

Original Scientific Paper

**THE LEGAL POSITION OF ASSOCIATIONS IN ENVIRONMENTAL
PROTECTION PROCEDURES IN THE REPUBLIC OF CROATIA**

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Abstract. *Non-governmental organisation for environmental protection can significantly improve the implementation of environmental law. Their important role in environmental protection is recognised by the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters adopted in Aarhus in 1998 (the Aarhus Convention).*

The Aarhus Convention came into force in the Republic of Croatia on June 25, 2007 upon the adoption of the Environmental Protection Act as the main act for implementing the Convention into the Croatian legislation. The Aarhus Convention guarantees the procedural environmental rights (access to information, public participation in decision-making and access to justice). The two acts which are particularly important for the implementation of the Convention in the Croatian legal system are the General Administrative Procedure Act and the Administrative Disputes Act.

In this paper, the author analyses the manifold legal status of non-governmental organisations (NGOs) in environmental protection proceedings. First, an NGO may have the status of a party whose rights, obligations or legal interests are being decided upon in the administrative procedure (for instance, an administrative proceeding on exercising the right of an NGO to access environmental information). Second, an NGO which is active in the field of environmental protection and meets all the requirements in accordance with the Environmental Protection Act shall be deemed to be a concerned party and shall, therefore, have the right to participate in environmental protection proceedings in which the Act provides for the general public and/or concerned public participation (e. g. environmental impact assessment procedure).

Third, an NGO may have a procedural legitimacy to pursue a review and protection in the field of administrative law in case some other action of a public authority has violated certain right, obligation or legal interest of an NGO (for instance, depriving an NGO of the right to participate in the process of preparing the waste management plan). Forth, an

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NGO may submit information (a notice) to a relevant authority pointing to the need to initiate an administrative proceeding ex officio in order to protect the public interest (e. g. a notice to the inspection authorities about environmental pollution). Although the subject matter of this proceeding does not involve the NGO's right, obligation or legal interest (in which case it would be regarded as a disputing party), the General Administrative Procedure Act makes provisions for the legal protection in case when a public authority has issued an information that the motion to initiate an administrative proceeding has been denied, as well as in case when a public authority has failed to respond to the motion within the time limit.

Key words: *non-governmental organisations, environmental protection, administrative proceeding, administrative dispute, Aarhus Convention.*

1. INTRODUCTION

Protection of the environment became a topic of serious social concern and started to be legally regulated nationally and internationally only in the latter half of the 20th century, in particular after the catastrophic predictions of the Club of Rome in the well known book "The Limits to Growth" (1972).

In all prior historical periods – from the Ancient Period to the Middle Ages and the modern age – a bit of attention was paid to the legal regulation of only some constituent parts of the environment – the air, water, seas, forests, nature and agricultural land.¹ This was the case in Croatian Law, too. Already in the medieval statutes and reformations of cities and communes – i.e. Korčula (1214), Dubrovnik (1272), Split (1312), Trogir (1322), Mljet (1345), Krk (1388), Vodnjan (1492), and Ilok (1525), we find numerous legal norms regulating the use and protection of water, forests and agricultural land, and forbidding air pollution (smoke, unpleasant odors).² The legal regulation protecting some portions of the environment was intensified in the second half of the 19th century, when major modern systemic laws were passed: the Act on Forests (1852), the Act on Water Rights (1891), the Act on Hunting (1893), the Act on the Management of Torrents (1895), etc.

In the contemporary world the right to a healthy environment is one of basic human rights. Thus the Constitution of the Republic of Croatia also states that "the conservation of nature and human environment" is one of the highest values of the constitutional system of the Republic of Croatia, and it is, as such, a grounds for the interpretation of the Constitution. The conservation of nature and human environment is hence put side by side with freedom, equality, including national equality, the rule of law, and other values.³

¹ See.: Kiss, A, Shelton, D., Manual of European Environmental Law, Cambridge, 1997.

² Milušić, A., Ecological Awareness and Ecological Responsibility in the Past (Some Findings from Our Oldest Statutes, Later Normative Regulations and Other Sources), ((Ekološka svijest i ekološka odgovornost u prošlosti (neka saznanja iz naših najstarijih statuta, kasnije normativne regulative i iz drugih izvora)), Legal Bulletin No. 1-2 1989; Lončarić Horvat, O., Cvitanović, I., Gliha, I., Josipović, T., Medvedović, D., Omejec, J., Seršić, M., Environmental Law (Pravo okoliša), Zagreb, 2003.

³ In its Article 3, the Constitution of the Republic of Croatia reads: "Freedom, equality, including national equality and the equality of the sexes, pacifism, social justice, observance of human rights, inviolability of property, conservation of nature and the environment, rule of law and a democratic multi-party system are the supreme values of the constitutional order of Croatia and the grounds for the interpretation of the Constitution".

Environmental protection is undoubtedly a *par excellence* general interest. Effort to protect and promote the environment is certainly one of the primary tasks for the state, the local self-government and specialized institutions, but also for the society as a whole. Since the protection of the environment is a general interest, it cannot be ascribed to a specific interest group, such that exist in civil construction, energetics, transportation, agriculture, etc. The environment and its protection are supposed to be a concern of every citizen and the entire public. As an isolated individual, the citizen cannot do much in an institutional system. However, individuals organized in associations for the protection of the environment can act as “the voice” of the environment, work in the public interest and become a respectable, in some situations dominant, factor for the protection and promotion of the environment.

Such an important role of associations, i.e. non-governmental organizations⁴ in environmental protection was recognized by the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 1998 (hereinafter: the Convention).

In the Republic of Croatia the Convention was ratified and published in the Official Bulletin so that it entered into force on 25 June 2007.⁵ In accordance with the Constitution of the Republic of Croatia the Convention thus became a part of the Croatian internal legal system and its provisions are implemented directly.⁶ Indeed, the provisions of the Convention have a stronger legal force than the national law.

Indeed, the provisions of the Convention have a stronger legal force than national law. Therefore, if there is a collision between the provisions of this Convention and national legal acts, administrative authorities and courts are obliged to act in accordance with the provisions of the Convention.

In some provisions of the Convention a specific position of associations for environmental protection is established.

First, associations are a constituent part of the definition of “the public” to which the Convention guarantees procedural environmental rights (access to information on the environment, participation in decision making in some procedures and access to the judiciary on certain conditions). The concept of “the public” refers to one or more natural or legal persons and, in accordance with the national legislation or practice, their associations, organizations or groups (Article 2, Paragraph 4). “The public” refers to every person, natural or legal, or to a group of persons, regardless of their citizenship, nationality or domicile. Moreover, discrimination as to citizenship, nationality or domicile is explicitly

⁴ The concept of “non-governmental organization” refers to non-profit organization of individuals into associations which are independent of and separated from state authorities. In the Republic of Croatia, the concept of non-governmental non-profit organizations may include associations, institutions, foundations, trade unions, political parties and religious communities.

⁵ Act on the Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Official Bulletin – International Contracts, No. 1/07.

⁶ “International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.”, Article 140 of the Constitution of the Republic of Croatia.

forbidden and, in the case of a legal person, as to where it has its registered seat or an effective center of its activities (Article 3, Paragraph 9).

Second, associations may be incorporated in the concept of “the public concerned”. A fundamental difference between the public and the public concerned lies in “greater” rights of the public concerned to be informed and to participate in decision-making in environmental issues (Article 6, Paragraphs 2 and 6) and to have ease of access to judicial protection and right to participation (Article 9, Paragraph 2). The public concerned is defined as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. Non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest (Article 2, Paragraph 5). However, those requirements of national law must be consistent with the Convention’s principles, such as non-discrimination and avoidance of technical and financial barriers to registration. Within these limits, parties may impose requirements based on objective criteria that are not unnecessarily exclusionary.⁷

Third, each Party of the Convention shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation (Article 3, Paragraph 4).

The said provisions by no means imply a privileged position of environmental associations, but are aimed to correct the inequalities in the system of legal protection paying more attention to the interests of those who use and influence the environment at the expense of the interests for the protection of the environment.

The fundamental regulation implementing the provisions of the Convention in the Croatian legislation is the Environmental Protection Act.⁸ Since the Convention pertains to procedural and environmental rights, crucially important for its implementation in the Croatian legal system are also the General Administrative Procedure Act⁹, as the general act regulating administrative procedures, the Act on the Right of Access to Information¹⁰, applied to issues related to the right of access to information on the environment not regulated in the Environmental Protection Act, and the Administrative Dispute Act¹¹, regulating protection before administrative courts.

Procedures for environmental protection are legally regulated procedures for which the Environmental Protection Act¹², and subsidiarily the Administrative Procedure Act apply. According to the formal criterion, parties in an administrative procedure can be classified into three groups: a) an active party, asking for a particular decision or action

⁷ Stec, Stephen; Casey-Lebkowitz, Susan, *The Aarhus Convention: An Implementation Guide*, New York and Geneva, 2000, p. 41.

⁸ Official Bulletin, No. 110/07

⁹ Official Bulletin, No. 47/09

¹⁰ Official Bulletin, No. 172/03, 144/10, 37/11 – Decision of the Constitutional Court of the Republic of Croatia

¹¹ Act on the Takeover of the Act on Administrative Disputes, Official Bulletin, No. 53/91 (Official Bulletin of the Socialist Federative Republic of Yugoslavia 4/77), 9/92 and 77/92. This Act shall cease to have effect on 1 January 2012 when the Act on Administrative Disputes shall come into effect (Official Bulletin, No. 20/10).

¹² “To environmental issues which are not regulated under this Act and which relate to specific environmental components or burdens, special regulations governing the protection of the specific environmental component or environmental protection against specific burdening apply” (Article 4, Paragraph 7, Environmental Protection Act). However, due to their number, those special regulations will not be covered in the present paper.

from a public authority¹³, b) a passive party, a person against whom proceedings are being conducted, and c) an incidental party (interveniens), a person whose rights or interest could be damaged by a decision¹⁴.

The present paper discusses the legal position of associations in the procedures for environmental protection, which have the right of access to information, participation in decision-making and access to justice in environmental matters in accordance with the Convention and Environmental Protection Act.

2. THE CONCEPT OF ASSOCIATION AND ITS LEGAL POSITION IN CROATIAN LAW

The right of association and establishment of associations is one of the rights guaranteed by the Constitution of the Republic of Croatia. Today it is not limited to nationals, but is guaranteed to all: nationals and foreigners (foreign nationals and persons without citizenship), natural and legal persons.¹⁵ According to Article 43, Paragraph 1 of the Constitution of the Republic of Croatia “Everyone shall be guaranteed the right to freedom of association for the purposes of protection of their interests or promotion of their social, economic, political, national, cultural and other convictions and objectives” where “for this purpose, everyone may freely form trade unions and other associations, join them or leave them, in conformity with law”. This right of free association is restricted only “by the prohibition of any violent threat to the democratic constitutional order and independence, unity and territorial integrity of the Republic of Croatia” (Article 43, Paragraph 2).

The legal regime of associations (foundation, goals, activities, registration, legal position, termination, etc) is generally regulated by the Act on Associations. The said act is constructed as a *lex generalis*, i.e. a legal document regulating foundations of associations, covering matters of substantive law and related procedural issues. However, there is an open possibility for a special act (*lex specialis*) to cover some questions in a different way. This Act, however, does not apply to political parties, religious communities, trade unions, and employers’ associations (Article 1, Paragraph 2 of the Act on Associations). Namely, it is obvious that these are very specific types of association requiring a totally different legal regulation and a different legal status.¹⁶

¹³ The expression “public authority” does not have a generally accepted, universal meaning in contemporary Croatian law. This is why individual legal acts prescribe what they imply by the term public authority. Article 1 of the Act on General Administrative Procedure defines that public authorities are: state administrative agencies and other state agencies, agencies of units of local and regional self-government, and legal persons who perform public powers.

¹⁴ Krbeć, I., *The Law of Yugoslav Public Administration, Volume III, Functioning and the Administrative Dispute*. 7th Edition (Pravo jugoslavenske javne uprave, III knjiga, Funkcioniranje i upravni spor), Zagreb, 1962., p. 64; Borković, I., *Administrative Law, 7th Edition (Upravno pravo, VII. Izd.)*, Zagreb, 2002., p. 418. Such a position is preserved in the new Croatian Act on General Administrative Procedure (Article 4, Paragraph 1 of the Act).

¹⁵ In Article 43 of the original text of the Constitution of the Republic of Croatia adopted in 1990, i.e. still in the times of the Socialist Federative Republic of Yugoslavia, the right of free association was guaranteed only to “citizens”.

¹⁶ On the legal regime of associations in Croatian law, see: Dika, M., Ljubišić, S., Medvedović, D., Šprajc, I., *Commentary of the Act on Associations with Forms (Komentar Zakona o udruženjima s obrascima)*, Zagreb, 2003.

In accordance with Article 2, Paragraph 1 of the Act on Associations, An association for the purpose of this Law shall be any form of voluntary association of natural or legal persons which, in order to protect and promote issues of public or mutual interest, environmental, economic, humanitarian, informative, cultural, ethnic and national, educational, social, professional, sports, technical, health care, scientific and other interests and goals as well as their beliefs, and without the intention of gaining profit, submit themselves to the rules that regulate organizations and activities of that form of association". This, therefore, is the legal definition of an association.

As a rule, associations are legal persons. They gain legal personality on the day of registration in the register of associations. However, associations may exist without a legal personality. In that case, regulations pertaining to partnership apply.

In accordance with the ancient Roman rule – *tres faciunt collegium* – an association may be established by three founders (Article 10, Paragraph 1 of the Act on Associations). The founders may be natural persons with the capacity to act, and also legal persons. It is, therefore, possible for an association to be founded by natural persons only, legal persons only, or both natural and legal persons. Membership in an association is totally free so that any physical and legal person may become a member of the association under equal conditions. Persons with no capacity to act or with a limited capacity to act can also become members of the association, but in that case they shall not have the right to decide in the association's bodies (the assembly, management board, supervisory board, etc.). Associations can become parts of larger groups of associations, they can freely decide on the form and title of such association (alliances, etc.) and decide whether or not such larger forms will also have legal personality.

In the Republic of Croatia foreign associations can also conduct their activities (Article 8 of the Act on Associations). Foreign associations are associations or other organization forms established in accordance with the legal rules of a foreign state, whose intention is not to gain profit and which must fulfill the conditions prescribed by the Act on Associations. Such associations are entered into the registry book of foreign associations kept by the Ministry of Administration, after which they may freely conduct their activities.

3. THE ASSOCIATION AS AN ACTIVE PARTY IN THE ADMINISTRATIVE PROCEDURE

In general, the procedure initiated by a request of an association to exercise its right of access to environmental information is the only environmental procedure in which an association participates as an active party on whose right a direct decision is pending. In such a situation, the association has the status of an active party on whose request the procedure is initiated.

The legal regulation of the right of access to information in the possession or under the supervision of public authorities was introduced in Croatia in 2003.¹⁷ Since this general regulation was not fully harmonized with the Convention and the specific nature of environmental information, the Environmental Protection Act contains separate provisions pertaining to the provision of information on the environment. The 2010 amend-

¹⁷ Act on the Right of Access to Information, see footnote 10.

ments to the Constitution of the Republic of Croatia also made the right of access to information an explicit constitutional right.¹⁸

Access to information can be broken down into two aspects – the so-called “active” and “passive” one.¹⁹ The passive approach represents the right of the public to request information from the public authority and the obligation for the public authority to provide the required information. This approach is made possible if there is a request by a party, and is conducted in an administrative procedure, where the party is not obliged to state the reason for requesting the information. The active approach represents the obligation for the public authorities to gather information and inform the public on them on a regular basis, without the need for the public to specifically request such information.

There are three acts which can apply to the procedure of providing environmental information upon the request of a party: the Environmental Protection Act, which contains provisions on informing the public in its Section IX, the Act on the Right of Access to Information, which is a fundamental act regulating the right of access to information, and the Act on the General Administrative Procedure, which pertains to all administrative procedures. The sequencing of the application of these acts is based on the legal principle of *lex specialis derogat legi generali*, which means that the Environmental Protection Act is the first one to apply.²⁰ If in the procedure of providing environmental information an issue arises that is not covered by this Act, the Act on the Right of Access to Information applies. If a procedural question comes up which cannot be resolved by implementing that Act, the Act on the General Administrative Procedure shall apply.

The Convention guarantees the right of access to the judiciary if a person holds the opinion that his or her request for information will not be resolved at all, that it has been rejected without grounds (partly or completely), that it has not been properly answered, or that it has not been treated in accordance with the provisions of Article 4 of the Convention.

In the Republic of Croatia the control of the procedure for providing information on the environment is ensured primarily by means of an appeal against the decision of the first instance authority, which, since the passing of Amendments to the Act on the Right of Access to Information of 2010, has been filed to the Personal Data Protection Agency.²¹ Exceptions are decisions of the Croatian Parliament, President, Government, the Supreme Court of the Republic of Croatia and the State Attorney, against whom either

¹⁸ “The right of access to information held by any public authority shall be guaranteed. Restrictions on the right of access to information must be proportionate to the nature of the need for such restriction in each individual case and necessary in a free and democratic society, as stipulated by law.” (Article 38, Paragraph 4 of the Constitution of the Republic of Croatia, Official Bulletin No. 56/90, 135/97, 113/00, 28/01, 76/10).

¹⁹ Passive access to information on the environment is covered in Article 4, and active access in Article 5 of the Convention.

²⁰ “The provisions of the regulation governing the right of access to information apply to information access matters in procedures which are carried out pursuant to this Act but are not regulated under this Act and its implementing regulations” (Article 4, Paragraph 2 of the Environmental Protection Act).

²¹ In a decision of the Constitutional Court of the Republic of Croatia RH U-I/292/2011 (Official Bulletin No. 37/11) the Act on Amendments to the Act on the Right of Access to Information was repealed since the required majority of representatives in the Croatian Parliament did not vote for it. However, the decision of the Constitutional Court also postponed the deadline for this Act to cease to be effective by 15 July 2011. It is expected that the Act on Amendments to the Act on the Right of Access to Information will have been voted for again in the Croatian Parliament by that time.

an appeal may be filed or an administrative dispute may be initiated (Article 17, Paragraph 8 of the Act on the Right of Access to Information).

Appeals are not allowed against the decisions of agencies in the second instance, but a suit may be filed to initiate an administrative dispute. The dispute is initiated before the Administrative Court of the Republic of Croatia, which is now the only administrative court in the country. However, starting with the first day of the implementation of the new Act on Administrative Disputes (1 January 2012) the party will file a suit for a dispute before one of the total of four administrative courts with authority on four locations in the country. The procedure on the appeal is urgent (Article 17, Paragraph 4 of Act on the Right of Access to Information).

4. THE ASSOCIATION AS THE PUBLIC CONCERNED IN AN ADMINISTRATIVE PROCEEDINGS (INCIDENTAL PARTY)

In addition to the right of access to information, the Convention also guarantees the right to participate in decision-making in environmental matters. Provisions from three articles are relevant here – Article 6 pertaining to decision-making on specific activities, Article 7 on public participation concerning plans, programs and policing related to the environment, and Article 8 on public participation during the preparation of executive regulations and generally applicable legally binding normative instruments. Only Article 6 deals with administrative proceedings.

Provisions from Article 6 oblige parties of the Convention to ensure public participation in making a decision on whether to allow specific activities. This primarily relates to activities listed in Annex I of the Convention (Paragraph 1, Clause a). Those activities cover domains of energetics, production and processing of metal, minerals, chemical industry, waste management, and other activities. The very norm defines that these have a significant impact on the environment. Article 6 also applies to decisions on activities outside the scope of Annex I, which may have a significant impact on the environment (Paragraph 1, Clause b). In addition, the implementation of Article 6 extends, in a suitable manner and where appropriate, to the consideration and amendments of working conditions of the activities listed above (Paragraph 10).

In the Republic of Croatia, public participation in making decisions on specific activities is covered in a series of legal acts and acts of delegated legislation. One can derive from this that there is no integrated legislative solution for public participation related to all environmental issues, as was the case with regard to providing information on the environment (Environmental Protection Act, subsidiary implementation of the Act on the Right of Access to Information, subsidiary implementation of the Act on General Administrative Procedure). There is another important difference with regard to access to information. While access to information pertains to the entire public, the Convention allows that certain rights related to participation in decision-making may be limited to the narrower public, the so-called public concerned (Article 6, Paragraphs 2 and 6), which is then allowed access to the judiciary (Article 9, Paragraph 2).²²

²² Provisions of the Convention represent only a minimum of standards below which the Party in the Convention is not allowed to go. Parties have the right to retain or introduce measures enabling broader access

3.1. Assumptions for the Association to Be Considered the Public Concerned

In accordance with the Convention, non-governmental organizations working on the promotion of environmental protection and complying with all requirements of the national legislation are considered the public concerned. The Croatian legislator has incorporated those assumptions into the Environmental Protection Act. An association active in the domain of environmental protection shall be considered to have a sufficient legal interest in procedures regulated by the Act if it fulfills the following requirements: (1) if it is registered in accordance with special regulations governing organizations and if environmental protection and advancement, including protection of human health and protection or rational use of natural assets, is set out as a goal in its Statute, and (2) if it has been registered in that capacity for at least two years prior to the initiation of the public authority's procedure on the request in relation to which it is expressing its legal interest, and if it can prove that in that period it actively participated in activities related to environmental protection on the territory of the city or municipality where it has a registered seat in accordance with its Statute (Article 144, Paragraph 2). In case an association does not meet the said requirements, it is not assumed to belong to the public concerned. This does not prevent the association from proving its legal interest in a separate proceedings: rather, such an interest is only not assumed.

An association may be included in the definition of the public concerned as a public institution which the environmental decision in question influences or may influence, or which is interested in such a decision. An illustrative example would include persons living or working in the area of possible negative influences on the environment or the area which will probably be under this negative influence, and such persons have decided to form an association to more effectively protect their rights. In this case the association would gain legitimacy to represent the interests of its members and it would have to be allowed the status of the public concerned, irrespective of the assumptions valid for other associations, as listed above.

Such a position is corroborated by the adjudication of the Administrative Court of the Republic of Croatia according to which citizens living in the area of possible negative influence of an operation have the right, individually or in a group, to participate in the procedure for assessing the acceptability of the operation.²³

3.2. Administrative Procedures in which Associations Can Participate

Public participation in decision making on specific activities in the Republic of Croatia is regulated by a series of legal acts and acts of delegated legislation. Provisions of the Environmental Protection Act regulate public participation in the assessment of the influence of an operation onto the environment, assessing how acceptable the intended operation is for the environment²⁴. Participation is also regulated in the procedure for defining

to information, more extensive public participation in decision making and wider access to justice in environmental matters than required by this Convention (Article 3, Paragraph 5).

²³ Administrative Court of the Republic of Croatia, Us-11449/1997 of 30 August 2000.

²⁴ A list of operations requiring mandatory assessment of influence to the environment and a list of operations for which there is a need to assess influence on the environment are given in the Bylaw on the Assessment of Influence to the Environment (Official Bulletin, No. 64/08, 67/09).

integrated conditions for environmental protection for facilities carrying out activities which may cause emissions endangering soil, air, water, and the sea.²⁵ These two administrative proceedings may be conducted in integrated proceedings.²⁶ Consulting the public is also prescribed in the procedure of giving consent to the Report on Safety.²⁷

The legislator has handed down the regulation of certain questions related to information and public participation in procedures defined in the Environmental Protection Act to the Government of the Republic of Croatia, which has adopted a Bylaw on Information Dissemination and Participation of the Public and Public Concerned in Environmental Protection Matters.²⁸

In addition to the Environmental Protection Act, public participation is also prescribed by other legal acts (and acts of delegated legislation), for instance the Nature Conservation Act²⁹, in the procedure for assessing the acceptability of operations for the ecological network, and the Act on Genetically Modified Organisms³⁰ in the procedure for issuing permits for intentional introduction of GMOs into the environment.

3.3. The Procedural Position of Associations

Associations acting as the public concerned in environmental protection proceedings have the procedural position of an incidental party. In its practice so far, the Constitutional Court of the Republic of Croatia has stated that both the Act on the General Administrative Procedure and Environmental Protection Act give citizens residing in the area of possible negative influences of an operation and whose interests related to the quality of the environment may be jeopardized by the intended operation the right to participate in the procedure to check the danger of the operation to the environment, individually or as an organization.³¹

Since due to the complexity of such procedures a more thorough regulation of some procedural issues is necessary, the Convention guarantees the following rights to the public concerned³²:

First, immediately after the environmental decision-making procedure is initiated, the public concerned shall be informed, either by public notice or individually, in an ade-

²⁵ Activities which can cause emission and details related to the procedure of defining integrated conditions for the protection of the environment are listed in the Bylaw on the Procedure for Defining Integrated Conditions for the Protection of the Environment (Official Bulletin, No. 114/08).

²⁶ When the operation for which an assessment of environmental influence is being made relates to a facility for which the Environmental Protection Act and the Bylaw on the Procedure for Defining Integrated Conditions of the Protection of the Environment define mandatory integrated conditions for environmental protection, the request for the assessment of environmental influences and the request for the determination of integrated conditions for the protection of the environment are decided on in an integrated proceedings.

²⁷ When an operator of the plant establishes that excessive quantities of dangerous matter are present, he or she is obliged to compile a Safety Report, in accordance with the Bylaw on Preventing Major Accidents Involving Dangerous Materials (Official Bulletin No. 114/08) and in accordance with the best available techniques and technologies.

²⁸ Official Bulletin, No. 64/08

²⁹ Official Bulletin, No. 70/05 and 139/08

³⁰ Official Bulletin, No. 70/05 and 137/09

³¹ Cases Us-11149/97 and Us-89/01.

³² The member of the public concerned exercises these rights in addition to the rights he or she exercises as an incidental party in accordance with the Act on the General Administrative Procedure.

quate, timely and effective manner of the proposed activity and the application upon which a decision will be taken (Article 6, Paragraph 2)³³. The public authorities must select a medium to inform the public such that it will allow everyone potentially interested to have a reasonable chance to find out of the proposed activity and the possibility to participate in the procedure. Therefore, if the medium selected to inform the public is a local newspaper, it would be much more effective to publish the information in a popular daily paper, rather than an official bulletin. Likewise, an “effective” way accorded with the Convention means that, if there is a possibility to select among a number of local papers to inform the public, the papers printing more copies should be chosen³⁴. Informing the public over the Internet (e.g. on the web page of the competent Ministry) cannot be considered an effective way if the Internet is not widely available to the population living in the area of planned operation. As a rule, for the public to be efficiently informed, a few different media should be used (local TV, the Internet, newspapers), and sometimes the information should be published a few times.³⁵

Second, during the public participation procedure, the competent agencies are due to ensure that the public concerned is allowed access to information relevant for decision-making free of charge and as soon as it is available, with the purpose of inspecting this information (Article 6, Paragraph 6)³⁶. This provision does not imply that agencies cannot charge for copying expenses, but only that they cannot charge for browsing the information.³⁷ However, the expenses for making copies must be reasonable, i.e. they must correspond to the average expenses of photocopying or burning the data on a CD or DVD³⁸. Making copies is included in the right of free access to information.³⁹

A case related to the complaint of Spain was caused by the fact that competent agencies have allowed access to information in such a way that individuals could access the documents only at one location, to which they had to travel 30 or 200 kilometers, and access to thousands of pages of the documentation has been made available only at two computers, with no right to get copies on a CD or DVD. The Convention Compliance Committee has found that Spain has violated Article 6, Paragraphs 3 and 6. The Compliance committee is of the opinion that the entire documentation should be available in the vicinity of the place of residence or fully available in electronic form, if the applicant lives in another location.⁴⁰

³³ Article 6, Paragraph 2 lists the content of information that must be given to the public concerned on this occasion, including the information on the possibility of participation in the procedure.

³⁴ v. Report by the Compliance Committee, Compliance by Lithuania with Its Obligations under the Convention, ECE/MP.PP/2008/5/add.6, 4 April 2008, par. 67.

³⁵ v. Findings and recommendations with regard to communication ACCC/C/2009/43 concerning compliance by Armenia, ECE/MP.PP/C.1/2010/8/Add.2, 17 December 2010, par. 70.

³⁶ Article 6 Paragraph 3 allows Convention parties to allow access to information to the public concerned only upon request. Access to information may be granted for the same reasons as access to other environmental information. In this article a minimum of information is listed, considered relevant to decision-making which, therefore, must be given to the public concerned.

³⁷ See: Findings and recommendations with regard to Communication ACCC/C/2008/24 concerning compliance by Spain, ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, par. 95.

³⁸ Ibid. Par. 119.

³⁹ Article 4, Paragraph 1 of the Convention.

⁴⁰ See: Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2009/36 concerning compliance by Spain, ECE/MP.PP/C.1/2010/4/Add.2, 15–18 June 2010, par. 61.

Third, members of the public concerned have the right of access to judicial control of the substantive and procedural legality of a decision, act or failure to act in relation to some activities from Article 6.⁴¹ The Convention explicitly guarantees that the public concerned may refute the decision due to violations of both substantive and formal law, and not only due to the violation of procedural regulations.

Other rights guaranteed by the Convention to the public at large and – even more so – the public concerned in the procedure deciding on particular activities include:

First, the right to reasonable time-frames for the different phases, allowing sufficient time for informing the public so it can prepare and participate effectively during the environmental decision-making (Article 6, Paragraph 3). This right presupposes that the public must have enough time to familiarize itself with the documentation and submit its comments, especially having in mind the complexity and scope of the proposed operation in the environment. In general, a time-frame that would be reasonable for a simple project of lesser scope and impact would not be reasonable in case major and complex projects are planned.⁴²

Second, the right of early participation, when all options are open and when efficient public participation can take place (Article 6, Paragraph 4).⁴³

Third, the right to submit comments, information, analyses or opinions that the public considers relevant to the proposed activity (Article 6, Paragraph 7).

Fourth, the decision must take into due account the outcome of the participation (Article 6, Paragraph 8). This does not mean that all comments and objections submitted must be accepted. However, competent agencies must seriously consider all comments they receive, which means that the decision must contain a written justification including comments coming as an outcome of public participation. A system in which all comments would be routinely rejected or ignored, without justification, would not be in accordance with the Convention.⁴⁴

Fifth, the right to prompt information on the decision, as soon as it has been made by the competent authority, in accordance with the relevant provisions from the national legal system, and the right of access to the text of the decision, followed by the reasons on which the decision is based (Article 6, Paragraph 9). In deciding on the way in which the public shall be informed of the decision, the deadlines and other conditions for access to the judiciary guaranteed in Article 9, Paragraph 2 of the convention must be taken into account⁴⁵

⁴¹ Control can also/otherwise take place before another legally founded, independent and impartial agency. Access to the judiciary is guaranteed in Article 9, Paragraph 2 and additionally regulated in Article 9, Paragraph 4 of the Convention.

⁴² See: Report by the Compliance Committee, *op. cit.* (add. 30), par. 69.

⁴³ Public participation in the assessment of impact of an operation to the environment, related to the temporary asphalt base in Zminje, which took place in 2010, i.e. six years after the base had been constructed and operational (in 2004) is an example of late public participation when no other option is open any longer and when efficient public participation cannot take place. See: Decision on the environmental acceptability of construction of a temporary asphalt base of 23 July 2010, http://puo.mzopu.hr/UserDocsImages/Rjesenje_30_07_2010_1.pdf.

⁴⁴ See: Findings and recommendations with regard to Communication ACCC/C/2008/24 concerning compliance by Spain, *op. cit.* (add. 33), par. 99-101.

⁴⁵ Report by the Compliance Committee, *op. cit.* (add. 30), par. 84.

4. THE ASSOCIATION AS A PARTY IN OTHER ENVIRONMENTAL PROCEDURES

The public has the right to participate during the preparation of plans, programs, policies, and regulations related to the environment (Articles 7 and 8 of the Convention). The Convention ensures procedural rights in those proceedings, too, where warranties in preparing plans and programs are the strongest.⁴⁶ Parties in the Convention are due to provide opportunities for public participation within a clear legal framework, and provide the needed information to the public. The public participation procedures must include reasonable time-frames and should be initiated early, when all options are open, and the final decision made must take into account the outcome of public participation. A competent state authority shall identify the public which may participate, taking into account the objectives of this Convention (Article 7).

Since these are not administrative proceedings, the question of legal protection is posed in case such plans and programs or the process of their adoption are illegal. It is an open question whether against the very plan and program a direct remedy may be used, such as the motion to the Constitutional Court of the Republic of Croatia to review the constitutionality and legality since the Constitutional Court has not dealt with such motions so far, except for spatial plans. However, since the Constitutional Court of the Republic of Croatia has so far defined its jurisdiction quite restrictively in matters related to general acts not passed by state authorities, one can assume that the motion to assess plans and programs would be rejected. Still, from the date on which the new Act on Administrative Disputes shall come into force (1 January 2012), there will be a possibility to initiate the review of constitutionality and legality of a general act passed by local and regional self-government units, a legal person holding the authority and a legal person conducting public service, before the Higher Administrative Court. However, this possibility shall be limited only to those applicants (natural or legal persons or groups of persons related by common interest) who prove it possible that the individual decision of a public authority which was based on an illegal general act has resulted in the violation of their right or legal interest (Article 83).

Representatives of the public have the right to complain to the Compliance Committee authorized to monitor the implementation of the Convention if they think that during the procedure for adopting plans or programs related to the environment the provisions of the Convention have been violated.

5. THE ASSOCIATION AS A DENUNCIATOR IN THE PROCEEDINGS

The guarantees of the Convention are also based on the assumption that the public will help the authorities to extend their limited capacities to discover illegal activities and omissions and thus ensure observance of the law. In that sense, a new provision of the Act on the General Administrative Procedure is important (Article 42) according to which the public authority is obliged to respond to the petition or information of an individual sug-

⁴⁶ Environmental plans and programs may be spatial plans, regional development strategies, plans and programs in the domains of transport, tourism, energetics, water management, healthcare etc, on all levels of government. See: Stec, S et al., op. cit. (footnote. 6), p. 115.

gesting that there is a need to initiate an administrative procedure *ex officio* in order to protect public interest. In the environmental domain, this will primarily pertain to petitions of citizens informing competent authorities that there is a danger for people's health and the environment and that an inspection procedure should be ordered. Before the new Act on the General Administrative Procedure came into effect individuals and associations had no legal protection in case an inspector did nothing on the basis of their charge or in case they were dissatisfied with what the inspection had done.

According to the provision of Article 42, Paragraph 3 of the Act on the General Administrative Procedure, when an official finds that there are no conditions to initiate proceedings, he or she shall inform the petitioning party accordingly and as soon as possible, at the latest within 30 days from the date of the petition. In this case, the petitioner has the right to complain to the public authority from which he or she has received the information rejecting the motion to initiate proceedings, within eight days from the date of receipt of the information, and also in case he or she has not been given answer to the petition in the given time-frame (Article 42, Paragraphs 2-4). The head (individual in charge) of the public authority decides on the complaint within eight days from the day in which the complaint was made. One can appeal against the decision on the complaint in the first instance, and one can initiate an administrative procedure against such decision in the second instance. If there is no second instance authority, an administrative procedure can be initiated against the decision of the first instance authority (Article 122, Paragraphs 3 and 4). This way individuals and associations are given the right of access to the judiciary in case they are dissatisfied with the work of inspections.

However, if a public authority decides to initiate an administrative procedure *ex officio*, based on a petition or denunciatory information, the petitioner shall not get the status of a party and shall not participate in further proceedings.

6. CONCLUSION

Environmental protection procedures in Croatia in which environmental associations participate are mostly related to access to information on the environment, issuing licenses for particular activities which can have significant effects on the environment, adoption of plans and programs related to the environment and incentives to inspections to initiate administrative procedures *ex officio* due to various possibilities to violate environmental legislation.

The Croatian legislation, and within it the Aarhus Convention, a ratified international treaty which has supra-statutory power, enables environmental protection associations to participate in those procedures, and also gives them certain procedural rights, among which the most important one is the right to initiate judicial control of the passed acts before the Administrative Court of the Republic of Croatia. Likewise, they are guaranteed legal protection in case an act is not passed based on their request for information or petition suggesting that there is a need to initiate an administrative proceedings *ex officio*.

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PRAVNI POLOŽAJ UDRUGA U POSTUPCIMA ZAŠTITE OKOLIŠA U REPUBLICI HRVATSKOJ

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Udruge za zaštitu okoliša mogu značajno unaprijediti provedbu prava okoliša. Takvu važnu ulogu u zaštiti okoliša priznaje im Konvencija o pristupu informacijama, sudjelovanju javnosti u odlučivanju i pristupu pravosuđu u pitanjima okoliša koja je zaključena u Aarhusu 1998. (tzv. Arhuška konvencija). Konvencija je u odnosu na Republiku Hrvatsku stupila na snagu 25. lipnja 2007., a temeljni propis kojim je provedena u hrvatsko zakonodavstvo je Zakon o zaštiti okoliša. Arhuška konvencija jamči procesna ekološka prava (pristup informacijama, sudjelovanje u odlučivanju i pristup pravosuđu) te su za njezinu primjenu u hrvatskom pravnom sustavu od osobite važnosti i Zakon o općem upravnom postupku te Zakon o upravnim sporovima.

U radu se analizira pravni položaj udruga u postupcima zaštite okoliša koji može biti višestruk. Prvo, udruga može imati položaj stranke o čijem se pravu, obvezi ili pravnom interesu rješava u upravnom postupku (primjerice upravni postupak ostvarivanja prava na pristup informaciji o okolišu). Drugo, udruga koja djeluje na području zaštite okoliša i ispunjava sve uvjete sukladno Zakonu o zaštiti okoliša smatra se pripadnikom zainteresirane javnosti te ima pravo sudjelovati u svim postupcima zaštite okoliša u kojima je temeljem zakona predviđeno sudjelovanje javnosti i/ili zainteresirane javnosti (npr. upravni postupak procjene utjecaja zahvata na okoliš). Treće, procesna

legitimacija može se priznati udruzi i u slučaju zaštite od drugih oblika postupanja tijela javne vlasti iz područja upravnog prava kojima joj je povrijeđeno pravo, obveza ili pravni interes (primjerice uskraćivanje udruzi prava na sudjelovanje u postupku donošenja plana gospodarenja otpadom). Četvrto, udruga može podnijeti obavijest ili predstavku kojom upućuje na potrebu pokretanja postupka po službenoj dužnosti radi zaštite javnog interesa (npr. obavijest inspekciji o onečišćenju okoliša). Iako se u tom postupku ne radi o njezinom pravu, obvezu niti pravnom interesu (u kojem slučaju bi imala položaj stranke), Zakon o općem upravnom postupku predviđa pravnu zaštitu protiv obavijesti tijela javne vlasti kojom se ne prihvaća prijedlog za pokretanje postupka, kao i za slučaj da udruga u propisnom roku nije primila odgovor od tijela javne vlasti.

Ključne riječi: udruge, zaštita okoliša, upravni postupak, upravni spor, Arhuška konvencija.