level twice, while much greater activity was at the entity level; it was 15 cases, which is understandable given that the

area of environmental protection is within the competence of the entity. Much less public participation activity is recorded at the cantonal and city / municipal levels (2 cases only).

For 2018, it can be said that it was also inactive in terms of participation at the BiH level; while at the entity level 5 cases of public participation in drafting regulations were recorded, at the cantonal level there was 1, and the number of public participation at the city/municipal level increased to 10.

For 2019, it can be said that it was inactive at the BiH level in terms of public participation in the adoption of regula-

tions, but a large number of public participation was recorded at the entity level in 9 cases, while at the cantonal level only 1 case of public participation was recorded and at the city/municipal level there were 3 cases.

Although 2020 was a year, in which restrictive measures prevailed and a state of emergency was declared due to COVID-19, at the BiH level 1 public participation in the adoption of regulations was recorded, while at the entity level there were 19 cases, at the cantonal 4 cases, and at the city/municipal level 3 cases.

A similar situation occurred during public participation in projects, approval of a decision on environmental impact study and issuance of an environmental permit, which for the civil sector implies specific legal activity in a specific project, through public discussion and public insight.

Thus, in 2017, the public participated in 2 projects in the approval of the Environmental Impact Assessment Study (EIA) and 3 projects in the approval of the environmental permit, and in 2018 in only 1 project approval of the EIA, but in 5 approvals of the environmental permit. Over the next two years, activities in this field increased, so in 2019 the public participated in 7 procedures for approving the EIA and in 9 procedures for approving environmental permits, while in 2020 the public participated in 6 procedures approving EIA and in as many as 21 procedures approving environmental permits.

When it comes to the adoption of strategic documents, in 2017 the public participated in 3 procedures, and in the following years 2018-2020 in 2 procedures. In addition, the public participated in other environmentally relevant procedures: , In 2017, it was as many as 6 times, while this number decreases over the next two years; in 2018, it participated twice, in 2019 only once, while in 2020 this number increased to 10 public

participation in decision-making in other environment-relevant procedures.

Speaking of participation in drafting of laws, remarks, suggestions and opinions (comments) given by the civic sector, whether it is state or entity law, the practice is different. Sometimes it happens that certain comments are adopted, and the association that submitted them is not informed, and often such comments are rejected.

The practice of the Center for the Environment from Banja Luka (CZZS) shows that in 2017 comments were submitted on the amendments to the Law on Animal Welfare in BiH, but they were not answered. The final text of the law, however, took into account all the comments. The situation is the same at the entity level, so the response to the comments for spatial planning documentation at the entity level was received, where only 2 out of 19 comments were accepted and, for the other, 17 explanations were given that are not in line with the practice of responding to comments, but may be considered as rejected. Furthermore, 18 comments in the public review procedure for the impact study were answered in the form of clarification, but not in the form of acceptance or rejection. In the procedure of obtaining the environmental permit, 7 comments were submitted, to which no answers were received, but the procedure of issuing the permit was suspended.

The Center for the Environment further notes that in 2018, at the level of enactment of entity regulations, the comments of the Center for Environment were rejected in three cases, two fully accepted and one partially accepted. At the level of the city of Banja Luka, in the preparation of spatial planning documentation, the comments of CZZS were accepted in 5 cases, partially accepted in 6 and rejected in 8.

In 2019, five sets of comments related to entity regulations were submitted on

behalf of the Center for the Environment, but no response was received for any of them. In addition, comments were submitted on the spatial planning documentation at the level of the city of Banja Luka with one comment, which was partially accepted. In 2020, CZSS submitted a total of 29 comments on three regulations related to the entity level, of which 10 comments were accepted, 4 were partially accepted and one was rejected, while the remaining 14 comments were accepted by rejecting the adoption of the requested act. At the local level, one set of comments was submitted, which was partly taken into account.

The public not only participated in the procedures prescribed by law in relation to special activities, plans, programmes, policies and preparation of executive

regulations or generally applicable legally binding normative acts, but also expressed its position in the period 2017-2020 by other legally permitted means. Thus, the public put pressure on the authorities to give up on certain projects that are harmful to the environment, or by its participation it contributed to the promotion of the topic of environmental protection to the general public.

By organising civil protests, rallies, public roundtable discussions and other forms of expression of opinion and views, the civil sector has had a great impact on the general public, which is increasingly influencing the authorities at all levels. Thus, the association Eco Forum from Zenica in the period from 2017-2020 organised or participated in the following events and/or activities:

- Conference "Reduction of chemicals and pollution of drinking water sources in rural areas"
- Internet presentation at the "BH Diasporic Conference" held in Washington D.C., USA on the activities of the Eco Forum
- Presentation of a new analysis of environmental legislation and public participation in environmental decision-making (Arnika, OSCE)
- Participation in the street action "Climate Change Day"
- Participation in the protest rally of the inhabitants of Kruščica
- Organisation of a round table on "Energy poverty in BiH" Public forum on "The impact of air pollution on public health"
- Round table in Zenica on the topic "Environmental Impact Assessment" and legislation governing this area
- Presentation "Industrial air pollution in Zenica 1892-2018", at the Extended thematic meeting of the Committee for Energy, Energy and Environment of the Academy of Sciences and Arts of BiH (ANUBiH)
- Final conference of the Energy Poverty project Public lecture by US EPA experts on the topic – The impact of pollution on human health
- Presentation "Industrial pollution: problems and solutions"
- Participation in the work of the conference "Green City Action Plan" of the EBRD
- Participation in the OSCE Forum – Human Rights and Peace
- Participation in protests against industrial air pollution in Lukavac
- International Conference "Combating Air Pollution in Industrial Cities of Europe" organised by the Arnika Association from the Czech Republic, in Ostrava
- Protest rally entitled "Civil protests without Compromise Mittal Out the right to life"

- Participation in the working meeting of the regional network of ombudsmen in Banja Luka with the presentation "Environmental permits – (in) efficient state instrument"
- Presentation of the study "Analysis of the transparency of the polluter pays principle in FBiH"
- Workshop for journalists reporting on environmental issues
- Organisation of a public debate on the draft "Green City Action Plan for Zenica"
- Presentation of the top list of the biggest polluters in BiH, within the alternative register of polluters www.eko.ba
- Participation in the conference on protection against chemicals organised by the organisation Alhem in Belgrade
- Protest walk on 28 February 2020, which took place simultaneously in 9 Balkan cities
- Participation in the meeting on the implementation of the Economic and Environmental Dimension (EEDIM) and the Annual Coordination Meeting of the Aarhus Centers, which were held from 14 to 17 October 2019 in Vienna, Austria
- An agreement on the establishment of the Zenica Group for Ecological Dialogue was signed
- Presentation of the alternative report on the implementation of the Cantonal Environmental Action Plan (KEAP) of Zenica-Doboj Canton (ZDK)
- Creation of the web portal "www.eko-prava.ba" for legal assistance to users dealing with environmental protection
- Project cycle management training Performance "No ministers" in front of the Ministries of Agriculture, Forestry and Water Management of Zenica-Doboj Canton
- International environmental action Eco Kids Support "United Balkans for Clean Air" media campaign
- Organisation of a round table "Environmental Center ZDK".

In modern forms of communication, associations, the work of which relates to the environment, use various methods of informing the general public. The association CRVENA from Sarajevo, for example, with the aim of timely informing the public and monitoring participatory processes in the city of Sarajevo, worked on continuous monitoring of local government units, which made decisions related to the change of spatial planning

documentation; recorded and published audio recordings from participatory events in order to provide access to information to all who could not be present. Also, they did short blog reviews from the sessions so that citizens could more easily follow the decisions made at the sessions of the City Council of the City of Sarajevo, among which there are often topics that are closely related to a healthy environment.

c) Access to justice

	A lawsuit was filed against the decision of the public body in an administrative dispute	The claim was upheld	The claim was denied	The lawsuit is pending	A request was submitted for an extraordinary review of the court decision	A motion to reopen the proceedings was filed	Complaint filed with the institution of the Ombudsman in BiH	Services of lawyers / attorneys used
2017	4	4	1	2	0	0	8	3
2018	3	1	0	1	0	0	10	0
2019	4	2	3	1	1	2	52	0
2020	21	4	1	15	2	2	22	

The legal activities of environmental protection associations have been on the rise since 2017 and it is likely they will soon become a serious corrective factor for public authorities in the application of the right to access justice. Thus, in the period from 2017 to 2019, an average of 4 lawsuits were filed, and in 2020 this number increased to 21. The number of accepted and rejected lawsuits also varies: in 2017 four lawsuits were accepted and one lawsuit was rejected, and in 2018 one lawsuit was accepted, while none was rejected. However, as far as ongoing proceedings are concerned, the situation is different: in the period from 2017 to 2019 there were on average 2 ongoing proceedings, in 2020 there were as many as 15 ongoing proceedings.

There were no extraordinary legal remedies against court decisions (request for extraordinary review of the court decision and proposal for retrial) filed in the period 2017-2018, while in the period 2018-2020 a total of 7 extraordinary legal remedies were filed. When it comes to complaints to the Ombudsman in BiH, they grew significantly from year to year: in 2017 there were 8 complaints, in 2018 10 com-

plaints, and in 2020 this number grew to 52 complaints. Considering the existence of Aarhus Centers in BiH, legal services were requested only 3 times in 2017.

II. Analysis of the answers to questionnaires sent to authorities

The questionnaire sent to the institutions contains elaborated questions about implementation of all three pillars, so in the matter related to access to information, the number of received, approved, partially approved and rejected requests was asked. The questionnaire also inquires about the required data related to the development and adoption of strategic documents and specific projects, thus requesting data on public participation in the development of regulations relevant to the environment, and data on public participation in approving the Environmental Impact Study and issuing an Environmental Permit.

a) Access to information

	Request for access to information received	Information provided fully	Information provided partly	Request denied	Request postponed
2017	12	12			
2018	26	25	1		
2019	49	46	3		
2020	34	33	1		
Ukupno	121	116	5		

According to the data obtained from the institutions, it can be concluded that the first pillar of the Aarhus Convention (access to information) is being implemented in full, and that there are no significant deviations from the application of the law. Out of a total of 121 requests for access to information sent, in 116 cases the information was approved in full, while in five cases the information was approved in part. However, the data obtained from the institutions do not show the real situation in practice, because the numbers given here are much higher. For this reason, this analysis cannot be realistically presented, because the institutions, by not responding to the questionnaires, withheld the data that are relevant for this report.

b) Public participation in decision-making

According to the data obtained from the institutions, public participation was most significant during the adoption of certain laws and bylaws. Given the above inactivity of institutions in cooperation with the civil sector, the data obtained mostly relate to the water sector, i.e., public participation in decision-making related to water.

According to the information received, the public in the Republika Srpska

participated only in the adoption of the Strategic Environmental Assessment in 2017, while in the Federation of Bosnia and Herzegovina, public participation in this sector was much more intensive. In 2017, the public participated in the development and adoption of Amendments to the Law on Waters, and in the procedures for adopting a strategic environmental assessment of Water Management Plans (2016-2021) for the Sava River Basin and the Adriatic Sea (implemented in 2018); public participation in the procedure of preparation of the Draft Rulebook on Amendments to the Rulebook on the Manner of Determining the Boundary of a Water Resource and on the Procedure for Determining the Belonging of a Land Plot to a Public Water Facility; the procedure of drafting the rulebook on the conditions to be met by the facility and place for collection and harmless destruction of animal carcasses, confiscations and products of animal origin intended for utilisation and means of transport intended for their collection and transport. For 2019, we also monitored activities related to public participation: public participation in drafting of the rulebook on the minimum content of the general act on maintenance, use and monitoring of water bodies; in 2020, despite the measures in force due to COVID-19, several consultations were held with the public in

the process of preparation on the issue: Regulations on the methodology for determining the lowest basic price of water services in the Federation of Bosnia and Herzegovina; Ordinance on the manner of calculation, procedure and deadlines for calculation and payment and control of settlement of obligations on the basis of general and special water charges; Ordinance on bathing areas and criteria for determining the quality of bathing water; Ordinance on amendments to the Ordinance on environmentally acceptable flow; Ordinance on amendments to the Ordinance on the content, form, conditions, manner of issuance and archive of water acts.

III. Analysis of the answers to questionnaires sent to courts

The questionnaire sent to the courts focuses on the right of access to justice, therefore, all the information requested relates to the dismissed proceedings by a lawsuit against the decision rejecting the request for access to information, lawsuit against the decision on preliminary environmental impact assessment and the decision on approval of environmental impact studies, and a lawsuit against environmental permits. In addition, data were requested on the submitted proposals for the reopening of the environment relevant procedure, and data on the submitted requests for extraordinary review of the court decision important for the environment. With regard to the outcomes of the initiated proceedings, data on lawsuits were requested, i.e., lawsuits that were accepted, rejected, and ongoing proceedings.

a) Access to information

	Lawsuits against a decision denying a request for access to environmental information	Lawsuits against decisions on preliminary environmental impact assessment	Lawsuits against the decision approving the Environmental Impact Study	Lawsuit against Environmental Permit	Proposal to repeat the procedure	Request for extraordinary review of a court decision	Lawsuits upheld	Lawsuits dismissed	Lawsuits postponed	Procedure suspended	Pending
2017				6		6					2
2018			1	11	1			1		1	10
2019			1	3						3	4
2020				10		2	1		2		9

The questionnaire sent to the courts contains all the questions relevant for their decision-making, on the basis of which a conclusion should be made on the state of applying access to justice. However, as with the institutions, the courts generally did not show a sufficient level of cooperation with the civil sector to present a realistic overview of their activities in this report. For that reason, the data obtained do not represent an accurate situation in the field of judiciary when it comes to the implementation of the third pillar of Aarhus Convention. The data obtained contain the response of only one court that sent its answers in a timely manner, while the other court, from which the answers were obtained, denies the presence of initiated disputes.

IV. Analysis of the answers to questionnaires sent to ombudsman of BiH

In addition to these two questionnaires sent to the authorities (institutions and courts), for the information requested from the Ombudsman in BiH, a special questionnaire was made requesting data on received requests for access to information, received complaints related to access to information, complaints received related to environment, the number of recommendations and examples, and the number of observations of this institution. When it comes to the implementation of the second pillar, public participation in decision-making, data on public participation in the development of regulations relevant to the environment and the procedure for approving the issuance of approvals by local self-government units were requested.

The role of the Ombudsman in BiH is defined by the laws on freedom of access to information. The scope of Ombudsman's competence comprises: *compiling and submitting information, such as guides and general recommendations related to the*

implementation and application of the Law on Freedom of Access to Information; inclusion in the annual report of a special part related to its activities; proposing instructions on the application of this law to all competent authorities. In addition, any party dissatisfied with the provision of the requested information or such a procedure being protracted may file a complaint with the Ombudsman in BiH for (human) rights violations.

Regarding the work of the Ombudsman in BiH for the stated period of requesting information 2017-2020, the institution received a total of 62 requests for access to information, 1094 complaints related to access to information, and 62 complaints related to the field of environment.

Given that the decisions of the Ombudsman in BiH are not binding (they are considered recommendations or observations), this institution has been active in cases related to the environment, i.e. proactive transparency in terms of providing information regarding the asbestos removal process or slag dump planning, and a special recommendation on proactive transparency was issued regarding the construction of block 7 in Tuzla. All previous activities related to access to information are included in the Special Report on Access to Information.⁹

V. Summary of analysis

The Aarhus Convention in Bosnia and Herzegovina is implemented directly through two sets of laws: laws on freedom of access to information and laws on environmental protection. Both sets of laws began to be applied in practice almost simultaneously and the application thereof 20 years later is yet to reach full capacity. The problems that arose in the beginning are still present now, and

⁹ Special Report on Access to Information of BiH Ombudsman, available in Bosnian at: https://www.ombudsmen.gov.ba/documents/obudsmen_doc2020020515415139bos.pdf

the efforts that are being made to correct the observed irregularities are still insufficient. Twenty years into the enactment and various influences including lobbying are still present under the auspices of the policy pursued, which hampers environmental protection efforts. However, the pressure exerted by the European Union on the authorities in Bosnia and Herzegovina shows that there is progress, albeit slow.

1) Access to information

Each of the pillars of the Aarhus Convention had its own period of maturity; thus, in exercising this public right the right to access information was the first civil servants encountered, when the civil sector proved to be an important corrector of the observed irregularities in the work of public authorities. Today, laws are applied mainly as prescribed, with the exception of bodies that misinterpret the law in providing answers to access to information. These errors are corrected only at higher judicial instances in proceedings related to lawsuits or extraordinary legal remedies.

Associations dealing with the environment mostly initiate procedures related to the right to access information on the basis of the law on access to information (RS, FBiH, Brčko district). Some authorities misinterpret certain provisions of the law, thus, it often happens that the deadline for responding to requests for access to information is unjustifiably extended, in order to send a notification to the third party, about which the information is requested, although such information has been compiled by the authority, from which the information is requested.

Some authorities still establish an exception to the provision of information stating that the non-disclosure of information is not justified by the public interest but do not determine what constitutes public interest, i.e., "any benefit and

any harm that may result from providing information". Failure to provide information is usually justified by the position of a third party that does not allow the requested information to be published for commercial interests, which contradicts the law, because it is the public body that decides, not the third party. Also, there are cases, in which the body rejects the requested information on the basis of other laws, which it applies directly in its work, but which are not applied in the procedure of providing information, so exceptions are determined on the basis of other laws and not on the basis of laws related to access to information.

Recently, the practice of requesting information from companies, where the authorities that have the obligation to provide information have majority shareholding, has begun to emerge. Such requests are mostly accompanied by acts, the form of which is not in accordance with the law, so it happens that such an act usually lacks basis for legal remedy. This further complicates and slows down the possibility to exercise the right of access to information with such cases ending up at a higher administrative or judicial instance.

It still happens that some authorities create a legal situation of "administrative silence" by not providing an answer, so the right to access information must be enforced by filing a lawsuit at court. This also further creates problems in accessing information for associations and causes material loss, because often the requested information is submitted after filing a lawsuit and paying a fee to the court, which means that an association loses about 200 KM (lawsuit fee and judgment fee).

2) Public participation in environmental decision-making

It can be said that the time period of making this report (2017-2020) was the most active in terms of changing the legislation concerning more detailed regulation of public participation in decision-making. As presented earlier in this report, the focus of the adoption of the Amendments to the Law on Environmental Protection has been on public participation in environmental decision-making. As a result, the public became more involved in decision-making at the stages when all options are open, and progress has been made in terms of informing the public of and its participation in the adoption of Environmental Impact Studies and environmental permits.

However, such a system of public participation does not follow modern information flow, so the authorities are still not accustomed to using the benefits of the Internet in communication with the public interested. Acts adopted in procedures (impact studies and environmental permits) are still not sent via email, which would reduce communication costs and allow more time to respond in a timely manner.

Problems that arise concern public participation in the adoption of regulations, which in certain situations grossly violates provisions of the Aarhus Convention relating to public participation and the application of Article 8 thereof. Some authorities still do not understand the seriousness of civil society's intentions to actively participate in protection of the environment, so it is bypassed when preparing draft laws and/or bylaws. The active work of the association leads to the observed shortcomings being discovered in a timely manner and thus pointing out and influencing the irregularities in the authorities' work. In addition, it is often the case that legislative (and executive)

authorities prepare and adopt laws under an urgent procedure, although such laws require public participation because they are systemic and significant for preservation of the environment.

3) Access to justice

From the very beginning of the application of the law, the right to access justice meant the right to file an appeal in administrative proceedings, i.e. to file a lawsuit in an administrative dispute against an act passed on the basis of access to information and or environmental law. In this regard, two practices differ, depending on the law, under which the procedure was initiated.

Although in the application of the third pillar of the Aarhus Convention the laws are largely harmonised, there are still legal situations that the courts interpret differently. In administrative disputes initiated against the Environmental Impact Study and/or Environmental Permits, some courts do not recognize the right to active identification (the right to file a lawsuit) of associations of citizens who participated in public hearings, although this right is conferred upon them under Article 9 of the Aarhus Convention.

Administrative disputes initiated against an act, whether in the field of the environment or access to environmental information, are usually pending for years. Long-term processes, in which a claim is acknowledged and a verdict adopted in favor of the association lose their meaning, because only filing a lawsuit and initiating proceedings and/or disputes does not stop (does not delay the execution of) the construction process disrupting the environment. And if it is information that is obtained in the dispute after a few years, such information also loses its meaning, because the project is in an advanced stage of construction.

APPLICATION OF THE AARHUS CONVENTION IN PRACTICE CASE STUDIES

1) Access to information

Case Study – slag and ash landfill Jezero II

During 2020, a non-governmental organization from Sarajevo submitted a request for access to information to the Federal Ministry of Environment and Tourism, requesting the submission of data on the slag and ash landfill Jezero II. As the legal deadline of 15 days for submitting information was exceeded, the association submitted a complaint due to the administration's silence to the competent ministry. After more than 6 months, a response was received that the association had erroneously invoked Article 218 instead of Article 216 of the FBiH Law on Administrative Procedure, and therefore the appeal could not be upheld. However, these allegations had no legal basis, and the association proved that it relied on Article 216, which enables it to appeal against the administration's silence. As it still did not receive a response, nor was the requested information provided; the entire case was reported to the competent administrative inspection. The ministry then provided the requested information after more than 8 months.

Case study – Opinion of the Republika Srpska Attorney's Office

During 2016, the Center for Environment from Banja Luka sent a Request for Access to Information to the Attorney General's Office of the Republika Srpska, requesting to submit opinions (in accordance with Article 22 of the Law on Attorney's Office) on the Annex to the Concession Agreement for Construction and Use of Thermal Power Plant Ugljevik 3, Municipality of Ugljevik and on the Annex II of the Concession Agreement for coal exploitation at the Istok 2 deposit, Municipality of Ugljevik. The Attorney General's Office subsequently submitted a Notice informing the Prosecutor that the deadline for submitting information would be extended in terms of Article 14, paragraph 4 of the Law on Freedom of Access to Information of the Republika Srpska. Thereafter, a Notice was submitted again, in which the provision of the requested information was refused in its entirety. Upon receiving the notification, Center for Environment filed a complaint with the Republika Srpska Attorney General, as a second instance body within the Republika Srpska Attorney's Office, and issued a Response to the appeal rejecting the allegations in the plaintiff's appeal. In accordance with the instruction on legal remedy, the Center for Environment initiates an administrative dispute against the Response to the Attorney General appeal, and after the initiated procedure, the District Court of Banja Luka issues a verdict, the lawsuit is accepted and the disputed act is annulled and the Attorney General's Office ordered to provide the requested information. The Republika Srpska Attorney's Office submitted a request for a retrial against such a verdict to the Supreme Court of the Republika Srpska, which issued a verdict rejecting the request. Thereafter, the Center for Environment addressed the Republika Srpska Attorney's Office with a request to pass a new act that will allow access to information in accordance with the instructions of the District Court of Banja Luka and the Supreme Court of Republika Srpska. The Republika Srpska Attorney's Office again issued a De-

cision rejecting the Request for Access to Information of the Center for Environment. At the beginning of 2020, the Center for Environment again filed a lawsuit against the Decision refusing to submit information, after which the Republika Srpska Attorney's Office submitted the requested information in its entirety.

Case study – Tax Administration of Republika Srpska

At the end of 2018, the Center for Environment from Banja Luka sent a Request for Access to Information to the Tax Administration Office of the Republika Srpska, requesting information related to the payment of concession fees for the Ugljevik, Gacko and Stanari thermal power plants. Upon the submitted Request, the Tax Administration submitted a Decision refusing to provide information in its entirety, justifying the exceptions according to the Law on Tax Procedure. The Center for Environment filed an appeal against such a decision with the second-instance body, the Ministry of Finance, which issued a decision rejecting the appeal. Thereafter, the Center for Environment files a lawsuit and initiates an administrative dispute against the Decision of the Ministry of Finance, and the District Court of Banja Luka issues a judgment upholding the lawsuit and annulling the disputed act. According to the received verdict, the Tax Administration Office of the Republic of Srpska submitted the requested information at the end of 2020.

2) Public participation in environmental decision-making

Case study – Law on Animal Protection of BiH

During 2017, the Parliamentary Assembly of BiH decided to put the adoption of Amendments to the Law on Animal Protection of BiH in an urgent procedure, considering that the amendment of only one article regarding animal breeding for fur is not crucial to conduct regular procedures and organise public hearings. However, the environmental NGO from Sarajevo objected to this position of the BiH Parliamentary Assembly, emphasising that it violates the basic principles of the Aarhus Convention on public participation in environmental decision-making. Namely, although the Law on Animal Protection does not directly touch on environmental issues, the article regulating the breeding of animals for fur causes great damage to the environment. After a detailed explanation of the violation of the Aarhus Convention was submitted to the Parliamentary Assembly, they decided that the Law should be put to regular procedure and for the first time in their history organised a public debate that indirectly touches the environmental issues.

Case study – FBiH waste regulations

During 2016 and 2017, discussions were held on the illegal repeal of two regulations concerning the management of packaging and electronic waste management in the FBiH. Namely, the Federal Ministry of Environment and Tourism made an illegal decision to repeal the regulations without organising public hearings and involving the public in the environmental decision-making process, in violation of the Aarhus Convention. The non-governmental association from Sarajevo reacted to this illegal action and demanded that the decision to repeal the regulations be withdrawn, and that a public hearing be organised, at which the public would have the opportunity to express its opinion

on the matter. Ultimately, the NGO's position was respected, the regulations were reinstated, and the competent ministry was fined for violations.

3) Access to justice

Case study – Environmental permits for thermal power plants

In the period of 2016-2017, the Federal Ministry of Environment and Tourism issued several renewed environmental permits for thermal power plants in the Tuzla Canton. Due to the above, the environmental NGO from Sarajevo filed a lawsuit against several such permits to the competent court in Sarajevo. After more than three years, the court issued 4 discriminatory verdicts, rejecting the claims on the grounds that the plaintiff does not have a seat in the place where the thermal power plant is located, and therefore has no possibility to file a lawsuit. This reasoning of the court is in complete contradiction with the Aarhus Convention, which enables access to justice for all natural and legal persons, regardless of their place of residence or seat. Due to the above, the NGO from Sarajevo submitted 4 requests for extraordinary review of the court decision to the Supreme Court of FBiH, but also an appeal to the Secretariat of the Aarhus Convention, which accepted to consider the appeal despite the fact that not all national remedies have been exhausted. Proceedings are currently underway.

Case study – Hydropower plants on the Drina river

During 2018, two renewed environmental permits were issued for the hydro power plant Buk Bijela and Foča on the river Drina, by the relevant ministry of the RS. Since both renewed environmental permits contained such deficiencies that required their annulment, the Sarajevo-based NGO filed two lawsuits with the competent court in Banja Luka. Although environmental permits contained a number of procedural shortcomings, a key shortcoming related to the date of application for renewed environmental permits by investors. Namely, in both cases, the request arrived late, and the obligation of the ministry was to reject the request, instead of accepting it and issuing permits completely illegally. Since these two cases were considered by different judges, two completely opposite judgments were obtained. For HPP Buk Bijela, a positive verdict was passed, upholding the claim, but as for the hydropower plant Foča, the judge made incorrect allegations that the request for a permit was submitted within the deadline, stating a "fictitious" date, for which there is absolutely no valid evidence. This is a classic example of a violation of national legislation (indirectly also of the Aarhus Convention) on an impartial trial and the fairness of judicial proceedings.

IMPLEMENTATION OF THE AARHUS CONVENTION DURING THE COVID-19 PANDEMIC

Illegal construction of hydropower plants

Summary of the case:

In the southern part of Bosnia and Herzegovina (precisely in the Republika Srpska, one of the two entities of the state), two private investor projects of small hydropower plants on almost untouched rivers, Bjelava and Mala Bjelava, are being built without the necessary permits. Nature defenders suspect that yet another construction on Vrhovinska River might be illegal. Investors are taking advantage of the government's measures to tackle the COVID-19 pandemic. In order to prevent destruction of these rivers, environmental defenders call on state authorities to immediately stop the illegal construction.¹⁰

Core of the problem:

Bosnia and Herzegovina is one of the last European countries that can still be proud of its wild and natural rivers, which provide refuge for more than a quarter of all endangered European fish species living in running water. Over 120 dams and small hydropower plants have already been constructed on the 240 watercourses. Several hundred others are proposed, which has provoked huge public controversy because of potential loss of drinking water and damage to the environment. During the national lockdown caused by COVID-19, some investors started to build controversial

projects despite the absence of necessary permits.

Violation of the law and/or human rights:

Srbinjeputevi Ltd. obtained a concession agreement from the Ministry of Energy and Mining of the Republic of Srpska for two small hydropower plants, Bjelava and Mala Bjelava, both on eponymic rivers in the Foča municipality. The company also received a permit to conduct a geological survey, but conducted neither an EIA process nor a construction permit proceeding required by the law. Activists possess video evidence from 16 April 2020 that the company has begun illegal construction. Additionally, because no permits have been officially issued, the concerned public did not have information about the project and was deprived of an opportunity to raise their concerns, questions, and comments. In regard to a small hydropower plant Hotovlje on Vrhovinska River in the Kalinovik municipality, Delaso Ltd. and the Ministry of Energy and Mining of the Republic of Srpska concluded the concession agreement in 2019; the company has valid permits for construction of a fish breeding facility. On 3 March 2020, the Ministry issued a decision stating that the company is not obliged to conduct the EIA process. Environmental activists have photo and video evidence from 16 April 2020 that construction has begun on what they suspect might be the small hydropower plant. If Delaso Ltd. has indeed already started construction without a construction permit, then the company is breaching the laws on Spatial Planning and Construction of Republika Srpska.¹¹

¹⁰ Peter Křivošík et al., 2020, Environmental destruction in times of coronavirus, available at <https://english.arnika.org/publications/environmental-destruction-in-the-time-of-coronavirus>.

¹¹ Increasing destruction of nature in times of pandemic – expansion of hydropower under protection of curfew (CZZS, press release, 21 April 2020); investors taking advantage of corona crisis to build five small hydropower plants in Bosnia and Herzegovina (Balkan Green Energy News, article, April 23, 2020) Bosnian Serb entity denies ignoring illegal power

POLLUTANT RELEASE AND TRANSFER REGISTER (PRTR)

There are processes in Bosnia and Herzegovina, the implementation of which is very slow, and by postponing them the health and environment, in which the citizens of Bosnia and Herzegovina live, is increasingly destroyed. To establish the Pollutant Release and Transfer Register (further as PRTR or the Register) is an obligation that Bosnia and Herzegovina should have fulfilled and started applying the adopted laws and bylaws more than 10 years ago. The existence of the PRTR register was established by the Kiev Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

Republika Srpska

According to the definition found in the Law on Environmental Protection (Official Gazette of the Republic of Srpska No. 71/12, 79/15 and 70/20) in Article 14 of the Law, *"register of release and transfers of pollutants is an electronic database on facilities and pollution, established as a single register on the release, transfer and disposal of pollutants into the environment from individual sources of pollution."* Article 102 of the Law on Environmental Protection stipulates that the Republic Hydrometeorological Institute (RMZRS) keeps the PRTR in accordance with the Rulebook on Methodology of Keeping the PRTR ("Official Gazette of Republika Srpska" No. 92/07). Although on the RMZRS website¹² there is a text with the described legal obligations and authorisations, the Register does not officially exist.

plants (Balkan Insight, article, 27 April 2020).

¹² See <https://rhmzrs.com/zivotna-sredina/register-postrojenja-i-zagadivaca/>.

Federation of Bosnia and Herzegovina

The Law on Environmental Protection (Official Gazette of the Federation of BiH No. 15/21) does not contain the definition of the Register, and according to Article 23, paragraph 1 of the Law, the Federal Ministry is reporting in accordance with legal obligations and international agreements, including those arising from the Kiev Protocol of the Aarhus Convention.

The Rulebook on PRTR (Official Gazette of FBiH No. 82/07) is currently in force on the basis of the 2003 Law on Environmental Protection, which has ceased to be valid. According to Article 146 of the current law, the Ministry must adopt a new Rulebook within one year from the adoption of the new Law, which is the first half of 2022. Until then, the 2007 ordinance applies. On the official website of the Federal Ministry of Environment and Tourism¹³ there are legal obligations, instructions and other materials described that speak more about the Register, and there is even a link to enter the Register but it is not functional.

Brčko district

The Law on Environmental Protection of the Brčko District of BiH (Official Gazette of the Brčko District of BiH No. 24/04, 1/05 19/07, 09/09) does not know the definition of the Register. According to Article 28 of the Law, the Register should be kept by the competent department for environmental protection of the government, and according to Article 112 of the Law, the head of the department and the government are responsible for adopting a rulebook on such a Register. The rulebook as well as the Register are yet to be established.

¹³ See <https://www.fmoit.gov.ba/bs/okolisne-dozvole/registeri-i-izvjesivanje>.

Summary

All laws on environmental protection that apply in Bosnia and Herzegovina and regulate the existence of the PRTR were amended in the same year, so the regulation in the entities was enacted more or less simultaneously. Fourteen years have passed since then, and the Registers still do not exist. Despite the constant reminders of civil society organisations that it is necessary in order to register and publish pollutants, the competent institutions have not found good enough reasons for its establishment and publication. So far, all legal obstacles to the establishment and publication of the Register have been removed, but the influences present on the socio-political scene do not allow the completion of these activities.

The PRTR is a very important tool in Bosnia and Herzegovina for environmental protection. With its existence, the public would be given the opportunity to get acquainted with the real situation of a number of polluters, whose work directly pollutes the environment and threatens human health. The establishment of the Register is currently not a topical issue, because its creation would entail paying compensation in accordance with the polluter pays principle, which would be quite a burden for the economy. Nevertheless, the persistence of civil society organisations in pointing out the need for the existence of the PRTR will continue as before, pointing to specific examples of environmental pollution and using all legally permitted forms of endurance.

AARHUS CONVENTION, EUROPEAN DIRECTIVES AND IMPLEMENTATION IN BOSNIA AND HERZEGOVINA LAWS

The Aarhus Convention was first directly applied to domestic laws through the adoption of the laws on freedom of access to information at all levels. It constituted the first serious implementation of almost the entire convention into domestic legislation. After that, the authorities of Bosnia and Herzegovina began to implement the pillars of the Aarhus Convention into law by transposing European directives regulating the right to access information, public participation in decision-making and access to justice.

The publication *Access to Information and Public Participation in Environmental Decision-Making in Bosnia and Herzegovina Spatial planning, EIA, environmental and construction permitting process: comprehensive guideline through environmental-administrative processes*¹⁴ deals with all directives that are implemented in domestic legislation. The period contained in the publication includes an analysis of the relationship between the implementation of European directives in domestic legislation until 2016 and covers the following directives:

1. **IPPC Directive** – Directive 2008/1/EC concerning integrated pollution prevention and control (the IPPC Directive)
2. **EIA Directive** – The EIA Directive (2011/92/EU) on the assessment of the effects of certain public and private projects on the environment
3. **SEA Directive** – The SEA Directive (Directive 2001/42/EC) on the assessment of the effects of certain

¹⁴ Arnika, Center for Environment Banja Luka, 2016 *Access to Information and Public Participation in Environmental Decision-Making in Bosnia and Herzegovina*, page 15-21, available at <http://english.arnika.org>.

plans and programmes on the environment

4. **Environmental Information Directive** – Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC
5. **Public Participation Directive** – Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programs relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC
6. **Industrial Emissions Directive** – Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)
7. **ESPOO Convention** – Convention on environmental impact assessment in a transboundary context

What is new?

This report covers the reporting period of 2017-2021 and refers to the transposition of European directives and conventions into laws dealing with environmental protection.

1. Environmental Information Directive

The provisions of Article 7 of the Directive, which determine the carriers for keeping the Register of pollutant discharges and transfers, as well as the provisions prescribing the obligation of the Member States to take the necessary measures, in order for the carriers to organise the keeping of records on environmentally relevant data, have been transposed.

2. Public Participation Directive

The provisions of Article 2, which refer to public participation regarding the availability of information on current programmes and plans implemented in the field of environment, as well as the provisions of paragraph 2 of Article 6 of the Directive, which prescribes the obligation to publish on the website, have been transposed.

3. Industrial Emissions Directive

The provisions of Article 12 have been transposed, which includes determining the content of the application for an environmental permit, as well as Article 26, which determines the obligation of Member States to take appropriate measures in case of significant negative effects on the environment arise due to the operation of industrial plants.

4. ESPOO – Convention on environmental impact assessment in a transboundary context

The provisions relating to the direct application of the said Convention have been transposed, which implies the initiation of a transboundary impact procedure in projects that may have a transboundary impact, as previously prescribed.

MECHANISMS OF COMPLIANCE WITH THE AARHUS CONVENTION IN BOSNIA AND HERZEGOVINA

The compliance mechanisms involve the use of specific methods of compliance of member states' legislation with the Aarhus Convention: a member can submit a request for compliance of another member; a member may request its own compliance; the Secretariat of the Aarhus Convention may make a recommendation to the Compliance Committee; the public may communicate the compliance of a member with the convention. This mechanism was used by the associations of Aarhus Center in BiH from Sarajevo and the Center for Ecology and Energy – Aarhus Center Tuzla, using the right of the public to be able to communicate about the member's compliance with the convention.

These organisations submitted a communication to the Aarhus Convention Compliance Committee,¹⁵ in which they state that during the decision-making of the courts a gross violation of the provisions of certain laws and the Aarhus Convention occurred. According to the communication, the courts that decided on the lawsuits to challenge the environmental permits in three cases, rejected them by challenging the right of the Association for the Protection and Promotion of the Environment, Nature and Health EKOTIM from Sarajevo to file a lawsuit on the basis that it has no seat in municipalities where the projects, for which environmental permits have been issued are found.

In this process, civil society organisations have used another way of protect-

ing the environment, invoking their right under Article 15 of the Aarhus Convention, which refers to the use of mechanisms for compliance with the Convention. By filing an application concerning court decisions, inconsistent and selective application of legal provisions were pointed out. The application had been accepted before all domestic remedies were used, which in a way constitutes a precedent in the work of the Compliance Committee. For the first time, Bosnia and Herzegovina was on the list of members that violated the provisions of the FBiH Law on Protection of the Environment, the Law on Administrative Dispute and the Aarhus Convention. Given the application of the law in relation to the Aarhus Convention, and as stated in the summary of the analysis of the questionnaire, the civil sector will be much more active in the future using international legal protection mechanisms.

PERSECUTION OF ACTIVISTS

Illegal persecution continued in the period of 2017-2020 against activists who openly opposed the construction of mini hydropower plants on rivers and streams in some local communities. Persecutions refer to organised groups that protect their rivers from "attacks" by investors with excavators, as well as to the lives and property of individuals. In such attacks, brutal methods of intimidating the public are often used in order to achieve the investors' goals, i.e. the construction of mini hydro power plants in these cases. The description contains specific cases of attacks on activists that took place during this period.

¹⁵ UNECE 2020, Communication to the Aarhus Convention Compliance Committee, available at: [fr:Aarhus_Center_BiH_BosniaHerz_26.01.2020_Redacted.pdf](https://www.aarhusconvention.com/fr/Aarhus_Center_BiH_BosniaHerz_26.01.2020_Redacted.pdf)

The case of Kruščica

1) Attack on the bridge over the Kruščica river

Hundreds of people were lately peacefully blocking a bridge in Kruščica in order to prevent entry of the machinery to the riverbed, and thus to enable the start of the hydropower plant construction. At the same time, however, the protesters allowed passage of private cars and other traffic not related to the intended construction. Early in the morning, on 24 August, the twenty-second day of the protest, police brutally attacked a group of 40 people, mostly women from which one was pregnant, at the bridge at the moment. The protesters neither provoked nor resisted the police, but were nevertheless forcibly removed in order to allow access over the bridge for construction equipment to pass. During the intervention, police officers insulted the women, making improper comments with sexual connotations, pulled clothes and traditional head scarves. After the police action, at least 27 women and 2 men had to receive emergency medical services due to injuries they suffered, mostly bruising and contusions. They first looked for medical help in the nearest hospital of Vitez where they were refused and so had to travel 15 kilometers to the town of Travnik. They asked the medical service for proof of injuries and were prepared to pay the obligatory 50 BAM fee. However, the medical service refused to issue the proof of injuries. More than 27 people were detained and interrogated for 7 hours at the police station in Vitez.

The Ministry of Interior of the Central Bosnian Canton, responsible for the police, immediately issued a statement, in which it claims that it acted based on a previously prepared plan of the police headquarters in Travnik with the approval of the Ministry of Interior of the Central

Bosnian Canton to make the road blocked by the citizens accessible. However, it was clear that the real aim of this action was to clear the way for construction and not to enable the flow of road traffic. As mentioned above, the protestors did not block the road to the private cars, trucks of the forestry company and all other, which are not connected to the investor, and other traffic. Moreover, workers and machinery of the Higrakon Pvt. Ltd. Sarajevo investing company were immediately behind the police lines and were able to cross the bridge to the location where the hydropower plant is planned as soon as the people had been „removed“. Such a situation leads to the suspicion that the state armed forces could have been misused to enforce private interests instead of protecting public order. The Ministry denies all the allegations referring to baseless violence and insisted that there were no injured people during the whole intervention, although videos shot by participants of the blockade, their testimony and medical service protocols prove otherwise.

2) Attack on Mika's Tibold house

On 25 November 2020, in the early morning, unknown perpetrators stoned the house of Tahira Tibold of Kruščica, the first woman ever elected as a chair of the local community [1]. Environmental groups are convinced that the attack is connected with Tibold's struggle to rescue the River Kruščica from the construction of harmful small hydropower plants by a private investor.

As the Local Community points out in its statement, the fact that it is an attack on an elected representative makes the whole incident even more serious: *“We will not tolerate violence. This is not just an attack on one woman, your fellow-citizen, but also on the legal and constitutional order of Bosnia and Herzegovina, given that*

Tibold represents all the locals who elected her and gave her legitimacy. This is just one in a series of cowardly attacks by people who do not know how to deal with a woman who does not give in to blackmail, bribery, and threats. Since she took office, there has been continual pressure on her and her family. Hate speech and heinous lies were written on social networks, live threats were subtly made, and in this way they switched to physical assault."

The case of Zeleni Neretva

A member of a Zeleni Neretva NGO was physically abused in his hometown of Konjic, near Sarajevo in July 2019. The environmental organisation defending the Neretva River is convinced that the aggression is linked to their activities.

"This morning, at 10:35, an activist of the Zeleni Neretva Konjic Association was attacked while performing the usual duties of monitoring the Neretva River. As a reaction, a photo camera was forcibly taken from him by unknown attackers (see picture). After his request of returning his camera, a physical attack followed, due to which the activist suffered minor injuries and his cellphone was destroyed," the organisation stated on their Facebook page. Later on, the organisation disclosed the names of alleged assailants. According to said post, the incident was then reported to the police and an investigation is underway.

CONCLUSIONS AND RECOMMENDATIONS

The Aarhus Convention has not been fully implemented in Bosnia and Herzegovina. Although 20 years have passed since the first laws were adopted to incorporate its provisions, the steps taken by the BiH authorities so far are not enough. The authorities most often justify the delay in implementation by the lack of political will as the most important factor on that path. Nationalism under the guise of democracy overshadowed the real needs of the citizens, existential, social, and there is little talk about environmental protection. The impact of politics on all segments of life is especially reflected in the formation and operation of administrative units, which often employ officials affiliated with political parties, family or friends without quality knowledge for the consistent application of the Aarhus Convention. Corruption is widespread, so the influence of industrial and economic lobbies, as well as wealthy individuals, is very strong at all levels of government in BiH. All this has led to the situation when the natural wealth of the country is being "sold out" in order to satisfy personal interests, and under the veil of public interest and better life of citizens. In such an environment, the local communities, with the help of civil society organizations, stand more and more openly against individuals, realising that only those who destroy the environment at the same time benefit from their bad projects. The environment is the only thing left to the citizens, untouched as it is, because the policy pursued for the last 25 years has shattered all hopes for a better and healthier life in this area.

The strengthened civic sector (associations dealing with environmental protection) with the establishment of 4 Aarhus Centers in Banja Luka, Sarajevo, Tuzla and Zenica over the years has become an influential and corrective factor in creating

good practice and standing with citizens in protecting the right to a healthy environment. Citizens of local communities are increasingly interested in how and in what way the authorities “sell” natural resources, and the establishment of more and more associations that are constantly concerned about the local environment speaks for itself. In recent years, the number of legal proceedings initiated against decisions that are harmful to the environment has increased. And this is not the only path that citizens use, as evidenced by the numerous examples of citizens in local communities who are willing to defend “their” nature in different ways. In this fight, the Aarhus Convention and the application of its pillars plays a very important role, enabling the public to gather information, participate in environmental decisions and legally fight to protect their rights.

In order for the Aarhus Convention to be fully applicable, both in theory and in practice, the authorities must take seriously those problems that civil society organisations encounter and point out. In the text of the analysis so far, opinions and recommendations have been given in relation to the application of the Aarhus Convention with a review of concrete examples from practice. The recommendations made on this report are the result of observed shortcomings, both in the implementation of the Aarhus Convention and in building relations between civil society and the authorities, in order to jointly protect the nature in Bosnia and Herzegovina. Therefore, in the future it is necessary:

1) Educate civil servants

The training conducted so far, including case law that has affected the work of civil servants, has proved useful in applying the pillars of the Aarhus Convention. However, this mainly refers to the second-level administrative bodies, i.e. the ministries, while the education of

municipal and city officials is still lagging behind, as indicated by the data from the field. In addition, practice has shown that some bodies that possess environmental data have not reached the required level of application, so it is necessary to conduct training of employees in such bodies, which also applies to employees in companies that are majority owned by public bodies.

2) Apply an electronic system of publishing information using new tools in line with the recommendations

Because the way of communication and informing the public has changed compared to the beginnings of the application of the Aarhus Convention, the authorities of Bosnia and Herzegovina should take a greater part in the application of modern forms of communication. If the authorities want to improve their work, it is necessary to monitor and use new tools in the application of the provisions of the Aarhus Convention in accordance with the available recommendations Electronic Information Tools Case Studies¹⁶ and UNECE and Consultation on the Recommendations on electronic information tools¹⁷ as well as use the internet page¹⁸ where you can find all useful information and documents related to the environment.

3) Establish and publish P RTP

As one of the priorities, the competent authorities should activate their human resources and work intensively on the

¹⁶ UNECE, not dated Electronic Information Tools Case Studies, available at <https://unece.org/env/pp/eit-case-studies>.

¹⁷ UNECE, not dated, Consultation on the Recommendations on electronic information tools, available at <https://unece.org/env/pp/tfai/consultation-recommendations-eit>.

¹⁸ See <http://infotabla.eko.ba/>.

implementation of the PRTP protocol, by establishing and publishing the Pollutant Release and Transfer Register. In accordance with the provisions of the Aarhus Convention and the environmental laws applicable in Bosnia and Herzegovina, the public is entitled to get familiar with all information available on pollutants.

4) Intensify cooperation between the civil sector and the authorities with the active participation of Aarhus Convention Focal Point of Bosnia and Herzegovina

Cooperation of competent institutions with civil society organizations in Bosnia and Herzegovina depends primarily on the level of government, to which the cooperation relates. When it comes to the competent ministries, the cooperation in the entities is different and depends on the problems that the associations face in their work. There is no continuous communication and exchange of information that could influence environmental decision-making, although sometimes the civil sector has significant information on individual projects. There are also no regular meetings to discuss identified problems on the ground and ways to best overcome or resolve them. All this has led to the situation when ministries and civil society organisations are sometimes on the same side, and often on opposite sides, so such specific cases usually end

up in court. On the other hand, some local authorities show more readiness for the voice of the public in environmental protection, and such cooperation has recently resulted in frequent signing of documents that additionally protect the environment. The situation varies from municipality to municipality and is mainly influenced by the current political situation, depending on which political party is in power.

In order to improve the environmental protection system in Bosnia and Herzegovina based on mostly good laws, which are often not properly applied in practice, it is necessary to strengthen cooperation at all levels of governments. The role of the Aarhus Convention Focal Point of Bosnia and Herzegovina in such activities is extremely important, in order to present Bosnia and Herzegovina as a responsible state in environmental protection.

The areas, in which the Aarhus Convention applies, are diverse (water protection, industrial pollution, air quality, nature protection, noise, chemistry, waste management) and its application in environmental legislation has been limited, which needs to progress, if Bosnia and Herzegovina wants to accede to the European Union. Civil society organisations, which after many years of work and experience, have welcomed the implementation of the Aarhus Convention in environmental laws, see future struggle to preserve what Bosnia and Herzegovina can be proud of – its nature and natural resources.

About us



Arnika – Citizens Support Centre (Czech Republic)

Established in 1996, non-governmental organization Arnika has many years of experience promoting information openness, supporting public participation in decision-making, and enforcing environmental justice. Its experts assist various civil society organizations, municipalities, and individuals in solving cases related to environmental pollution and its prevention throughout the Czech Republic. Arnika also participates in international projects focused on environmental protection and strengthening the implementation of the Aarhus Convention in Central and Eastern Europe, Caucasus, and Central Asia. Arnika is a member of the Green Circle – an association of ecological non-governmental organizations of the Czech Republic, European Environmental Bureau, and European ECO Forum.

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životnu sredinu

Center for Environment (Bosnia and Herzegovina)

Founded in 1999, the Center for Environment is a non-profit non-governmental organization dedicated to environmental protection and the promotion of sustainable development through advocacy and civic initiatives. The Center promotes the implementation of the Aarhus Convention, specifically free access to information held by public authorities and greater public participation in environmental decision making. It strives to affect relevant environmental policies, raise public awareness of environmental issues, and achieve constructive dialogue and cooperation with stakeholders. It is active mainly in Bosnia and Herzegovina.

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More information:

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Coalition for Protection of rivers in Bosnia and Herzegovina

The Coalition was established in June 2016 by civil society organizations and individual nature lovers who oppose plans for construction of hydroelectric power plants on the rivers of BiH and promote the development of sustainable tourism and traditional activities on the rivers that can provide more diverse jobs and achieve greater development for local communities. Coalition for Protection of rivers in Bosnia and Herzegovina currently brings together over 20 organizations from across the country and the number of members continues to grow.

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