

Implementation of the Aarhus convention - A survey

Ass. Prof. Marina Malis Sazdovska

Faculty for Security

Msc. Latif Latifi

State Environment and Nature protection Inspector

Abstract

Legislation on global and regional level in the field of environmental protection is characterized by the adoption of international conventions and agreements that attempt to regulate this matter legally. As an extremely important area, which exceeds the boundaries of nation-state and as a global environmental problem, the issues of environmental protection are a major concern to international organizations. It is directly linked to reducing the jurisdiction of the States and transfer of competences to international organizations and institutions in order to solve the problems in a global experience.

In order to overcome the problems regarding the implementation of international documents, the creation of certain policies by international organizations and institutions is required to promote the idea of environmental protection as a basic motto of the global world.

Taking into account the recommendations of Brundtland Commission, humanity has a moral obligation to preserve natural resources for future generations.

Main objective of this article is the presentation of research on the implementation of the Aarhus Convention and the proposal of measures for the creation of ideas and policies on improving access to information in the field. The research is done with the students from the faculty of Security which accessed the information in environmental matters.

Keywords: Aarhus Convention, implementation, ideas, policies etc.

Introduction

Protecting the environment is an imperative of contemporary society. In all legal acts and other documents is highlighted the need for protection of healthy human environment, protection against contamination of water, soil and air in order to reduce or eliminate the possibility of violating human health. Although there are evident efforts from legislators and government bodies to regulate this very important matter, however, the main issue is the implementation of the adopted international documents.

In this sense, it is extremely important to raise the level of people's consciousness and their relationship to healthy human environment and compliance with the provisions contributing to create an uncontaminated environment that wouldn't

cause negative consequences for humans health and life, but also wouldn't cause negative consequences to flora and fauna (Sazdovska, 2009, pp. 79).

In order to eliminate or at least to reduce some environmental problems internationally, certain international documents, declarations and conventions are adopted. But the submitted question is about their implementation and control of the implemented provisions.

Although the contemporary globalization processes of sovereignty of national states is decreasing and part of credentials are transmitted to international organizations and institutions, it is possible at the national and international levels to realize the planned legislative and other provisions for healthy human environment, however it is possible at the national and international levels to realize the predicted legislative and other provisions for healthy human environment ("International standards and practices for protection of the environment" Faculty of Security- Skopje, 2010, pp. 55). Regional negotiations among many countries that are faced with various environmental, economic and cultural circumstances, may lead to important decisions and at the same time agreements for global environment to be more efficient. But bilateral negotiations with motivation of concluding an agreement especially those that include fewer countries involved are faced with similar problems concerning the management of natural resources or they suit to different types of environmental threats (Saskind, 2008, pp. 9).

During contract compiling for global environment it is necessary to provide the population growth, the need for more reasonable development models and to encourage wealthier countries to learn surpassing environmental standards in order to overcome the growing gap between North and South. These negotiations for resolving of environmental problems should not result in slowing down the speed of change in the environment, up to the pace that the biosphere can tolerate. This is a special challenge for diplomacy environment. It is possible to do with improving processes and by strengthening the institutions in order to build a global consensus (Saskind, 2008, pp. 9).

It should be taken into consideration the recommendations of Brundtland Commission (WCED, 1987) to moderate the disposal of natural resources, taking into account the future generations (Markovik, 2006). According to all mentioned above, in the coming period imperative for all of humanity on planet Earth would be acting in accordance with environmental ethics (Carson, 1962).

Despite these significant aspects of the environment that can be connected to security. „Environmental security” is defined as a state protecting people from environmental threats and threats that come from endangering the environment. The main actor in the promotion of the protection is the state, because the environment will become a security problem at the same moment when the state will be forced to use special measures to deal with environmental pressures. World Commission on Environment and Development, in their Brundtland report on 1987 they connect security with environment, noting that humanity faces two major threats, including: the dangers arising from the possible use of nuclear weapons and environmental degradation which is present everywhere in the world (Mileski, 2006, pp. 22).

Despite global environmental security threats, of course eco crime also should be

mentioned, which unfortunately in recent years is becoming more prevalent and more important, considering the harmful effects caused by it. For the mentioned above witness is the role of Interpol as an international institution that is struggling with this serious type of crime, which often has the characteristics of organized crime. Solving the above problems is possible only with maximum engaged entities that have jurisdiction in the area of environmental protection. For their successful and efficient response or action, fulfillment of certain conditions is required, which are related with public decisions regarding the environment, the public and access to information and transparency of procedures.

There are a numerous of international documents that regulate the protection of the environment from different aspects, including international conventions and agreements. Among them one of the most important conventions is certainly the Aarhus Convention.

Aarhus Convention

Aarhus Convention (United Nation Convention) (“Official Gazette” of Republic of Macedonia, no. 40/99) is the convention about the access to information, public participation in decision-making and access to justice regarding the issues related to environment (Parliamentary Office of Science and Technology, Aarhus Convention, 2006, No. 256). The Convention contains provisions for interaction between the public and authorities in a democratic context and at the same time creates a new process for public participation in negotiations and implementation of important decisions for the environment. Aarhus Convention regulates access to information and public participation and at the same time support these rights with the provisions on access to justice.

According to this Convention, European countries regulates three main issues: the right of individuals and legal persons to seek information about the environment; public right to participate in decision-making related to environmental protection and right for access to justice when the two previous rights are not respected.

In accordance with this Convention, citizens have the right of public access to environmental information and at the same time are active participants in the information process. Information can be active and passive. Besides informing, citizens have the right to participate in decision-making related to environmental protection. Also Aarhus Convention “access to justice” enables public wide access to justice and legal protection. If citizens somehow want to bring charges, it is necessary only to have a sufficient interest, but there may be no violation/offense or special interest.

Regarding the implementation of the Aarhus Convention, certain European countries have a positive experience, as exemplified by the UK (Parliamentary Office of Science and Technology, Aarhus Convention, 2006, No. 256). But, in countries that are in transition and are not members of the European Union have a different approach to public information. Some of them form “Aarhus – centers” where citizens can be informed about the Convention (Parliamentary Office of Science and Technology, Aarhus Convention, 2006, No. 256). However, those centers realize communication between NGOs, public and state authorities. Instead of just giving free access to

information on environmental protection, they focus on expanding public awareness through press conferences, offering legal advice and sense of hearing to the public related to legislation.

Unlike the implementation of the first pillar of the Aarhus Convention, the implementation of the second pillar arise certain problems. This pillar allows NGOs and citizens' right to participate in decision-making. The main area of activity in connection with the second pillar are activities related to energy, industry, transport, waste management and sector managing waters. Also included are plans, programs, preparation of legal instruments and policies regarding environmental protection. But the implementation of this pillar also causes certain difficulties (Parliamentary Office of Science and Technology, Aarhus Convention, 2006, No. 256).

1.1. Implementation of the Aarhus Convention in the Republic of Macedonia

The provisions of the Aarhus Convention are incorporated in the legislation of the Republic of Macedonia and should be implemented in practice.

Also it adopted a Strategy and Plan of Action for implementation of the Aarhus Convention in Republic of Macedonia. The aim of the strategy is to analyze the situation with the implementation of the Convention in the Republic of Macedonia, to recommend guidelines for overcoming obstacles and problems that may arise in its implementation, and to propose an action plan to implement the established guidelines and solutions (Strategy and Action Plan for implementation of the Aarhus Convention in the Republic of Macedonia, pp. 10).

With the law on environment, which is a framework law in Republic of Macedonia, conditions are created for implementation of the Aarhus Convention, because the law contains provisions that allows quality realization of the right for information access, public participation in decision-making and better access to justice related to issues on environment.

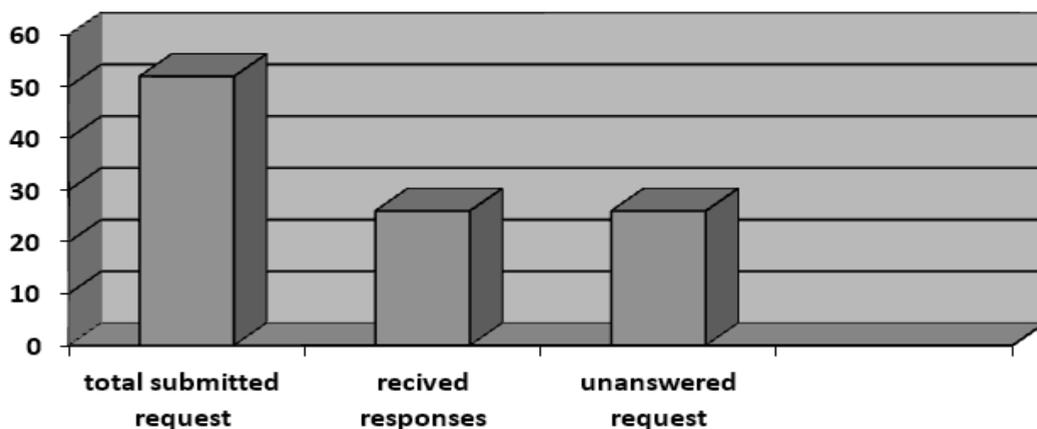
According to the strategy, proposes conducting training aimed at strengthening the capacity to implement the Convention, raising public awareness of the importance of the Convention and so on. It is expected major contribution from National Strategy for data management regarding environment, which was adopted in 2005 by the Government of Republic of Macedonia (Strategy and Action Plan for implementation of the Aarhus Convention in the Republic of Macedonia, pp. 180).

Also in the country acts "Macedonian Information Centre for Environment" (MICE), who should manage the database for the condition of the environment, but in the same time should be accessible to the public, and also there is the office for public communication at the Ministry of Environment and Physical Planning.

Although there is good compliance between international and national legislation, however there are certain problems in the implementation of certain conventions and agreements, including the Aarhus Convention as well. To be exact, according to the analysis outlined in the strategy with plan of action for implementation of the Aarhus Convention in the Republic of Macedonia, problems come across in this area are: overlapping of competencies; lack of a comprehensive monitoring program and a unique methodology; failure to implement or inefficiency of numerous inspections services and more (Strategy and Action Plan for implementation of the Aarhus Convention in the Republic of Macedonia, pp. 42).

For the purpose of analyzing the approach of implementation of the Aarhus Convention, a survey was realized related to information access on the environment (Survey, "Environmental Criminalistics" Faculty of Security- Skopje, 2015). The survey was conducted through the submission of requests for access to information in the field of environment. Requests are submitted to certain competent institutions to verify the procedure for obtaining a response regarding requests for environmental information. In the survey 52 requests were submitted, from which a response was gathered in from 26 cases.

Institutions in which requests were sent are: Ministry of Interior, Ministry of Agriculture, Forestry and Water Management, Ministry of Environment and Physical Planning, PE Macedonian Forests, PE Komunalec (local enterprise for waste and water management), several municipalities and others.

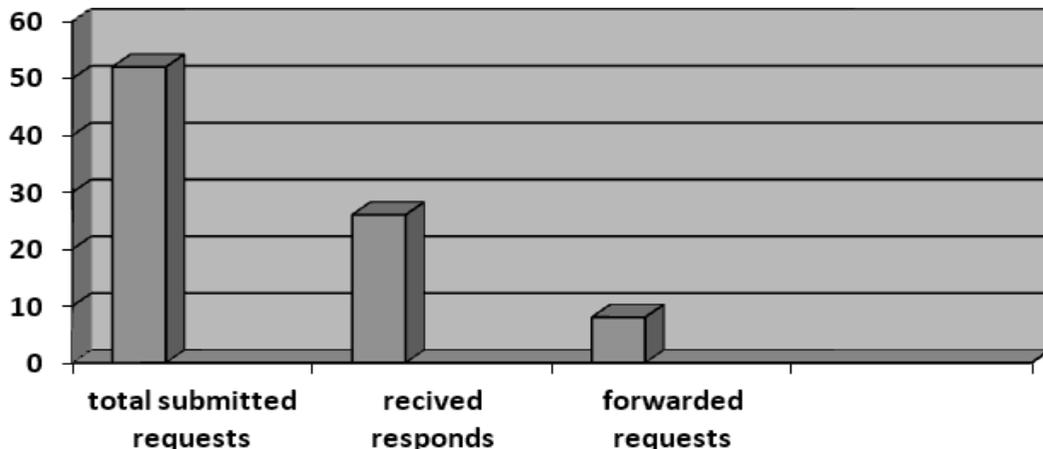


Graphic 1: submitted requests and received responses

Responses received from various institutions were received in different ways: by e-mail, home address and so on. Certain responses are signed by those responsible for public relations, but in some cases responses were signed by the highest governing bodies-ministers. Signatories of response besides ministers, were signed also from and assistant ministers, mayors, and officials responsible for public relations.

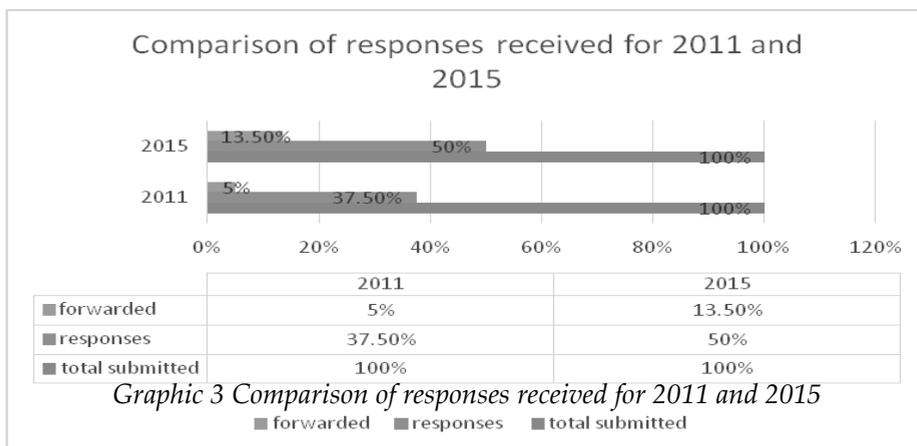
The submitted requests were with various characters, such as: number of environmental crimes in a certain area, contamination of drinking water, state of landfills, and quantity of illegally cut timber and so on. In some cases, when the institutions are not directly responsible for requests, they resent or forwarded them to the competent authorities and at the same time informing claimants of information. Results of research on the implementation of the Aarhus Convention are worrying especially in the part related to access to public information, because half of the institutions and bodies that received requests replied, and the other half did not answered at all to the applicants for information. So this obviously means that in Macedonia this issue is still not satisfactory.

Graphic 2: submitted request, received response and resent or forwarded requests to other institutions



Positive conclusion arises from the procedure for responding from competent institutions. Explicitly, in case the body or institution is improper to submitted request, they forward the request to the competent authority, and after received respond they reply it to the applicant for information.

If above survey compares with the previous survey conducted in 2011 (Sazdovska, Yearbook of the Faculty of Security, Skopje, 2012) can be concluded that in 2015 we have increased the percentage of responded requests, which is 50% and in 2011 it was only 37.5%. This can be seen in the following graphic.



The survey on access to information for environmental protection, indicates that there are serious issues in the implementation of the Aarhus Convention in Republic of

Macedonia. Even though, the national legislation has taken all necessary measures to implement the provisions of the Convention and for that reason there are drafted laws and regulations, but their implementation on practice is the main issue. In accordance with the regulations, there are certain persons who are responsible for contact with citizens about the provision of information, but in most cases the necessary response is missing, in other words institutions do not respond to submitted requests. The reason for such behavior may be unconscious of competent persons or lack of awareness of the procedure for access to information. On the other hand, those institutions or explicitly persons who replied to the claimant information, acted professionally and promptly informed the claimants. In addition, almost all posts were supported by adequate explanations, as well as certain results were attached in support.

Draft - measures to improve the implementation of the Aarhus Convention

The implementation of the Aarhus Convention isn't in satisfactory level. After the adoption of the Convention, laws and regulations at national level of states, it requires further monitoring of activities, because it isn't a completed process, but a process that should continue in the future (The Aarhus convention and its implementation in the European community, Kremlin, Georges-Stavros, Seventh International conference on environmental compliance and enforcement). There were found certain weaknesses (Parliamentary Office of Science and Technology, Aarhus Convention, January 2006 Number 256), which should be overcome in the future.

Creating policy for adequate implementation of the Aarhus Convention, should be given the following proposals and measures:

- Public information for Aarhus Convention, the rights of citizens to information access, public participation in decision making and access to justice ("Official Gazette" of Republic of Macedonia, no. 93/2007);
- Determination for information points and information centers;
- Strengthening the capacity of institutions which are responsible for implementation of the Convention (Strategy with Action Plan for implementation of the Aarhus Convention in the Republic of Macedonia, page 16);
- Proactive action (Parliamentary Office of Science and Technology, Aarhus Convention, January 2006 Number 256);
- Training for government and NGO representatives;
- Strengthening the activities of non-governmental organizations, activities which can provide a major contribution for monitoring the implementation of the Convention and to raise awareness about the importance of values provided by this Convention (Parliamentary Office of Science and Technology, Aarhus Convention, January 2006 Number 256);
- Taking also other measures aimed at improving the implementation of the Convention.

Governments of States - Parties to the Aarhus Convention should take into account the above mentioned recommendations, in order to design policies that in the next period will improve the implementation of the Convention.

Conclusions

The aforementioned problems have already been detected in practice in the Republic of Macedonia, weaknesses regarding implementation of legal regulations in the area of environmental protection.

Therefore, in the coming period measures and actions should be taken to raise public awareness on the benefits of application of the Aarhus Convention, strengthening the capacity of authorities and institutions, training for public prosecutors and judges, and more.

Also by the competent ministries should be taken measures for implementation of the above outlined strategies regarding the implementation of certain conventions treating the matter of environmental protection, among them also the implementation of Aarhus Convention. Only in this way we can provide a correct and honest approach to environmental protection in the present and care for coming generations.

References

- Markovic, D. (2006) "Actuality considerations of Nikola Tesla for environmental issues", magazine Vertex, Nis.
- Mileski, T. (2006) "Environmental Security", Faculty of Philosophy, Skopje.
- Saskind, L. E., (2008) "Environmental Diplomacy" Tabernakul Skopje.
- Sazdovska, M. M., (2009) "Environmental Criminalistics" Solarisprint, Skopje.
- Sazdovska, M. M., (2010) "International standards and practices for environment protection" Faculty of Security- Skopje, Skopje.
- Sazdovska, M. M., (2012) "Implementation of the first pillar of the Aarhus Convention, a conditions and challenges", Almanac of the Faculty of Security, Skopje.
- Strategy with Plan of Action for implementation of the Aarhus Convention in the Republic of Macedonia, www.moepp.gov.mk.
- Documents
- Advocacy memorandum "Arguments for prosecutors of environmental crimes" Interpol pollution crimes working group, Penalty project, 5 June, 2007.
- Aarhus Convention ("Official Gazette" of Republic of Macedonia, no.40 / 99).
- Parliamentary Office of Science and Technology, Aarhus Convention, January 2006 Number 256.
- Regulations on the procedure for providing access to information about the environment, ("Official Gazette of RM" no. 93 of 26.07.2007).
- <http://www.rec.org.mk/Arhuska%20Konvencija/Arhuskagradjaniinformacii.pdf>
- <http://www.rec.org.mk/Arhuska%20Konvencija/Arhuskagradjanipravda.pdf>
- http://www.cdradio.com.mk/index.php?option=com_content&view=article&id=1584:2012-05-08-12-28-40&catid=37:city-info&Itemid=154