

## **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

### **Task Force on Public Participation in Decision-Making**

#### **Eighth meeting**

Geneva, 8–9 October 2018

Item 3 of the provisional agenda

**Protection of persons exercising their rights in  
conformity with the provisions of the Convention**

**Information paper N5**

## **Overview of the implementation of article 3, paragraph 8, of the Aarhus Convention**

Prepared by the secretariat<sup>1</sup>

This information paper directs participants to selected sections of the 2017 Synthesis report on the status of the implementation of the Aarhus Convention<sup>2</sup> and 2017 national implementation reports submitted by Parties to the Convention<sup>3</sup> (Questions III e) and IV), relating to item 3 of the provisional agenda of the eighth meeting of the Task Force on Public Participation in Decision-making under the auspices of the Aarhus Convention. Specifically, it lists the information provided by the Parties with respect to the implementation of article 3, paragraph 8, of the Aarhus Convention.

Several organizations submitted information relating to this topic. More information is available on [http://www.unece.org/env/pp/reports\\_organisations\\_2017.html](http://www.unece.org/env/pp/reports_organisations_2017.html).

For more information, please check the [Implementation Guide](#) pages 71-72, the outcomes of the [tenth meeting of the Task Force on Access to Justice](#) and the [Aarhus Clearinghouse selected resources](#).

Participants are invited to consult the available resources in advance of the meeting in order to gain an overview of the status of implementation. They will be further invited to share challenges, good practices, lessons learned and information on recent legislative and practical developments as well as identify needs in relation to this subject.

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<sup>1</sup> This document was not formally edited.

<sup>2</sup> Document ECE/MP.PP/2017/6 available from [http://www.unece.org/env/pp/aarhus/mop6\\_docs.html](http://www.unece.org/env/pp/aarhus/mop6_docs.html) in English, French and Russian from under Category II heading.

<sup>3</sup> Available from <http://apps.unece.org/ehlm/pp/NIR/>. Information from 2017 national implementation reports provided in accordance with their availability to the secretariat by 15 September 2018.

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## I. Excerpts from the 2017 Synthesis Report on the status of implementation of the Convention

76. As for the 2014 reporting cycle, all reporting Parties stated in their reports that their legislation ensured the principles of non-discrimination and equality before the law. France reported on the adoption of a law reforming provisions on the protection of whistle-blowers and the possibility to rely on the assistance of the Rights Defender, an independent public institution. Further developments on whistle-blower protection took place also in Serbia and some other Parties.

77. Single and non-systematic cases of prosecution of persons or NGOs for exercising their rights vested in the Aarhus Convention were reported by Parties. For instance, Hungary reported on litigation initiated by developers claiming damage to their reputation and financial damages in libel cases. Belarus recalled the detention of antinuclear activists. During the reporting period, the Ministry of Environment of Belarus participated in governmental consultations and meetings, and reminded the nuclear agency and the nuclear power plant administration of their obligation to comply with article 3, paragraph 8, of the Aarhus Convention. Iceland referred to a comment received which claimed that environmental NGOs that tried to exercise their rights under the Convention ran the risk of being adjudged to pay costs in judicial proceedings. Such costs might deter NGOs from exercising their rights under the Convention. A Slovenian NGO mentioned that, despite the legal mechanisms in place, individuals or organizations are “indirectly victimized”, usually through actions for damages for “slander”.

269 (d). Based on the analysis of the synthesis report it is advisable for the Parties to:

...Parties should increase efforts to protect whistle-blowers, environmental activists and other persons exercising their rights in conformity with the Convention against penalization, persecution, harassment and other forms of retaliation for their involvement;

## II. Overview of 2017 National Implementation Reports

### Albania

III. It is established the Administrative Court, which has representation in any district of Albania.

IV. Problems are still noticed in the practical implementation in certain fields, public attraction in decision making.

### Austria

25. Austrian constitutional law contains the following non-discrimination provisions: according to Article 2 of the Basic Law on the General Rights of Nationals and Article 7 of the Federal Constitutional Law, all nationals (Austrian citizens) are equal before the law. In addition, paragraph 14 of the European Convention on Human Rights, which was ratified by Austria in 1958, provides for an accessory discrimination ban which bans discriminatory actions with regard to the rights granted by the European Convention on Human Rights. A certain level of protection against discrimination irrespective of nationality is granted by the Implementation of the International Convention on the Abolishment of all Forms of Racial Discrimination in the Federal Constitutional Law (Federal Law Gazette 1973/390).

26. Based on EU membership, EU citizens (nationals of European Union Member States) are equally guaranteed the fundamental rights enshrined in the European Convention on Human Rights and in the EU Charter on Fundamental Rights or are provided with protection against discrimination on grounds of nationality, sex, race, or ethnic origin, religion or philosophy, disability, age or sexual orientation.

### Azerbaijan

Legislation grants everyone the right to judicial protection of their rights. For example, article 1 of the Act on the Judicial Appeal of Decisions and Actions (Omissions) that Infringe the Rights and Freedoms of Citizens specifies that if citizens believe their rights and freedoms to have been breached by a decision or action (omission) of state authorities, enterprises and officials, they may file an action in court.

## Belarus

29. Paragraph 8 of article 3 of the Convention is implemented on the basis of provisions of the Constitution. In accordance with Article 23 of the Constitution, personal rights and freedoms may be restricted only in the instances specified by law, in the interest of national security, public order, the protection of the morals and health of the population and the rights and liberties of other persons. Under Article 26, no one may be found guilty of a crime unless his or her guilt is proven by the procedure specified in law and established by a verdict of a court of law that has entered into legal force. The Criminal Code enshrines in law liability for interfering with the lawful activities of public associations and liability for persecuting citizens who express criticisms (Articles 194 and 197).

Nevertheless, information regarding the detention of Belarusian anti-nuclear activists in connection with their activities was submitted to the Aarhus Convention Compliance Committee by members of the public.

The Ministry of the Environment, as the national government authority responsible for implementing the provisions of the Aarhus Convention in Belarus, has been actively co-operating with other government bodies in order to comply with article 3, paragraph 8, of the Convention. In particular, over the period 2014 - 2016, information explaining that it is mandatory to comply with the provisions of the Aarhus Convention, especially with article 3, paragraph 8, has been sent to law enforcement agencies. Over the period 2013 - 2015, similar information was sent to the Belarusian NPP and to the Ministry of Energy of the Republic of Belarus. Over the period 2014 - 2016, representatives of the Ministry of the Environment have taken part in seminars and other working meetings – including some with the participation of international experts – during which they have assiduously drawn the attention of other government bodies to the mandatory nature of compliance with the provisions of the Aarhus Convention, especially article 3, paragraph 8.

### IV. Obstacles encountered in the implementation of article 3

31. The ‘restricted’ nature of the Aarhus Convention implementation process presents a problem: sufficient headway is being made within Ministry of the Environment bodies, but other public authorities do not make sufficient use of all possible ways of implementing the Convention.

## Belgium

The principle of the right to freedom of speech, together with the right to protection of a healthy living environment is constitutionally embedded in Articles 19 and 23 respectively of the Co-ordinated Constitution.

Art. 19 reads as follows with regard to this matter: "The freedom of worship, the free public practice thereof, as well as the freedom to express one's opinion in any field, are guaranteed, subject to the punishment of offences committed during the application of these freedoms".

Art. 23 stipulates the following: "Everyone has the right to a decent existence.

This is guaranteed by the law, the Flemish Parliament Act or the rule referred to in Article 134, taking into account the corresponding obligations, the economic, social and cultural rights of which they lay down the terms for exercise.

These rights include especially: (...) 4° the right to the protection of a healthy living environment (...)

See also the federal report ([www.health.fgov.be](http://www.health.fgov.be))

## Bosnia and Herzegovina

With respect to paragraph 8, measures taken to ensure that persons exercising their rights under the Convention are not penalized, persecuted or harassed.

- Law on Protection of Environment of FBiH (Official Gazette of FBiH, 33/03 and 38/09) (LoPE FBiH);
- Law on Protection of Environment of RS (Official Gazette of RS, 71/12 and 79/15) (LoPE RS);
- Law on Protection of Environment of BD (Official Gazette of BD, 24/04, 1/05, 19/07 and 9/09) (LoPE BD);

- Law on Urban Planning and Civil Engineering of RS (Official Gazette of RS, 40/13) (RS LoUPCE) and □
- Law on Nature Protection of RS (Official Gazette of RS 20/14) (RS LoNP)

Articles 31 LoPE FBiH/30 LoPE BD are relevant stating that an abuse of legal instruments (litigation, indemnification, civil or minor offence or legal proceedings) for the purpose of punishing, persecution or harassment of individuals who exercised their right of participation as public shall be deemed illegal. In LoPE RS, the law maker has left out the provision that would explicitly forbid punishing, persecution or harassment of individuals who exercised their right of participation as public. Article 42 LoPE RS prescribes that interested public or interested authorities may instigate proceedings to protect their rights before relevant courts.

Cantonal Court in Goražde concluded that in the period between 01 January 2014 and 31 December 2016 there were no proceedings initiated before this Court in regard to violations of the right to public participation. Having in mind that in terms of indemnification and legal protection every individual is entitled to protection in administrative and judicial proceedings, official records of this Court were verified and it was found that there were no administrative procedures initiated in the mentioned period before this Court concerning environment protection.

## Bulgaria

The Bulgarian legislation has no explicit text that literally reproduces the requirements of article 3, paragraph 8 of the Convention, but in accordance with article 45 of Constitution of the Republic of Bulgaria: “Citizens shall have the right to present complaints, suggestions, and petitions to the state authorities” and article 56 stipulates: “Every citizen, whose rights or legitimate interests are violated or jeopardized, shall have the right to remedy. Appearing before any institution of State, every citizen may be represented by legal counsel.”

## Croatia

III. This right is ensured pursuant to the principle of legality referred to in Art. 16 of the Croatian Constitution (OG No. 56/90, 135/97, 8/98 – consolidated text, 113/00, 124/00 – consolidated text, 28/01, 41/01 – consolidated text, 55/01 – corrigendum, 76/10, OG No. 85/10-consolidated text and 5/14, hereinafter referred to as: Constitution) and the right to appeal referred to in Art. 18 of the Constitution.

IV. CSO representatives deem that Article 171 of EPA is contrary to Article 3, para. 8 of the Aarhus Convention since such legal provision bring persons who do not wish to exercise their guaranteed right of access to justice in a precarious and unequal position. They also believe that Article 253 of EPA is contrary to Article 9, para. 3 and 4 of the Aarhus Convention with regard to the costs of procedures that have to be fair, equitable and not prohibitively expensive.

## Czechia

III. The Czech Charter of fundamental rights and freedoms stipulates the right to freedom of expression, freedom of association, right to petition, right to favourable environment including the right to information about the environment, and the right to court protection from unlawful decisions of public authorities.

All those constitutional rights are implemented by a number of “ordinary” Acts. Persecuting and bullying any persons who claim such rights within the limits of the system of law is prohibited and, as far as it is known, is not practised by public authorities.

## Denmark

III. The Danish Act of Constitution establishes citizens' rights to freedom of speech, freedom of association, and the right to test the decisions made by the administrative authorities in court. The European Human Rights Convention also offers protection of citizens' fundamental rights and freedoms. Furthermore a citizen may only be subject to legal proceedings or prosecution, if the felony is positively stated as illegal in the Danish legislation. . Therefore it is not possible according to Danish law to penalize, persecute, etc., as mentioned in article 3, paragraph 8 of the Convention.

## Estonia

III. The prohibition established in article 3, paragraph 8, in regard to penalizing, persecuting or harassing persons exercising their rights is first of all contained in section 12 of the Constitution, according to which no one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The Penal Code of Estonia establishes that as fit for a State based on the rule of law, no one shall be convicted or punished for an act which was not an offence pursuant to the law applicable at the time of the commission and that a person shall be punished for an act if it comprises the necessary elements of an offence, is unlawful and the person is guilty of the commission of the offence. Pursuant to the responses received from the NGOs in 2016, the prohibition to penalize, persecute or harass persons exercising their rights have not been violated in Estonia.

## European Union

III. The EU is based on the rule of law. Any decision by EU institutions that would penalise, persecute or harass a person on the sole ground that (s)he has exercised rights under the Aarhus Convention would constitute a misuse of powers and be illegal. In addition, such acts would be subject to disciplinary proceedings.

## Finland

III. 42. Under the provisions of Section 6 of the Finnish Constitution regarding equality, no one shall, without an acceptable reason, be treated differently from other persons on the ground of conviction, opinion or any other reason that concerns his or her person. Furthermore, under Section 6 of the Administrative Procedure Act relating to legal principles of administration, an authority shall treat the customers of the administration on an equal basis and exercise its competence only for purposes that are acceptable under the law. The acts of the authority shall be impartial and proportionate to their objective.

43. In an administrative court process, the possibility to order a private party to compensate another party or an authority for his or her legal costs is determined on the basis of the provisions of Section 74 of the Administrative Judicial Procedure Act (586/1996). Between private parties, the liability to compensate for legal costs is based on the final result of the decision and on consideration of discretion.

## France

III. 18. - The 1789 Declaration of Human and Civic Rights is considered by the Constitutional Council to form part of the country's corpus of constitutional principles; it recognizes that all citizens are equal in the eyes of the law (Article 6), prohibits arbitrary arrests and detentions (Article 7) and proclaims: "No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established law and order" (Article 10).

The Constitution guarantees the independence of the courts and the Constitutional Council has highlighted the independence of the administrative courts as a fundamental principle acknowledged in French law (Constitutional Council, 22 July 1980, No. 80-119 DC).

19. - France is also a party to the Convention for the Protection of Human Rights and Fundamental Freedoms ('the European Convention on Human Rights'), which guarantees the right to security and to freedom of thought, opinion, expression and association, under the supervision of its Court (the ECHR).

20. - Finally, Act No. 2016-1691 of 9 December 2016 on Transparency, Combating Corruption and Modernizing the Economic Life of the Nation has reformed the provisions for protecting whistle-blowers (Chapter II).

21. - Article 8 of the Act provides for a procedure based on graduated reporting channels, first within and then outside the workplace. However, in case of serious and imminent danger or in the event of a risk of irreparable damage, this procedure can be disregarded.

22. - The identity of the whistle-blower and of anybody referred to in the report shall remain confidential and, subject to certain conditions, the whistle-blower shall be immune from criminal prosecution and from any form of discrimination or sanction within the workplace.

23. - The warning may be reported directly to the Defender of Rights (the national Ombudsman – an independent authority created in 2011 on the basis of the Constitution), who plays the crucial role of referring it to the appropriate authority.

IV. 24. - Some organizations considered the state of emergency then in force to have been a source of restrictions on civil society participation in COP21.

25. - They have further expressed dissatisfaction that the reforms relating to the recognition of associations, introduced by Decree No. 2011-832 of 12 July 2011, have reduced the number of officially recognized associations from its previous level.

## Georgia

III. The principles of the Aarhus Convention are reflected in the Constitution of Georgia, the Law of Georgia on Protection of the Environment and the General Administrative Code of Georgia. According to the article 42 of the Constitution of Georgia, each person has a right to apply to the court for protection of his/her human rights and responsibilities (including the rights granted by the Convention).

## Germany

III. The general provisions in Article 3 of the Convention are implemented in Germany, in accordance with the division of competences, at both federal and Land level.

(e) The free exercise of the rights pursuant to Article 3 (8) of the Convention (including the prohibition of discrimination laid down in Article 3 (9) of the Convention) is guaranteed constitutionally by the principle of the rule of law enshrined in Article 20 (3) of Germany's constitution, the Basic Law (Grundgesetz – GG), and by the fundamental rights enshrined in the Basic Law, especially the prohibition of discrimination in Article 3. Article 19 (4) of the Basic Law provides for effective recourse to the courts should any person's rights be violated by a public authority.

## Greece

III. 41. There is an integrated legal framework in Greece, as already mentioned, ensuring the exercise of the rights of the persons under the Convention. The right of access to information is provided and guaranteed by the Constitution as well as by the Administrative Procedure Code.

42. According to Article 4 of the Constitution all Greek citizens are equal before the law. Citizens have also the constitutional right of previous hearing. Articles 4 to 25 of the Constitution provide for the protection of human rights, including the free development of one's personality, the participation in the social, economic and political life of the country and the recognition of the value of human dignity.

43. Article 24 of the Greek Constitution enshrines the mixed rights (individual, social and political ones) of everyone in the natural and cultural environment and, at the same time, establishes the State's obligation of the State to protect and take preventive or enforcement action under the principle of sustainability. Through this constitutional provision, one of the most important principles of International Environmental Law is transposed into the national legislation namely, the Preventive Principle, which relates to the obligation for taking measures to avoid scientifically verified risks of damages.

44. Every act of the State must be in conformity with the law and must also be provided for by a law.

45. The citizens, in the framework of their protection, have several possibilities for administrative and judicial review as well as actions for compensation according to the civil liability provisions (see art. 9).

46. The Ministry of Administrative Reform and e-Governance has issued the “Guide of Good Administrative Behavior” and the “Rights of citizens and enterprises in their transactions with public services”, seeking to inform the public about its rights, available at the website of the Ministry.

47. Additionally, the Ministry of Justice in cooperation with the competent Ministries adopted the Human Rights National Action Plan 2014-2016. In this Action Plan there is particular reference to the right to environment including actions for its protection

## Hungary

III. 37. Adequate protection of citizens participating in administrative procedures is guaranteed by the Administrative Procedures Code, it declares the equality of all persons appearing before authorities, the prohibition of discrimination between or the exclusion of any persons, the right to a fair and timely procedure as well as the right to access to justice.

The Administrative Procedures Code is particularly aware of the protection of the rights of those with full or partial disability. Besides this, paragraph (2) of section 1. of the Administrative Procedures Code states as a main principle that the authority may not abuse, when exercising its jurisdiction and must exercise its jurisdiction with adherence to the tenets of professionalism, simplicity and cooperation with the client. Paragraph (2) of section 4. alludes to the fact that detriment caused by illegal procedures of the authority may raise the issue of adjustment for recompense in the Hungarian legal system.

Standpoint of the Deputy Commissioner for the Protection of the Interests of Future Generations:

The guarantees provided by the Administrative Procedures Code adhere to the decision making process of other management and authority institutions so the existing guarantees of the Administrative Procedures Code cannot be used in all cases concerning new institutional solutions, and the new regulations do not provide adequate protection.

38. In addition to the general client rights granted under the Administrative Procedures Code, the Act also makes it possible for anyone to file a complaint or an application in the public interest outside of the administrative procedure at the authority with competence in the given matter. The complaint is a plea that aims to eliminate the infringement of individual rights or interests and its fulfilment does not fall under the jurisdiction of any other – particularly, court, or public administration – process. A report in the public interest raises attention to a certain circumstance whose remediation or cessation is in the interest of the public as a whole. A complaint or report in the public interest may contain suggestions as well. Pursuant to Section 3, Paragraph (2) of the Act CLXV of 2013 on the rules of complaint or reports of public interest, no complainant or applicant submitting a complaint or application report may be subject to any penalization whatsoever with the exception of those laid down in Paragraph (4) with regards to the submission of an application or report. As per Section 3., Paragraph (3) the personal information of the complainant or applicant – with the exception of those laid down in Paragraph (4) – may only be provided to the institution that has jurisdiction to pursue the process based on the complaint or report in the interest of the public, if this institution has a right by law to manage such information or if the complainant or the applicant has unequivocally agreed to the forwarding of his/her personal information. The personal information of the complainant or applicant cannot be made public, without the unequivocal permission of the complainant or applicant.

Have any libel, slander or similar provisions of civil or criminal law been used in the context of environmental decision-making processes? Have there been any cases of civilian organizations being ordered to pay damages in connection with their public interest environmental protection activities or litigation?

39. It arises more and more frequently that in connection with the exercise of the rights laid down in the Convention or Hungarian law, a developer considers him or herself to have been subject to libel which could damage reputation or to have suffered financial damage. Such cases have appeared, where developers filed lawsuits on the basis of the protection of personality or have called for compensation because of the emergence of additional costs. In these cases the Hungarian Supreme Court has repeatedly confirmed that harm was done to good business reputations, no financial damages have been awarded to the plaintiffs.

IV. The new Civil Code of 2011 brought many changes to the registration of civil organizations, thus the standardization of legal practice and legal utilization has come to a halt. There is a great uncertainty regarding judicial practice.

## Iceland

III. The Constitution of the republic of Iceland has a special chapter, Chapter VII, on human rights. Article 73 of that chapter provides every citizen with the right to freedom of opinion and belief as well as the right to freedom of expression. Article 74 of the Constitution provides every citizen the right to form associations. Furthermore the European Convention on Human Rights (ECHR) has been incorporated into Icelandic legislation by Act No. 62/1994 on the European Convention on Human rights and it is an established rule of legal interpretation of Icelandic law that the human rights chapter of the Constitution shall be interpreted in line with the ECHR.

IV. A comment was also received regarding Article 3, paragraph 8, about an on-going case where environmental NGOs (Fjöregg and Landvernd) have summoned the Government for the failure to issue a declaration of nature conservation for certain areas in Mývatn and Laxár. The Attorney General has issued its statement of defence where he argues that the case should be dismissed and the NGOs should pay the litigation cost, since the environmental NGOs do not have legal standing in the case. The Attorney General refers to the conclusion of the Supreme Court in cases No 119/2014 and 677/2013 where it was stated that the Aarhus Convention is correctly implemented in Iceland since the Government has chosen to implement an administrative procedure to ensure the public access to justice in environmental matters. The environmental NGOs argue in their comments that these claims of the Attorney General have a deterrent effect for the NGOs. The Ministry for the Environment and Natural Resources points out in addition that the Government cannot fulfil the judicial claims set forth in the subpoena. Declarations of nature conservation need to be approved by the owners of the respective land. If the landowners do not approve the conservation the Government would need to seek the approval of the Parliament. It can also be mentioned here that Declarations of protection are regulatory acts according to Icelandic legislation.

## Ireland

III. Ireland ensures that anyone exercising any of their rights, including their rights under the Aarhus Convention, are not penalised in the following ways:

Article 40.3.1 of the Constitution places a positive obligation on the State to guarantee in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

Article 38 of the Constitution of Ireland provides that '[n]o person shall be tried on any criminal charge save in due course of law';

The Protected Disclosures Act 2014 established a detailed and comprehensive legislative framework protecting whistle-blowers in all sectors of the economy.

Section 42 of the Irish Human Rights and Equality Commission Act 2014 puts a new positive duty on public bodies to have regard to human rights and equality in the carrying out of their functions and gives an important role to the Irish Human Rights and Equality Commission to guide and support public bodies in implementing this.

The Non-Fatal Offences Against the Person Act 1997 sections 2, 5, 9 and 10 respectively prohibit assaults on another person, threats to kill or cause serious harm to another person and the coercion or harassment of another person.

## Italy

III. With respect to paragraph 8, measures taken to ensure that persons exercising their rights under the Convention are not penalized, persecuted or harassed.

The exercise of rights and legitimate interests foreseen by law is guaranteed through access to Courts. Inspections, sanctions, and similar measures are only admitted to the extent that they are foreseen by law, and in the framework of constitutional rights of freedom and equity.

Other specific requirements are contained in sectoral law and at the local level.

## Kazakhstan

III. In accordance with Article 15 paragraph 2 of the Law "On the order of consideration of physical and legal entities" subjects and civil servants must:

1. stop the persecution of individuals, including those acting in the interest of legal entities, their family members due to either the request appeal to the entities and officials with criticism on their activities or to protection of the rights, freedoms and legitimate interests;
2. do not send the complaint to the officials whose actions (inaction) are being appealed to;
3. exclude cases of imposing checks on persons in respect to whom there are reasons for believing that they are not interested in an objective resolution of a question;
4. do not allow the appeals of individuals and legal entities to the detriment of the person who has submitted it, or in whose interest it was filed;
5. do not to divulge information about the private lives of individuals, including those acting in the interests of a legal person, without their consent or the information constituting national security information or other private information protected by law, do not to allow the establishment of the identity of an individual, not related to the appeal.

To date, not a single case of prosecution of the public members exercising their rights under the Convention was documented.

## Kyrgyzstan

III. 50. Kyrgyzstan has legislation in force to punish any persecution of people who exercise their rights within the law.

51. There are no known cases of provisions on libel and slander or any similar provisions of civil or criminal law being applied in the context of environmental decision-making. Nor have there been any cases of an NGO being ordered to pay damages in connection with its public interest environmental protection activities or with any court cases in which it has engaged. IV. Obstacles encountered in the implementation of article 3.

IV. The lack of a smoothly functioning mechanism for engagement with the whole of society prevents full implementation of the existing primary legislation.

Public participation in decision-making is most often merely nominal. The public rarely bring court actions when their rights have been impaired, as they do not believe that the legal system is fair.

## Latvia

III. The principle that no legal activity can be sanctioned is enforced in Article 1 of the Constitution. The rights covered by the Convention are enforced in State legislative acts, including Articles 92 and 115 of the Constitution.

It is directly stated that no unfavourable consequences may occur, including no civil claims for damages can be raised against a person, who has exercised his or her rights by applying in administrative court (EPL, Article 9, para. 5, and APL, Article 4, para. 4). Opinions and proposals received by the ESB as a result of environmental impact assessment public discussion are forwarded to the developer of the proposed activity without indicating information on the authors of the opinions and proposals (personal data, place of residence, etc.).

## Lithuania

III. 32. Pursuant to Article 25 of the Constitution of the Republic of Lithuania, a human being must not be hindered from seeking, receiving and imparting information and ideas. The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health,

honour or dignity, private life, or morals, or to defend the constitutional order. Article 30 of the Constitution stipulates that a person whose constitutional rights or freedoms are violated shall have the right to apply to a court. Under Article 33, citizens shall be guaranteed the right to criticise the work of state institutions or their officials and to appeal against their decisions. This article prohibits persecution for criticism.

33. Any hindrance (punishment, persecution, etc.) for a person to use a right provided for in the Constitution, save for the exceptions provided for in the Constitution, is illegal.

34. Pursuant to the Code of Civil Procedure (CCP), each person concerned has the right to apply to a court in accordance with the procedure established by law to defend an infringed or disputed right or legitimate interest.

35. In an effort to prevent restriction of the individuals' rights in the civil procedure, the CCP lays down procedural penalties for persons who abuse the procedure (file unjustified claims, or deliberately act against the fair and fast review and resolution of a case). A court can introduce an obligation to compensate damages suffered by a person participating in a case due to the abuse of the procedure.

## Luxembourg

III. No one undertaking actions on the basis of the Aarhus Convention is penalized: on the contrary, such actions are encouraged. Failure by public authorities to comply with their obligations arising from the Aarhus Convention may amount to maladministration, attracting not only civil but also, in some circumstances, criminal penalties. Transparency plays a fundamental role in this area. As far as concerns the issue of access to environmental information, the Administrative Court held, in a judgment that predates the conclusion of the Convention – i.e., on the basis of the legislation on access to environmental information then in force – that “... the right of access to environmental information is general in nature and constitutes an end in itself; the exercise of this right cannot be limited in time, nor is the applicant obliged to demonstrate an interest in this connection”. (Administrative Court, 22 December 1997, Roll No. 9768).

## Malta

III. • Have any libel, slander or similar provisions of civil or criminal law been used in the context of environmental decision-making processes?

• Have there been any cases of NGOs being ordered to pay damages (of a private entity or a public authority) in connection with their public interest environmental protection activities or litigation (e.g. due to a delay in a procedure)?

There was no case of NGOs being ordered to pay damages (of a private entity or a public authority) in connection with their public interest in environmental protection activities or litigation (e.g. due to a delay in a procedure) and no libel, slander or similar provisions of civil or criminal law were used in the context of environmental decision-making processes.

## Montenegro

III. Please consult Articles 23 and 51 of the Constitution of Montenegro.

## Netherlands

III. (f) The exercise of the rights under the Convention is adequately guaranteed by the Environmental Management Act (Dutch: *Wet milieubeheer*), the Freedom of Information Act and the General Administrative Law Act. This includes the provisions on the active and passive disclosure of environmental information. Moreover, Article 1 of the Dutch Constitution contains an injunction on discrimination.

Since 1 July 2016, the Act House for Whistleblowers offers additional guarantees for the protection of whistleblowers, including in the field of the environment.

## Norway

III. The right to freedom of association and freedom of speech are laid down in the Section on Human Rights in the Constitution. Comprehensive legislation ensures security under the law for the individual, which among other things ensures that people who exercise their rights under the Convention are not persecuted in any way.

## Poland

III. 29. Pursuant to Article 225 CAP, no person shall be exposed to loss or accusation as a result of having filed a complaint or proposal or as a result of having provided material for publication that has the characteristics of a complaint or proposal, if he was acting within the law. State bodies, local government bodies and social organisation bodies are required to act against restrictions on criticism and other actions that limit the right to submit complaints or proposals or provide information for a publication that has the characteristics of a complaint or proposal.

IV. 30. According to the analysis of the Supreme Chamber of Control, Polish law concerning the access to environmental information is difficult to interpret, which contributes to the lack of performance of statutory duties by some offices.

## Portugal

III. In this context, it is noted that Article 268, paragraph 4, of the CRP provides that "Citizens are guaranteed effective jurisdictional oversight of their rights and interests that are protected by law, particularly including the recognition of said rights and interests, the challenging of any administrative act that harms their rights and interests, regardless of its form, the performance of the administrative acts legally required, and the adoption of adequate provisional remedies."

## Romania

III. Article 30 (paragraphs 1-6) of the Romanian Constitution, revised and republished, guarantee the freedom of expression, freedom to express opinions in the public communication media. Censorship of any kind is forbidden. A persons exercising their rights under the Aarhus Convention cannot be penalised, persecuted or harassed.

In applying the provisions of Article 12 letter (f) of Government Decision no. 878/2005 (where a public authorities may refuse a request for information regarding the environment if the disclosure of the information would affect the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided by the national or Community legislation in force), the public authorities take into consideration the provisions of Law No. 677/2001 on the protection of persons regarding the processing of personal data and the free circulation of those data.

Romania is also a Party to the European Convention on Human Rights, and therefore recognising the jurisdiction of the European Court of Human Rights.

IV. Obstacles encountered in the implementation of article 3

- the fluctuation of the personnel responsible with environmental information;
- insufficient personnel with legal training within the environmental authorities.

## Serbia

III. - Article 18, Paragraph 2 of the Constitution of the Republic of Serbia guarantees, and as such, directly implements human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws. Article 34 stipulates that no person may be held guilty for any act which did not constitute a criminal offence under law or any other regulation based on the law at the time when it was committed, nor shall a penalty be imposed which was not prescribed for this act.

-The Republic of Serbia has ratified the key international agreements in the field of human rights and combat against corruption by adoption of the following laws, such as: Law on Ratification of European Convention on Human Rights ("Official Gazette of SM- International Treaties", No. 9/03); Law on Ratification on Criminal Law Convention on

Corruption ("Official Gazette of FRY- International Treaties", No. 2/02 and Official Gazette of SM, No 18/05); Law on Ratification on Civil Law Convention on Corruption ("Official Gazette of RS- International Treaties", No. 102/07); Law on Ratification of the United Nations Convention against Corruption (UNCAC) ("Official Gazette of RS- International Treaties", No. 12/05); Law on Ratification Aarhus Convention ("Official Gazette of RS- International Treaties", No. 38/09). Basic strategic and legal acts regarding the human rights, corruption and environment in the Republic of Serbia are the following: Constitution; National Strategy of Combating Corruption in the Republic of Serbia for the period 2013. to 2018. („Official Gazette of RS”, No. 57/13) and Action Plan to the National Strategy („Official Gazette of RS”, No.79/13); Law on State Servants; Law on Anti-Corruption Agency, („Official Gazette of RS”, No. 97/08, 53/10, 66/11, 67/13, 112/13); Law on Data Secrecy; Law on Protection of Personal Data („Official Gazette of RS”, No. 97/08, 104/09, 68/12); Law on Free Access to Information of Public Importance; Law on Prevention of Harassment at Work („Official Gazette of RS”, No. 36/10); Criminal Code („Official Gazette of RS”, No. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12); Criminal procedure Code („Official Gazette of RS” No. 58/04, 85/05, 115/05, 85/05, 49/07, 20/09, 72/09, 76/10); Law on Offences („Official Gazette of RS”, No. 101/05, 116/08, 111/09). The Republic of Serbia has adopted environmental laws and subsidiary regulations which prescribes and ensures the right for healthy environment, public access to information, public participation in decision making and access to justice in order to implement Aarhus Convention.

- The Commissioner has implemented the project ‘Protection of Whistleblowers’ with the financial support of the British Embassy in Belgrade and the Government of the Kingdom of the Netherlands since July 2012. This project has two goals: 1. to provide preparation of the model law on protection of whistleblowers which will be submitted to the responsible authorities for consideration and adoption, since Serbia is still lacking a comprehensive regulatory framework relating to the protection of whistleblowers, and 2. to contribute to the improvement of knowledge and understanding of different interested parties on necessity and benefit of the whistleblower protection. The Model Law on Whistleblowing and Protection of Whistleblowers was prepared during this project and submitted in May 2013 to the responsible Ministry (Ministry of Justice and Public Administration) for further action. The Law on the protection of the Whistleblowers is adopted in 2014. The Whistleblowers Protection Act („Official Gazette of RS”, No. 128/14) was adopted in 2014, came into force on 4th December 2014 and its implementation began six months later, on 5th June 2015. This Act regulates whistle-blowing, the whistle-blowing procedure, rights of whistle-blowers, obligations of the state and other authorities and organisations, and private and legal entities in relation to whistle-blowing, as well as other affairs of importance to whistle-blowing and the judicial protection of whistle-blowers. Whistle-blowing may be internal (an act of disclosing information to an employer), external (an act of disclosing information to a designed authority) or alarming the public (an act of disclosing information using mass media, the Internet, at public gatherings or in any other way information may be made available to the public). The employer of a whistleblower must not, by doing or by failing to do, put a whistleblower or an associated person in an unfavorable position, in particularly related to: recruitment; disciplinary measures and penalties; working conditions; termination of employment; job assignments or transfer to another job; etc. With a motion for the issuance of a preliminary injunction, a court may be requested to delay the legal effect of an act, prohibit adverse action from being taken and order for the consequences of the adverse action to be eliminated. Based on the Whistleblowers Protection Act two subsidiary acts have adopted, as follows: Rulebook on the internal whistle-blowing procedure, the manner of appointment of an authorised person working with/for the employer („Official Gazette of RS”, No. 49/15) and Rules on the program for acquisition of specific knowledge related to the protection of whistleblowers („Official Gazette of RS”, No. 4/15). The MAEP has adopted the Rulebook on Internal Whistle-blowing Procedure on 3rd December 2015. In the period 2015/2016 there is no case in the field of environmental protection. Various public institutions work with whistleblowers, and they attempt to protect them and investigate their disclosures. These include the Anti/Corruption Agency, the Anti-Corruption Council, the Ombudsman, the Ministry of Justice, and the Commissioner for Access to Public Information on and Personal Data Protection. The Bureau for Social Research (BIRODI) advises and supports whistleblowers, including analyzing their disclosures, providing legal advice and referring them to the proper authorities. Transparency Serbia operates an Advocacy and Legal Advice Centre (ALAC) to which victims and witnesses of corruption can report cases and receive advice on filing official complaints. Several NGOs in Serbia support whistleblowers, investigate cases and work for stronger legal protections. Pistaljka (Serbian for “whistle”) documents and monitors whistleblower cases. The acquisition of special knowledge and professional training of

persons dealing with whistle-blower protection cases shall be run by the Judicial Academy in cooperation with the ministry competent for matters of the judiciary. Judicial Academy has trained judges (1200) and their assistants (200).

## Slovakia

III. Article 45 of the Constitution of the Slovak Republic ("Everyone has the right to timely and complete information about the state of the environment and about the causes and consequences of its condition.") in connection with Article 51 (1) of the Constitution of the Slovak Republic and Article 3 (1) of Act No. 211/2002 Coll. on free access to information ("Everyone has the right to access to information available to obliged persons") represent the basic constitutional rights, to which also the right to free uncensored expression of opinions is related.

IV. The insufficient interest of some central government bodies in the Aarhus Convention can be perceived as one of additional obstacles, which became evident in the process of preparation of this report, concretely at the request for sending supporting documents and during the process of providing comments on the draft report, within which the majority of the affected central government bodies failed to provide cooperation within the requested scope or remained inactive, thus, it was not possible to evaluate sufficiently certain areas under the competence of these central government bodies. For the above reasons, in relation to Article 3 of the Convention we can point out, for example:

- an insufficient evaluation of the duties resulting from Article 3 (8) of the Aarhus Convention, in particular in relation to prevention of punishment, penalisation, persecution or harassment of persons exercising their rights in conformity with the provisions of the Aarhus Convention.

## Slovenia

III. It is already evident from the general constitutional provisions defining Slovenia as a state governed by the rule of law that those enforcing their rights in the Republic of Slovenia in accordance with the Convention cannot be penalised, prosecuted, or otherwise hindered in any way.

IV. Relating to Article 3.8. of the Convention: Plan B warns that, despite the legal mechanisms in place, individuals or organisations are "indirectly victimised", usually through actions for damages due to "slander" (it provides two examples of such claims).

## Spain

III. 26. The Spanish Constitution of 1978 and the system of constitutional, legal and administrative protection implemented through it are directly applicable to the guarantee of the effective exercise of the rights recognized in the Constitution and by Spanish legislation.

## Sweden

III. Under Sweden's Constitution, everyone is guaranteed freedom of expression, freedom of information, freedom of assembly, freedom to demonstrate and freedom of association in their relations with the public institutions (chapter 2, section 1 of the Instrument of Government). The European Convention also protects these fundamental rights.

The Act on special protection for employees who blow the whistle on serious irregularities (2016:749) applies as of 2017. It means that an employer must not subject an employee to reprisals because the employee blows the whistle on serious irregularities in the employer's activities. One example of serious irregularities can be when an employer does not follow the regulations that apply to its activities, e.g. on the handling of chemical products. The protection from reprisals can also cover whistle-blowing about conditions that involve risks for life, safety, health and environmental damage.

## Switzerland

III. In Switzerland the free exercise of the rights pursuant to Article 3 paragraph 8 of the Convention is guaranteed by the constitutional principle of law and justice enshrined in Article 5 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst, SR 101) and the right of right to equal and fair treatment in judicial and administrative proceedings provided in Article 29 paragraph 1 Cst. According to Article 1 of the Swiss Criminal Code

of 21 December 1937 (SCC, SR 311.0) no one can be punished for an act that has not been expressly declared to be an offence by the law. Under Swiss law, the exercising of rights provided for in a Convention, which Switzerland has ratified, can never be considered a criminal offence. In contrast, any persecution or harassment of persons which exercise their rights in conformity with the provisions of this Convention is considered punishable and has to be persecuted by the criminal justice authorities.

## Turkmenistan

III. In Turkmenistan, during the period under review, there has been no change in the legislation regarding the suppression of the prosecution of individuals. All relations are regulated within the framework of the Law of Turkmenistan "On complaints by Citizens and Procedure for their Consideration" (1999). To date, no cases of harassment of members of the public exercising their rights under the Convention have been recorded.

## United Kingdom

III. 21. The UK has strengthened the access rights to information through powers of enforcement given to the office of the Information Commissioner (ICO) and the Tribunals Service. The ICO examines complaints from members of the public who feel that their request for information has not been dealt with properly by the public authority. The First-tier Tribunal (Information Rights), Upper Tribunal and, ultimately, the Supreme Court give further and higher levels of appeal. The ICO, Tribunals and the Supreme Court have powers to order public authorities to release information, and both the ICO and Tribunals are free of charge. The Scottish Information Commissioner has broadly similar powers, although the appeal procedure operates without a tribunal.

22. We treat all members of the public equally, regardless of nationality, citizenship and domicile. Any person has equal access to the courts.

23. Several legal and administrative measures are available in the UK to protect people from penalization, persecution or harassment in pursuing matters covered by the Convention. Some of these measures relate to the avoidance of discrimination against particular members of the public, such as at work or in the provisions of services (e.g., the Equality Act 2010). Others have more general application, or are based on fundamental human rights. Examples include the Protection from Harassment Act 1997, which makes it a criminal offence to behave in a way amounting to the harassment of another person, or the Human Rights Act 1998, which makes rights from the European Convention of Human Rights enforceable in UK courts (<https://www.gov.uk/government/topics/equality-rights-and-citizenship>). Or, in relation to Northern Ireland, <http://www.nidirect.gov.uk/index/information-and-services/government-citizens-and-rights/your-rights-and-responsibilities.htm>.