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ECONOMIC COMMISSION FOR EUROPE

**MEETING OF THE PARTIES TO THE CONVENTION ON
ACCESS TO INFORMATION, PUBLIC PARTICIPATION
IN DECISION-MAKING AND ACCESS TO JUSTICE
IN ENVIRONMENTAL MATTERS**

Third meeting
Riga, 11–13 June 2008
Item 6 (a) of the provisional agenda
Procedures and mechanisms facilitating
the implementation of the Convention:
Reports on implementation

**IMPLEMENTATION REPORT SUBMITTED BY
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA¹**

Article 10, paragraph 2, of the Convention requires the Parties, at their meetings, to keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. Through decision I/8, the Meeting of the Parties established a reporting mechanism whereby each Party is requested to submit a report to each meeting of the Parties on the legislative, regulatory and other measures taken to implement the Convention, and their practical implementation, according to a reporting format annexed to the decision. For each meeting, the secretariat is requested to prepare a synthesis report summarizing the progress made and identifying any significant trends, challenges and solutions. The reporting mechanism was further developed through decision II/10, which addressed, inter alia, the issue of how to prepare the second and subsequent reports.

¹ The present document was submitted on the above date due to resources constraints.

I. PROCESS BY WHICH THIS REPORT HAS BEEN PREPARED

1. The draft version of the national report on the implementation of the Convention in The former Yugoslav Republic of Macedonia has been prepared by the Public Communication Department (PCD) within the Ministry of Environment and Physical Planning (MOEPP). Following the principles of the Convention on timely informing and participation of the public, it was available to the public for amending and commenting:

- (a) The information, together with the report, was published on the MOEPP website, enabling every individual an access to the draft report.
- (b) The information, together with the report, was distributed to all the non-governmental organizations (NGOs) in the country, for their commenting.
- (c) A number of the answers received by the Ministry had remarks regarding the report.

2. All the relevant remarks, comments and suggestions were addressed and relevantly implemented in the report.

II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT

Organization of the State authorities in The former Yugoslav Republic of Macedonia

3. The organization of relevant State bodies is as follows:

- (a) The Parliament of the Republic is the representative body of the citizens and the legal authority in the country;
- (b) The Government is the executive authority;
- (c) The MOEPP carries out other activities related to the State and protection of environment; including spatial planning;
- (d) Local self-government units have responsibilities in:
 - (i) Urban (urban and rural) planning;
 - (ii) Environment and nature;
 - (iii) Communal activities;

International agreements - legal basis for their compulsory action

4. Article 118 of the Constitution of the country stipulates that “international agreements ratified in accordance with the Constitution are part of the internal legal system and cannot be changed by law”. Article 68 stipulates that “the Parliament of The former Yugoslav Republic of Macedonia... ratifies international agreements”. Finally, Article 98 provides that “the courts shall judge on the basis of the Constitution and the laws and international laws ratified in accordance with the Constitution”.

5. Based on the aforementioned, the legal system of the State and the agreements ratified in accordance with the Constitution shall be considered as internal rights of this country, thus having the legal power of a law, and cannot be changed by law.

III. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8 OF ARTICLE 3

6. The Law on Environment directly implements the requirements of the Convention for access to environmental information, public participation in the decision-making process and access to justice. The Draft Law establishes that:

- (a) Everyone has the right to access to environmental information without having to show interest;
- (b) The right to access to information shall be established in a manner defined by the Law;
- (c) All the bodies specified by the Law shall provide environmental information;
- (d) A request for giving an information may be refused only in specific cases;
- (e) The bodies specified by the Law shall collect and release environmental information within the scope of their work;
- (f) The reimbursement of the costs on giving the required information shall be of a reasonable value which does not exceed the real costs;
- (g) A party not satisfied shall have a right to access to justice.

7. The legal obligations on access to environmental information, public participation in the decision-making and access to justice shall be contained in the new Law on Access to Information (*Official Gazette*). MOEPP has a legal obligation to disseminate environmental information in accordance with the Law on Waste, the Law on Nature Protection, the Law on Ambient Air Quality and the draft Law on Waters. All the aforementioned laws envisage a legal basis for practical implementation and realization on the basis of the secondary legislation acts.

8. The Government, following a proposal of the State administration body responsible for environmental issues, shall publish and keep a list of subjects possessing or in which environmental information is possessed. The List specifies the information held by each of the aforementioned subjects.

9. The subjects possessing environmental information shall nominate a person responsible for achieving/practicing the right for access to environmental information, and provide premises in which the requesting parties shall be able to review or have an insight into the required environmental information.

10. The subjects possessing environmental information shall submit the required environmental data and information or make them available to the persons requesting access to information.

11. The Law shall define the responsibility of the Ministry of Education and Science to envisage that every curriculum for primary or secondary schools contains teaching methods and issues in the field of environment. The local self-government units shall, in their territories, promote the development of the environmental education and public awareness.

IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3

12. The following obstacles have been encountered:

- (a) The ongoing process of decentralization is an additional obstacle for the realization;
- (b) Difficulties vis-à-vis increasing capacities for practicing the right to access to environmental information regarding all information, in written, visual, audio, electronic or any other type of available form;
- (c) Lack of financial resources needed for dissemination of data and information, establishing and equipping information points;
- (d) Lack of available human resources at both the national and local levels;
- (e) Need to strengthen the capacities of the non-governmental sector.

V. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE GENERAL PROVISIONS OF ARTICLE 3

13. The practical implementation of the principles of the Convention takes place through the Public Relations Department (PRD). All the environmental information of vital importance for normal and healthy living which are in the frameworks of the legal provisions are distributed to the public. Citizens participate by offering their proposals and petitions/requests for certain environmental problems. There are computers in the PRD aimed for public use, through which the interested citizens can acquire new and useful information.

14. MOEPP establishes cooperation with the environmental NGOs in several ways:

- (a) By financially supporting their projects,
- (b) By giving expert assistance,
- (c) By providing information and data for their use.

The NGOs are also included in the drafting of new legal regulations, programmes, policies, projects and activities.

15. Numerous public awareness-raising campaigns have been realized through the PRD on specific topics, and different events are being organized for marking the days of the eco-calendar.

16. The green Eco-bus, which is a completely technically equipped mobile Public Communications Office, as well as a number of other activities, are used to realize the campaign as specific tools for communication with and approaching citizens.

17. The Eco-bus travels throughout the country, carrying out exchange of information and education through the direct contacts with the citizens.

18. Education and public awareness-raising are also promoted through cooperation with the electronic and printed media.

VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3

19. The official MOEPP site (www.moepp.gov.mk),
The official NGO site (www.eko.net.mk).

VII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ARTICLE 4

Relevant definitions

20. The Law on Environment, in its section regulating the meaning of the terms used in the text of the Law, stipulates that “the public” shall mean one or more legal entities or natural persons, citizens and their organizations and associations established in accordance with Law. The “public concerned” shall mean the public, concerned by or having an interest in—at present or in future—the decision-making concerning the environment. The public concerned includes the civil society associations established for the purpose of environment protection and promotion, and natural persons most likely to be affected by the consequences of the decision.

Article 4

21. The Law on Environment provides that bodies and legal entities and individuals which possess environmental information, or on which environmental information is possessed, shall be:

- (a) Public administration bodies;
- (b) Local self government units;
- (c) Legal entities and individuals who are authorized with public authorizations, including special duties, activities and services in the field of the environment; or
- (d) Other the legal entities and individuals specified by law. The list of entities which possess environmental information or on which environmental information is possessed, and the specification of the information possessed by each of the aforementioned bodies, shall be subject of a secondary legislation act.

22. The list shall be published and regularly revised. The judicial and legislative bodies shall not be part of the bodies and legal entities and individuals which possess environmental information, or on which environmental information is possessed.

23. The right of access to environmental information shall be exercised with respect to all information in written, visual, audible, electronic or any other available form, pertaining to:

- (a) The state of environmental media and areas;
- (b) Factors, measures and reports;
- (c) Cost/benefit analyses; and
- (d) Conditions related to human health and safety.

24. Everyone has the right to request validated environmental information and data from public authorities and legal entities and individuals without having to prove their interest.

25. Finally, the Law is based on the principle of non-discrimination. According to the Constitution citizens are equal with respect to enjoying rights and freedoms, irrespective to the sex, race, skin colour, national and social origin, political and religious conviction, property and social state. The citizens are equal before the Constitution and the laws.

26. The request for environmental information may be submitted to any of the entities which possess environmental information. The entity is responsible for submitting the information not later than one month from the date of receipt of the request, or two months from the date of receipt of the request under specified conditions.

27. The manner and the procedure through which access to environmental information is provided are subject to a secondary legislation act. The information shall be provided in the form requested, unless specified conditions in law are fulfilled.

28. The Law on Environment envisages the authorization that the bodies and legal entities and individuals which possess environmental information, or in which environmental information is possessed, may refuse to allow access to information under specific conditions stipulated by the Law.

29. The level of the compensation for the expenses related to the delivery of the information determined by the regulation shall be reasonable and shall not exceed the real costs incurred for the provision of the requested information. Thus, searching of registers and records of data, as well as verification of information where it is possessed or maintained, shall be free of charge.

VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4

30. The same obstacles apply here as do for article 3.

IX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 4

31. The PRD keeps register of the number of visits. All visits are presented in a table, classified according to the type of information requested, or according to the target groups.

32. The PRD continuously encounters interested citizens reporting on their problems by phone and requesting information on the possibilities for resolving the problems.

33. To increase the number of group visits in the PRD, it is acquiring more educational materials for pre-school and school-age children, as well as other promotional materials.

34. All the requests for information indicated in the table are submitted accordingly in the requested form, within the specified term.

X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

35. www.moepp.gov.mk; www.eko.net.mk; www.sinf.gov.mk.

XI. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON THE COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION IN ARTICLE 5

36. MOEPP shall, in accordance with the draft Law on Environment, establish an environmental information system. The information system shall be established and organized in a manner so as to provide a relevant database; comprehensive, accurate and publicly accessible information on the state of the environment, the state and quality of the environmental media and other environmental areas; noise; ionizing and non-ionizing radiation, including electromagnetic radiation; as well as forecasts through the use of modelling techniques. The system shall include systematization, storage and use of data obtained through the State monitoring network and local monitoring networks, from the monitoring performed by the operators obliged for that by Law, from individual environmental media and areas, as well as data from the Register of pollutants and polluting substances and their properties and the Cadastre of polluters of the environment.

37. Operators which are sources of emission and which pollute one or more environmental media and areas, or use the natural heritage, shall under the special law carry out self-monitoring by using devices and instruments approved through the procedure for measurements verification established by law, and maintain the monitoring devices and instruments in proper working condition.

38. The State administration body responsible for the environmental issues shall, in cooperation with other relevant bodies of the State administration, prepare an Indicator Report and a state-of-the-national-environment-report every four years (hereinafter "the Report"). The Report shall be available at the MOEPP website, and sent to all relevant and interested institutions.

39. The entities which possess environmental information, or in which environmental information is possessed shall, within the scope of their powers, provide for dissemination, public accessibility and maintenance of environmental information they possess, or which is possessed on their behalf, in forms and formats that are easy to reproduce and accessible by electronic communication networks. They shall also provide for public participation in the process of laws, other regulations and legal acts drafting.

40. MOEPP shall be responsible for dissemination of environmental information and for facilitating the access to environmental information possessed by the other ministries, the

municipalities, the city of Skopje and the municipalities of the city of Skopje, and other bodies and entities.

41. The right of access to environmental information shall be exercised with respect to all information in written, visual, audible, electronic or any other available form, pertaining to:

- (a) The state of environmental media and areas, such as air and atmosphere, water, soil, land, biological and landscape diversity, including genetically modified organisms (GMOs), as well as interaction among these elements;
- (b) Factors, such as substance, energy, nuclear fuels and nuclear energy, noise, radiation or waste, including radioactive waste, emissions and other releases into the environment, affecting or likely to affect the environmental media and the human health;
- (c) Measures, including administrative measures, such as policy, legislation, plans, programmes, agreements, as well as activities which may directly or indirectly affect the environmental media and factors, and measures or activities designed to protect those elements;
- (d) Reports on the implementation of environmental laws and other regulations and acts;
- (e) Costs/benefit analysis and other financial and economic analysis, and assumptions applied as part of the measures and activities aimed at environment protection and improvement;
- (f) Conditions related to human health and safety and the safety of foodstuffs, including pollution's impact on the food chain, living conditions, sites of importance to culture and man-built structures, to the extent to which they are affected, or are likely to be affected by the environmental media, or through the impact of such media on any condition of the aforementioned elements and factors.

42. Everyone has the right to request validated environmental information and data from public authorities, legal entities and individuals, without having to prove their interest.

XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5

43. The following obstacles have been encountered:

- (a) Secondary legislation acts need to be adopted;
- (b) The process of decentralization needs to be completed, thus creating capacities at the local level capable to manage the environmental data and information;
- (c) Capacities need to be created to enable the right of access to environmental information to be exercised with respect to all information in written, visual, audible, electronic or any other available form;
- (d) There is a lack of financial resources needed for dissemination of data and information, as well as opening and equipping information points/offices;
- (e) There is a need to strengthen capacities in the non-governmental sector.

XIII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 5

44. The development of Environmental Information System has started by the Project REReP 1.8 (Development of National Environmental Information System for the South-Eastern European Countries). Due to limited resources, only part of the system has been developed.

45. Cooperation between the Ministry of Health (MoH) and MOEPP is of basic significance for the proper conception and implementation of the policy on the relation environment - human health. MoH, through the State Sanitary and Health Inspectorate and the State Health Institute (SHI) shall participate in the monitoring of the environment pollution, respectively the monitoring of the air, water and food products pollution, monitoring and protection of the population against the harmful impact of gases, ionizing radiation, noise and supervision of the hygiene-epidemiological state of the population. The public health organizations which are included in the monitoring shall submit data to the MOEPP on a regular basis.

46. There are health and health-environmental Units within the SHI and 10 Regional Health Institutes, which have established monitoring on the air pollution, and the health suitability of drinking and surface waters. These activities shall be carried out according to established methodology and dynamics in compliance with the existing legislation, in a form of programme tasks. The Regional Health Institutes shall process and submit the data from the monitoring of the air, drinking water and surface waters to SHI as semi-annual and annual reports. They shall submit monthly reports to MOEPP. SHI shall, at the beginning of each year, prepare an annual report.

47. MOEPP shall inform the international bodies. The obligation for informing, both on a national and international level, shall be carried out by MEIC. Based on the processed data, MEPP shall also prepare reports on a monthly and yearly basis. The printed reports shall be submitted to the relevant institutions. The official reports shall be made available to different interested parties and the public in the premises of the Public Communication Office (PCO) and on the website of the Ministry. Most of the information shall be published at the MOEPP website: the data on the air pollution, a state-of-the-environment-report, etc.

48. The non-governmental sector has established the nationwide so called Coalition - Aarhus Family, with a possibility for using the Internet and communications technology to implement the Convention to strengthen the role of the non-governmental sector in Convention implementation. In this direction, the non-governmental sector envisage establishment of four regional offices. The regional offices shall have the roles of

- (a) Citizen centres enabling citizens to request information;
- (b) Resource centres for NGOs in the region and for transfer of information on the local, national and international level; and
- (c) Centres which shall take part in the dissemination of information on horizontal and vertical levels.

XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5

49. www.moepp.gov.mk.

XV. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES IN ARTICLE 6

50. The subjects of environmental impact assessment (EIA) shall be projects which due to their character, scope or location of their realization may have significant impact on the environment. EIA is carried out for projects which are subject to a mandatory requirement for an EIA and are defined according to criteria on the basis of which a need is identified for an EIA of other project specified in general terms which are likely to have a significant impact on the environment. The need for an EIA shall be identified on the basis of case-by-case examination of characteristics, size and location, in accordance with the prescribed criteria, in light of the latest scientific and technical developments and provisions in the regulations regulating the limit values of emissions into the environment.

51. The body of the State administration competent for the execution of the works from the area of environment is obliged to:

- (a) Publish the notification of performance for a project in two national daily newspapers and on the competent State body's website;
- (b) Publish the decision on the need for performances of an EIA in two national daily newspapers and on the website as well as on the notice board of the competent body;
- (c) Announce that the EIA study is being prepared and is available to the public in two national daily newspapers, a local radio/TV station; a non-technical report of the study shall be posted on the Ministry's website;
- (d) To publish the report for compatibility of the EIA study in two national daily newspapers and on the Ministry's website;
- (e) Publish the decision granting approval or refusal of the project's realization in two national daily websites as well as on the notice board of the competent body;
- (f) Announce the time and the place of the public hearing on the EIA study in two daily newspapers and a local radio/TV station.

52. Where a foreign country so requests, items 2, 3, 4 and 5 shall be made available to the competent authority of foreign country, in accordance with the stipulated procedure.

53. The law provides that the body of the State administration competent for the execution of the works from the area of environment shall be obliged to publish an integrated environmental permit on its website and in two national daily newspapers, and allow, within 15 days, access of the concerned public to the relevant information for public participation in the procedure of issuing the permit, and to the opinions that were taken into consideration and upon which the permit was issued.

54. Each entity of local self-government may comment to MOEPP, in written form, within 30 days from the date of the announcement. MOEPP is obliged to consider all comments and opinions when issuing the permit.

55. Local self-government units shall ensure public access to all relevant information, within the procedure for granting the B IPPC permit.

56. Within 30 days from the date of the announcement of the application for IPPC permit, the concerned public may comment, in written form.

57. During the preparation of the A-IPPC permit, MOEPP shall be obliged to explain which public comments are taken into account, and which are not considered including the reason why not.

58. At request of the concerned public, the investor is obliged to organize a public hearing.

59. Finally, the Law is based on the principle of non-discrimination. According to the Constitution, all citizens are equal with respect to enjoying rights and freedoms, irrespective to the sex, race, skin colour, national and social origin, political and religious conviction, property and social state. The citizens are equal before the Constitution and the laws.

XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6

60. Financial resources are needed and capacities need to be strengthened of all the relevant subjects in the process.

XVII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6

61. MOEPP shall implement the obligations resulting from the provisions for including the public in the decision-making process in accordance with the Law on Environment and the relevant secondary legislation acts.

62. The public has been informed on all the requests submitted to MOEPP regarding the issuance of a Permit with Adjustment Plan for an Integrated Environmental Permit, which enables inclusion in the overall process. Also, public debates are organized upon the request of concerned/interested parties, whereas the results of public participation are taken into consideration in accordance with legal obligations.

XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6

63. www.moepp.gov.mk.

XIX. PRACTICAL AND/OR OTHER PROVISIONS MADE FOR THE PUBLIC TO PARTICIPATE DURING THE PREPARATION OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7

64. The Law envisages the obligation for inclusion of the public in the adoption of the environmental programme and plan documents. Public participation in the preparation and adoption of the National Environmental Action Plan (NEAP) and the Local Environmental Action Plan (LEAP) shall be exercised in a manner and under terms defined by Article 69 of this Law.

65. Prior to the commencement of the planning document adoption procedure and within five days from the date of the completion of an environmental report, the body that prepares the planning document shall publish information concerning the draft planning document and the environmental report with information on the public participation procedure. The body shall at the same time submit the draft planning document and the Environmental Report to the body of the State administration responsible for environmental affairs. The body of the State administration responsible for the affairs of the environment and the bodies affected by the implementation of the planning document, legal entities and individuals and the public may express their opinion on the draft planning document and the environmental report to the body preparing the planning document within 30 days from the date of submission and publication of information thereon. The body shall, in the development of the planning document, take into account the opinions received and prepare special report thereon. The manner in which information shall be published and the public participation and the manner of preparation of the report shall be a subject of a secondary legislation act.

XX. OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE PREPARATION OF POLICIES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7

66. The body of the State administration responsible for environmental affairs, and the bodies concerned by the implementation of the plan documents, the legal entities, and individuals may express their opinions on the draft plan document and the environmental report to the body preparing the plan document within 30 days of the date of submission, i.e. publication of the information on these. The body shall, during the preparation of the plan document, take into consideration the opinions received regarding the draft plan document and the environmental report, on which a separate report shall be prepared.

XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7

67. The following obstacles have been encountered:

- (a) Only part of the secondary legislation acts have been prepared and adopted;
- (b) There is a need for financial resources and strengthening the capacities of all the relevant subjects in the process;
- (c) Preparation of strategic, plan and programme documents is needed.

XXII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 7

68. Public participation in the preparation of the plan documents shall be clearly and unambiguously defined by several secondary legislation acts with regard to all strategic, plan and programme documents (Spatial Plan of The former Yugoslav Republic of Macedonia, Water Master Plan, Strategy on Economy Development, NEAP, LEAP, Vision 2004, Plan on Phasing-out Leaded Petrol and others). These documents shall be legally adopted in two phases: draft and proposal. Draft documents shall be published and a public hearing shall be organized to discuss their content. The opinions, comments and suggestions obtained from the hearing shall be taken into consideration during the completion of the text of the document, submitted as a proposal for a final adoption.

XXIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7

69. www.moepp.gov.mk.

XXIV. EFFORTS MADE TO PROMOTE EFFECTIVE PUBLIC PARTICIPATION DURING THE PREPARATION BY PUBLIC AUTHORITIES OF EXECUTIVE REGULATIONS AND OTHER GENERALLY APPLICABLE LEGALLY BINDING RULES THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8

70. According to Article 61 of the Procedure for adoption of plan documents, preparation of environmental regulations and public participation is ongoing.

71. The Government, upon a proposal of the State administration body responsible for the environmental issues, shall specify the conditions, manner and procedure for public participation in the preparation of environmental regulations and other acts.

72. The State administration bodies and the local self-government units shall, for the objective of public participation in the decision-making process, inform the public on all the proposals for preparation, adoption, amending or revision of plans and programmes, by means of oral information, or other appropriate manner, such as electronic and printed media. They shall also enable access to information on the proposals, including information on the right of the public to participate in the decision-making procedure on the plans and programmes, along with the responsible body to which comments and questions can be submitted.

73. The bodies shall enable the public the right to give their comments, proposals and opinion prior to the making decisions on plans and programmes. During the decision-making process, they shall take into consideration the opinion form the public participation.

74. During the decision-making process, the bodies shall undertake measures for informing the public on the decisions made, and the reasons and basis for such decisions, including informing on the process of public participation.

75. The Government, upon a proposal of the State administration body responsible for the environmental issues, shall specify the types of plans and programmes, manner and procedure for public participation in the preparation, adoption and amending or revision of plans and programmes, along with the manner and criteria on which the public participation is defined, including the NGOs.

76. The plans and programmes regarding national safety, defence of the country and protection and salvation of population are an exception from the aforementioned plans and programmes.

77. Article 2 and article 3, paragraph 9, of the Convention are completely implemented by the Law on Environment (*Official Gazette*, nos. 53/05, 81/05 and 24/07), together with the adopted secondary legislation acts:

- (a) Decision on publishing a list of subjects that possess or on which environmental information are possessed (*Official Gazette*, no. 82/07);
- (b) Rulebook on the Manner and Procedure for providing access to environmental information (*Official Gazette*, no. 93/07);
- (c) Decree on the Reimbursement of Costs for providing environmental information in the cases when fee is charged, which is in a governmental procedure for adoption.

78. The Law on Free Access to Information of Public Character was also adopted (*Official Gazette*, no. 13/06)

XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8

79. The Law on Environment is in a parliamentary procedure for final adoption of the text of the Law; the relevant secondary legislation act is to be adopted.

XXVI. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 8

80. During the preparation of the environmental laws to be harmonized with the European Union (EU) directives, inter-ministerial working groups for harmonization of the legislation were established. The working groups have become the main driving force for most of the activities related to the preparation of the legal texts, thus presenting a platform for development of new environmental legislation that is compatible with the EU legislation. This approach is also practiced in the preparation of strategic documents in the field of the environment.

81. MOEPP, within the frame-works of the projects for preparation of regulations and strategic documents, along with the other regulations, has tried to provide transparency through the following means:

- (a) Questionnaires;
- (b) Public opinion research;
- (c) Quantitative and qualitative polls; and

(d) Organizing Workshops on the draft Laws. Representatives of the interested parties (e.g. government and state institutions, local self-government units, public enterprises, industry (i.e. national Chamber of Commerce), other interested private legal entities, NGOs, and scientific and expert organizations) took part at these workshops. Their relevant comments were implemented in the draft Laws.

82. The environmental laws and the process of their preparation were published and available at the MOEPP website for commenting by the public. The received relevant comments were implemented in the laws.

XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8

83. www.moepp.gov.mk.

XXVIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9

84. Article 55 of the Law on Environment, contains the conditions under which the request for environmental information may be refused.

85. The entities/bodies responsible for the provision of environmental information may refuse the request for environmental information if:

(a) The information requested is not possessed by or in them. Within seven days from the date of receipt of the request, the entities/bodies responsible for provision of environmental information (hereinafter, entities) to which the request has been submitted shall forward the request to the entity that possesses the requested information if they are aware of that entity, and inform the applicant thereon, or inform the applicant on the entity most probably possessing the requested information;

(b) The request is manifestly unreasonable;

(c) The request is too general. The entity shall, within term that shall not be longer than 15 days from the date of receipt of the request, provide in writing guidance to the person concerned as to the form, content and volume of the request; and/or

(d) The request refers to information the completion of which is under way, or which is used for internal needs and communications. If the information completion is in progress, the entity shall inform the applicant of the entity preparing the information and when it will be completed.

86. The entities may refuse to allow access to information if disclosure of the information would have negative effects on:

- (a) Confidentiality of the proceedings managed by the competent authorities;
- (b) International relations, public security and national defense;
- (c) Court procedures, the right of legal entities and individuals to a fair trial and the right to initiate court or disciplinary procedures;

- (d) Confidentiality of commercial or industrial information where such confidentiality is guaranteed by law, with view to protecting legitimate economic interests;
- (e) Protection of persons and confidentiality of personal data;
- (f) Protection of intellectual and industrial property rights;
- (g) Interests of any person who supplied the requested information without any obligation to do so, where that person has not consented to the disclosure of the information concerned; and/or
- (h) Protection of specific wild species and/or types of habitats.

87. The entities shall not refuse the request for information based on paragraph 2, items 1, 4, 5, 6, and 7 of this Article, if such request relates to information on discharges or other emissions in the environment.

88. In each of the cases, the entities shall assess whether the protection of public interests, to which the requested information pertains, is of higher importance than the interests served by the disclosure of the information.

89. The entities responsible for the provision of environmental information shall issue a decision on the refusal of the request, in part or in full, or a conclusion in writing which shall contain the reasons for the refusal of the request, as well as a reference to the possibilities for an appeal against the decision or the conclusion. The entities responsible for the provision of environmental information shall submit the decision or conclusion within a period of:

- (a) The shortest possible term, but not later than one month from the date of receipt of the request; or
- (b) Two months from the date of receipt of the request, if the volume and the complexity of the information are such that the period of one month is insufficient to complete the documentation.

90. The requesting party shall have the right to lodge an appeal against the decision or conclusion adopted by the Government and the State administration bodies, issued by the entities responsible for the provision of environmental information, with the Second Instance Commission of the Government responsible for resolution of administrative matters in the area of environment.

91. The requesting party shall have the right to lodge an appeal against the decision or conclusion issued by the entities responsible for the provision of environmental information, with the body of the State administration responsible for the affairs of the environment.

92. The provisions from article 9 of the Convention have been implemented in the Law on Free Access to Information of Public Character (*Official Gazette*, no. 13/06). There, according to Article 7, the right to a legal protection is given to the requesting party/person requesting access to information, while Article 28 gives the appeal procedure against the decision or conclusion. Article 35 gives the possibility for judicial protection, i.e. right to initiating administrative dispute in front of the competent court.

93. The Law on Courts (*Official Gazette*, no. 58/06), Article 13, paragraph 4 stipulates that judicial decisions are obligatory for all legal entities and individuals, and they are stronger than the decisions of any other body.

94. The administrative procedure in the country is carried out on the basis of the Law on General Administrative Procedure (*Official Gazette of SFRY*² Nos. 52/56; 10/65; 18/65; 4/77; 11/78; 9/86; 16/86; 47/86) in the frameworks of the bodies of the public administration and the Government. Namely, in case of administrative procedure managed by the local self-government unit or by another body of the public administration, acting as a body of first instance, the right to appeal against the decision is submitted to the competent ministry in the relevant area. On the other hand, when the public administration body of the acts as first instance body, the right to an appeal is submitted to the government commission for settlement of administrative matters of second instance in the area of environment, established as standing body within the Government.

95. According to Article 49 of this Law, a party to an administrative procedure is the entity (whether a legal entity or natural person) upon whose request the procedure has been initiated or against whom the procedure has been raised or who is entitled to participate in the procedure for the purpose of protecting his/her /its rights or interests (hereinafter, "The party"). The party is entitled to raise an appeal against decision issued at first instance (Article 223). The party is also entitled to initiate administrative dispute against the decision issued at second instance or in case of "administration silence" before the Supreme Court of the country (administrative disputes are managed in accordance with the Law on Administrative Disputes, *Official Gazette of SFRY* No. 4/77).

96. The Second Instance Commission of the Government settling acts received from first instance bodies is obliged to issue a decision in accordance with the Law on General Administrative Procedure, within 60 days. After the expiry of the term, the party not satisfied with the decision issued by the second instance commission or in case the commission has not responded within the prescribed period, may initiate administrative dispute before the competent court, i.e. the Supreme Court, which is the competent court for settling administrative disputes. The same rule applies in case the role of second instance body is possessed by the Ministry of Environment and Physical Planning.

97. In addition to regular legal remedies, the party may also use extraordinary legal remedies against the final decision under administrative procedure, i.e. renewal of the procedure (Article 250).

98. The draft Law on Environment regulates the rights and the obligations of the State, of the units of the local self-government, as well as the rights and the obligations of legal entities and individuals with regard to provision of environment protection and improvement, for the purpose of citizens' exercise of the right to a healthy environment. With regard to procedures stipulated by this Law, the Law on General Administrative Procedure applies, unless stipulated otherwise in the Law.

² SFRY = Socialist Federal Republic of Yugoslavia

99. The draft Law on Environment, to enable organizations and individuals to have access to justice, specifies the cases in which citizens' organizations established for the purpose of environment protection, as well as the public, enjoy the right to submit appeals in the area of environment, thus providing a wider framework for exercising the right to appeal compared with the one established under the Law on General Administrative Procedure.

100. The draft Law on Environment establishes the right to access to justice for organizations and individuals for the purpose of protecting their rights and interests in several cases. These cases include:

- (a) Protection of the right to access to environmental information;
- (b) Protection of the rights under the EIA procedure;
- (c) Protection of the right under the integrated environmental permitting procedure;

101. The right to access to justice by organizations and individuals for the purpose of protecting their rights and interests, through administrative procedure, is also regulated by separate environmental laws, such as: the Law on Air Quality (*Official Gazette*, no. 67/2004), the Law on Nature Protection (*Official Gazette*, no. 67/2004), The Law on Waste Management (*Official Gazette*, no. 68/2004), The draft Law on Waters and other laws regulating the rights of legal entities and individuals in the area of environment and other rights. The procedures specified in these laws are subject to the procedures stipulated in the draft Law on Environment, as well as the Law on General Administrative Procedure, so that the rules described above apply identically.

Protection of the Rights of Individuals and Organizations in the Administrative Procedure by the Ombudsman Institution

102. The Ombudsman Institution has a legal function and obligation to protect the rights of the citizens and everyone else, guaranteed to them by the Constitution, laws and international acts and documents ratified by the Parliament in that direction, and to protect the right to free access to environmental information.

103. The Ombudsman is an independent body, a mechanism through which the constitutional and legal rights of the citizens and everyone else are protected against violation by acts, activities and omissions of activities by the State administration bodies and other bodies and organizations having public competencies. The manner of appointing the Ombudsman shall guarantee his independence during the carrying out of the function. The Law on the Ombudsman (*Official Gazette*, no. 60/2003) in its Articles 11 to 18 envisages tax exemption for the requesting party for the procedure initiated by the Ombudsman.

104. The past practice of the Ombudsman acting in a line of duty or on the basis of submitted requests indicates violation of more procedures in relation to the violation of the environmental rights of individuals or group of citizens. Nevertheless, the number of procedures that are under way is not a realistic picture of the situation in this area, which indicates insufficient education of the citizens with regard to their rights and the right to a free access to information.

Protection of the rights of individuals and organizations through procedures before courts.

105. The right of individuals and organizations to initiate procedure before court for the purpose of protecting their right or legally protected interest is regulated in laws containing substantial and procedural provisions on civil, criminal or administrative cases. These procedures are carried out in accordance with:

- (a) Law on Litigation Procedure (*Official Gazette*, no. 33/98; 44/02);
- (b) Law on Criminal Procedure (*Official Gazette*, no. 15/97; 44/02);
- (c) Law on Administrative Disputes (*Official Gazette of SFRY*, nos. 4/77, 36/77; 44/02)
- (d) Law on Misdemeanors (*Official Gazette*, no. 62/06)
- (e) Law on Administrative Disputes (*Official Gazette*, no. 62/06) - provides court protection of rights and interests of individuals and legal entities.

106. The right of individuals and organizations to initiate procedure before a court for the purpose of protecting their rights or legally protected interests in the area of environment is also regulated in the draft Law on Environment. According to Article 158 of this Law, in its section on liability for damage caused onto the environment, the legal entity or the natural person under direct threat or suffering consequences from the apparent environmental damage, has the right to request from the instigator of damage return at the environment to its original state or can claim compensation for the damage, in accordance with the general legal rules for damage compensation.

107. In addition to actions referred to in Chapter 22 of the Criminal Code of the Republic, a private plaintiff may submit a private lawsuit to the competent court for criminal actions regulated in separate environmental laws.

108. The Law on Nature Protection (*Official Gazette*, no. 67/2004) stipulates the following criminal actions against nature:

- (b) Extermination of indigenous species;
- (c) Introduction of wild species;
- (d) Re-introduction of wild species;
- (e) Illegal taking and use of genetic and biological material;
- (f) Illegal damage and destruction of speleological structures;
- (g) Damage and destruction of minerals and fossils.

109. The draft Law on Waters prescribes the following criminal actions: unauthorized use of water and unauthorized extraction of groundwater.

XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9

110. The following obstacles have been encountered:

- (a) Relevant secondary legislation act needs to be adopted;

- (b) Reforms in the legal system are needed;
- (c) Dragging out of lawsuits, which results in expiration of the documents/subjects;
- (d) Need for training and introducing the competent/responsible bodies to practice vis-à-vis the right to access to justice, especially the bodies of the executive and legal authorities.

XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 9

111. The Law on the Ombudsman (*Official Gazette*, no. 60/2003) in its Articles 11 to 18 envisages tax exemption for the requesting party for the procedure initiated before the Ombudsman.

112. Since 2007, the NGO Florozon - Skopje has carried out activities for strengthening capacities with regard to administration of justice for better practical application of the right to access to justice. In particular, its programme aims to strengthen the capacities of judiciary system for practical application of the Convention – (i.e. right to the access to justice, specifically, the introduction of and education on the third pillar of the Convention and better unification during its application, imposing alternative mechanisms for fast and efficient processes, and implementing appropriate and efficient measures for eliminating the consequences.

113. Representatives from 27 national courts have benefited from the programme (e.g. judges, higher associates, state secretaries, presidents of courts) including lawyers, representatives of the Ombudsman, the Ministry of Justice and MOEPP. A Seminar was organized by the Environment Management and Law Association (EMLA) expert team from Hungary.

114. Florozon will continue with this Programme in 2008.

115. To enable easier access to justice, Florozon has opened a Centre for Access to Justice and Implementation of the Convention. The Centre acts nationwide, for the benefit of all individuals and legal entities. The Centre Programme offers free legal advice and free legal representation in cases where the right to a healthy environment has been breached.

116. The following statistical data in the database:

- (a) Three hundred ninety-six reports for obtaining information - where can the citizens raise questions regarding environmental issues (in this direction, Florozon works in co-relation with the subjects that possess environmental information);
- (b) Six criminal charges prepared against private persons;
- (c) Four misdemeanour denunciations submitted to the competent court;
- (d) Fourteen reports - achieved agreement on reclamation of the state of the environment.

117. During 2008, Florozon will expand its programme with TAI³ research.

118. The former Yugoslav Republic of Macedonia will be the next European country to implement overall TAI assessment.

119. TAI partners throughout the world monitor the performance and progress of their Governments in the implementation of the citizens' rights to information, public participation in decision-making and access to justice regarding the environmental issues.

XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9

120. www.covekovi-prava.gov.mk; www.ombudsman.gov.mk; www.sobranie.mk; www.stat.gov.mk; www.usud.gov.mk; www.mlrc.org.mk

XXXII. CONTRIBUTION OF THE IMPLEMENTATION OF THE CONVENTION TO THE PROTECTION OF THE RIGHT OF EVERY PERSON OF PRESENT AND FUTURE GENERATIONS TO LIVE IN AN ENVIRONMENT ADEQUATE TO HIS OR HER HEALTH AND WELL-BEING

121. The Convention, as an international Agreement, is one of the most significant instruments for protection of the citizens' right to a healthy environment. The public has a right and need to be informed, to participate in the decision-making on the environment protection issues, and to have a free access to these issues. Implementation of the Convention enables improvement of the access to information, and increasing public participation in the decision-making process, thus improve the quality of the decisions, which will result in the improvement of environmental quality. Implementation of the Convention contributes towards protection of the right to every individual of present and future generations to live in environment appropriate for his or her health and welfare, enables rights to access to information, and aids public participation in the decision-making and access to justice on environmental issues, all in accordance with the Law on Environment Protection and Promotion.

³ The Access Initiative. For information, see <http://accessinitiative.org>.