

CITIZENS FACING ENVIRONMENTAL CHALLENGES IN BALKAN COUNTRIES

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ABSTRACT

Obligation to care for the environment is proscribed by the national constitutions and laws of the Balkan countries. International organizations like the Council of Europe (the Congress of Local and Regional Authorities) have started the process of strategic thinking and planning how to help cities increase their resilience to meet the challenges of the fast deteriorating environment. Moreover, although the right to clean and healthy environment has not been envisaged in the European Convention on Human Rights, the European Court of Human Rights has already pronounced itself in a number of cases connected to environmental protection. At the universal level, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) foresees effective public participation and access to information and justice for environment-friendly urban and spatial planning. Despite the norms and institutions that strive to protect the environment, it is no secret that pollution and climate change claim thousands of lives every year.

The author examines preparedness of the citizens and environmental NGOs in Croatia, Serbia, Macedonia and Kosovo to challenge government decisions, which impose high external costs in urban areas. The following indicators will be used in the research: compatibility of national legislation with international standards, dynamism of the NGOs (e.g., projects, contribution to policy-making, legal aid), citizens' response to environmental problems and environmental lawsuits brought to competent bodies. The research methods encompass legal and comparative analyses of international instruments, laws and court cases, desk research and structured interviews with stakeholders.

The results will show that NGOs and citizens in the Balkan countries are not sufficiently empowered to provide effective contribution to environmental security in urban areas. Recommendations will be offered on how to enhance legal infrastructure, boost advocacy and provide adequate legal remedies to prevent and deter environmental damage in urban areas.

Key words: environmental protection, Aarhus Convention, environmental information, legal remedies, resilient cities.

1. INTRODUCTION

Deteriorating environment and climate change have been recognized worldwide as one of the biggest challenges for the modern day humanity.¹ Environment changed by heavy pollution and over-use of natural resources may cause serious health problems not only to the present generations, but also to their off-springs. From the international perspective, the right to health has been framed by Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESC).² The states are required to recognize the right of everybody to enjoy the highest attainable standard of health and to take practical steps to improve all aspects of environmental and industrial hygiene. It is inconceivable to realize the

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¹ Paris Agreement under the UN Framework Convention on Climate Change, United Nations Office at Geneva | Geneva (Switzerland), FCCC/CP/2015/10/Add.1, Decision 1/CP.21 (adopted 12.12.2015).

² ICESC, 993 UNTS 3, UN Doc. A/6316 (1966) (entry into force 3.1.1976).

natural right to health, without living in a healthy environment. While the onus to promote and protect a healthy environment is put on the states, environmental democracy requires involvement of citizens in the decision-making that not only affects their own lives, but also the lives of the future generations.³

Environmental democracy and protection systems are framed in a number of international and European instruments.⁴ They are applicable, *mutatis mutandis*, to the environmental protection of the cities. As an example, the court in the Czech Republic considered that urban plan was amenable to judicial review based on the Aarhus Convention.⁵ Similarly, applicants invoked the European Convention on Human Rights (ECHR) to stop environmental degradation in urban areas.⁶

What is less clear is to what extent these instruments are used for the benefit of the urban dimension by the citizens of the Balkan countries. This simple idea is examined through the prism of citizens' participation in pro-environmental Non-Governmental Organizations (NGOs). "Pro-environmentalism" for the purpose of this paper is defined as a rational choice to protect and preserve the environment from further harm and abuse. The assumption is that the apolitical option offered by the NGOs stimulates a pro-environmental orientation of the Balkan citizens, who otherwise may be oblivious to the serious environmental degradation that is caused by the pollution, or remain dormant vis-à-vis environmental threats.

The Balkan cities share European environmental problems in terms of land use and degradation, air pollution, greenhouse gas emission and solid waste.⁷ The relevance for the NGOs' proactive involvement in shaping the urban environment is magnified due to the past armed conflicts, economic difficulties, current huge migratory waves and perceived wide-spread corruption.⁸ These factors have adversely affected the environment, the level of employment and the public confidence in the institutions that should balance out the societal environmental and economic interests. Paradoxically, they also have created a window of opportunity for the NGOs to raise the "pro-environmental" energy vibration and to channel it towards a common goal of the urban environmental protection, regardless of any ethnical, religious or political divisions of the citizens.

Considering the above, the following questions arise regarding action and reaction of the environmental NGOs in selected Balkan subjects:

- 1) To which extent does the urban dimension of environmental policies and legislation reflect the environmental NGOs' involvement?
- 2) How well are environmental NGOs prepared to challenge government decisions and to start court proceedings against the government and individuals when their actions and omissions impose high external costs to the environment in the urban areas?

³ Istvan Sarkozy, *The Hungarian Parliamentary Commissioner for Future Generations*, in Gyula Bandi (ed), *Environmental Democracy and Law*, Europa Law Publishing 2014, pp. 273, 294-295.

⁴ Gyula Bandi, *Introduction into the Concept of "Environmental Democracy"*, in Gyula Bandi (ed), *Environmental Democracy and Law*, Europa Law Publishing 2014, pp. 3, 5-8.

⁵ Supreme Administrative Court, judgment no. 1 Ao 1/2006.

⁶ See p. 4.

⁷ Nancy Kubasek and others, *Environmental Law*, 6th edn, Pearson Education Inc.2008, p. 425.

⁸ Corruption Perceptions Index 2015, Transparency International <<http://www.transparency.org/cpi2015#results-table>> accessed 6.3.2016.

The subject of examination is environmental legislation, practices and court cases relevant for the representative sample: Croatia, Serbia, Macedonia and Kosovo.⁹ As former units of ex-Yugoslavia, they share geographical position and history. In light of their differences, they walk the EU path on their own, meaning that they have different levels of attachment to the EU environmental standards and rules. Data gathered from statistical offices, parliaments, ministries, courts, city councils, dialogues and structured interviews with NGO and official representatives are analysed from a cross-border perspective, noting that the environmental degradation is ignorant of the ethnic or national borders.¹⁰ Theoretical and legal framework in the first part of this article is oriented towards human rights protection, as its main objective. The results from legislative and comparative overview regarding the NGOs' dynamism (projects, contribution to policy-making, legal aid), NGOs/citizens' response to environmental problems and environmental lawsuits/cases are presented in the second part. The text concludes with critical remarks and recommendations for greater empowerment of the NGOs in the process of shaping and implementing the "eco-legislation".

2. INTERNATIONAL AND EUROPEAN "PRO-ENVIRONMENTAL" FRAMEWORK

Public participation in decision-making is a manifestation of the concepts of the rule of law and deliberative democracy.¹¹ It is closely connected with the natural rights' theories, as defined in the age of enlightenment and translated into internationally and constitutionally guaranteed rights. Under the above theoretical precepts the international instruments relevant for environmental democracy and protection are developed.

2.1. Environmental Democracy

Legal basis of environmental democracy is found in the International Covenant on Civil and Political Rights (ICCPR).¹² Its Article 25 envisages the right to participate in formulation and implementation of policy in areas, which are likely to affect the public. Thus, the environmental matters fall within its scope. The Principle no. 10 of the 1992 Rio Declaration on Environment and Development¹³ requires a commitment to transparent and accountable democratic government, which involves people in the environmental decision-making processes. Environmental democracy is translated into active involvement of citizens in creating and adopting decisions that have impact on the environment in urban areas, which in turn has consequences on their health and well-being.

The 1998 Aarhus Convention¹⁴ deepens the commitment for environmental democracy, including urban areas. Its architecture is based on the following pillars: 1. access to information; 2. participation in decision-making; and 3. access to justice. Capacity building, which in this highly technical area is a, *sine qua non*, for effective participation has been added as a government duty.¹⁵ The EU and its members are parties to the Aarhus Convention. They are obliged to implement its provisions. The provisions of the

⁹ Under UNSC Resolution 1244.

¹⁰ I-C. Introduction to the Concepts of Environmental Security and Environmental Conflict, Institute for Environmental Security <<http://www.envirosecurity.org>> accessed 7.3.2016.

¹¹ Gerd Winter, *Theoretical Foundations of Public Participation in Administrative Decision Making*, in Gyula Bandi (ed), *Environmental Democracy and Law*, Europa Law Publishing 2014, pp. 27, 30-32.

¹² International Covenant on Civil and Political Rights, 999 UNTS 171, UN Doc. A/6316 (1966) (entry into force 23.3.1976).

¹³ 1992 Rio Declaration on Environment and Development, United Nations publication, Sales No. E.73.II.A.14 and corrigendum, UN Doc. A/CONF.151/26 (vol. I) (adopted 14.7.1992).

¹⁴ Convention on Access to Information, Public Participation in Decision -Making and Access to Justice in Environmental Matters, 2161 UNTS 447 (entry into force 30.10.2001).

¹⁵ Gyula Bandi (n 4) pp. 5-6.

Aarhus Convention are incorporated into EU Directive 2003/4/EC on access to environmental data and their public dissemination¹⁶; and into the EU Directive 2003/35/EC on public participation regarding preparation of certain plans and programs and access to justice.¹⁷ The EU Commissions monitors and reports about the implementation of the Aarhus Convention by the EU.

A European instrument devoted to environmental democracy, but specific to urban areas, is the Resolution “Making Cities Resilient” of the Congress of Local and Regional Authorities, CoE¹⁸. It addresses the environmental policy-making in the context of the climate change. The Resolution calls for mutual support of the cities regarding strategic thinking, planning and exchange of best practices.¹⁹

2.2. Human Rights Approach to Environmental Protection

The ECHR, CoE human rights instrument, *par excellence*, guarantees the right to privacy and freedom of expression. They were invoked by applicants in the context of the environmental protection before the European Court of Human Rights (ECtHR).²⁰ The NGOs have a legal standing to bring a case before the ECtHR, provided that they also fulfil the victim requirement.

Several of the ECtHR cases are indirectly linked to greening the urban living, such as *López Ostra v. Spain*.²¹ The applicant complained that a waste treatment plant, which was situated nearby their house in a city and which operated without a license, produced pollution that violated the right to privacy. The responsible authorities remained passive vis-a-vis the polluter. The ECtHR held that severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes, without representing a grave health hazard. Nonetheless, the environmental hazard must attain a level of severity resulting in significant impairment of the applicant’s ability to enjoy her home, private or family life. The ECtHR found a breach of Article 8 on the account that the state failed to strike a proper balance between the economic interest of the town and the applicant’s right to enjoy privacy of her home.

In the case *Grimkovskaya v. Ukraine* the applicant complained that the routing of a motorway through applicant’s street resulted in severe air and noise pollution.²² The ECtHR established a breach of Article 8 considering, *inter alia*, that the applicant was not provided with access to relevant environmental information and with a possibility to participate in the relevant decision-making process.

In another ECtHR case *Vides Aizsardzības Klubs v. Latvia*, the applicant was an environmental NGO.²³ In a resolution addressed to the Ministry of Environment, it expressed grave concerns about degradation of the dunes in the Gulf of Riga. The NGO pointed its finger on the local mayor who was allegedly involved in illegal constructions in the affected area. The court found against the NGO in the defamation proceedings, considering that the allegations, which were published in a local newspaper were not

¹⁶ Directive on public access to environmental information, Official Journal L 41 pp. 26-31, Directive 2003/4/EC (entry into force 14.2.2003).

¹⁷ Directive providing for public participation in respect of the drawing up of certain plans and programs relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, Official Journal L 156 pp. 17-23, Directive 2003/35/EC (entry into force 25.6.2003).

¹⁸ Council of Europe.

¹⁹ CLRAE, Making Cities Resilient Resolution 339 (2012), CPL(22)2 (adopted 22.3.2012).

²⁰ ECHR, European Treaty Series, CETS No.005 (entry into force 3.9.1953), art. 8.

²¹ *López Ostra v. Spain* (1995) 20 EHRR 277.

²² *Grimkovskaya v. Ukraine*, Application no. 38182/03, 21 July 2011.

²³ *Vides Aizsardzības Klubs v. Latvia*, Application no. 57829/00, 27 May 2004.

proven. The ECtHR found a breach of the freedom of expression under the ECHR Article 10 on the account that the environmental NGO was exercising its watchdog role in accordance with the law. It, thus attempted to alert to the issue of public interest, which concerned the detected deficiencies regarding local environmental protection. In particular, the state failed to secure a proper balance between the measures that restricted the NGO's freedom of expressions and the legitimate aim to protect the reputation and rights of others.

2.3. Criminal Justice Response to Environmental Damage

Speaking about Europe, the CoE Convention on the Protection of Environment through Criminal Law²⁴ has not yet entered into force, although it needs only 3 ratifications. It requires the ratifying countries to prohibit a number of behaviours that pollute the environment, and to penalise intentional or negligent pollution, which causes or creates a risk of death, or serious injury. Article 11 is the most interesting one for the NGOs, as it stipulates that ratifying states may grant them the right to participate in criminal proceedings regarding grave environmental crimes. Concrete measures and forms of NGOs' participation in the aforementioned criminal proceedings are left to be determined by the states. After the bad news that the above Convention has not yet entered into force after 18 years since its opening for ratifications, the good news is that the EU Directive 2008/99/EC on Environmental Protection through Criminal Law²⁵ has entered into force in 2008 and requires to be transposed in domestic legislation by 2010 to the benefit of the urban environmental criminal protection.

Criminal justice response in environmental matters must not be forgotten. Environmental pollution is a lucrative business for criminal enterprises.²⁶ Therefore, criminal justice must take its course, as envisaged in the CoE Convention on the Protection of Environment through Criminal Law. Citizens and NGOs must be able and feel obliged to cooperate with the justice authorities regarding environmental crimes. In particular, regarding urban environmental crimes the NGOs can: 1. educate the public, the law enforcement and (potential) polluters about the criminal justice protection; 2. report environmental crimes to the authorities and provide evidence; 3. provide valuable data and information to criminal investigators and prosecutors in view of their data collection activities and their technical knowledge; 4. provide *amicus curiae*; and 5. represent the interests of the victim.

3. TAKING A STEP BACK: ENVIRONMENTAL NGOs IN CROATIA, SERBIA, MACEDONIA AND KOSOVO

3.1. NGOs' Perspective on Inclusion of International and European Standards in Domestic Laws and Practice

The starting points of the examination are above-mentioned international and European commitments.²⁷ Simple check of the UN ratification lists reveals that Croatia, Serbia and Macedonia are parties to the ICCPR, to the ECHR and to the Aarhus Convention. Although Kosovo is not in a position to ratify a UN or CoE convention, the ICCPR and ECHR are directly applicable according to Article 22 of its constitution. Croatia, already an EU member and the remaining three subjects that hope to become EU members have a responsibility to transpose Directives 2003/4/EC and 2003/35/EC in their domestic

²⁴ Convention on the Protection of Environment through Criminal Law, European Treaty Series, CETS No. 172 (opened 4.11.1998).

²⁵ 2008/99/EC of the European Parliament and of the Council, Official Journal L-328, pp. 28-31 (entry into force 26.12.2008).

²⁶ Michael Lyman and others, *Organized Crime*, 4th edn, Pearson Education Inc.007, pp. 193-194.

²⁷ See pp. 3-5.

laws. Indeed, the aforementioned directives are transposed by way of primary and secondary legislation on environmental protection and access to public information to a various extent.²⁸

Legislation of all examined subjects²⁹ shows that legal foundations for access to environmental information and for NGOs participation at the policy and law-making stages in urban areas have been laid down. Common exceptions in this regard relate to national security, intellectual property and state secret. Common legal measures include access to information without stating the interest; information-sharing on a webpage or by the media; and round tables upon authorities' or public initiative.

The Croatian law³⁰ shows that legal foundation for access to environmental information and for participation of NGOs vis-a-vis urban environmental decision-making has been firmly laid down. Provisions from the Serbian Law on Environmental Protection regulating the public request and refusal of environmental information, which were criticised as being too restrictive, were deleted recently. The environmental information now must be sought in line with the Law on Free Access of Public Information.³¹ Its Article 9 foresees a list of exceptions that will need to be interpreted restrictively in line with Article 4, paragraph 2 of the Directive 2003/4/EC.³² However, the Law neither mentions the need for restrictive interpretation of exceptions nor it requires weighing public interest for information disclosure against the opposing interest as foreseen in the above Directive. The Macedonian law³³ has changed 15 times in 10 years, and thus has not complied with the rule of law requirement for law foreseeability. The Kosovo law³⁴ needs to be more precise regarding the requirement for public participation at local level for proper implementation.

In case of a cross-border environmental impairment, some type of public participation in other affected states is foreseen in the laws of all four subjects. Croatia, Serbia and Macedonia are parties to the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention).³⁵ For this right to be meaningful, the public must be supplied with sufficient information in a language people understand and with sufficient time to formulate comments.

Although the legal framework is to some extent harmonized with the international and European standards, mostly as a result of the EU enlargement process, Skopje, Tetovo and Prishtina continue to be amongst the most polluted cities in Europe.³⁶ Part of the air pollution problem is connected with factories and power plants (Obilic in Prishtina) that operate in the cities and municipalities, part of it is connected with pollution created by heavy traffic and unsolved heating problems, but a big chunk of the problem has been created by "uncontrolled" construction in breach of the urban planning principles and by cutting trees. One day devoted to planting trees in a year by the Macedonian government, cannot

²⁸ Law on Protection of the Environment, Peoples' Journal of Croatia nos. 80/13, 153/13 and 78/15, Article 2; Law on Environmental Protection, Official Gazette of Serbia nos. 135/2004, 36/2009 and 14/2016, Articles 79 and 80; Law on Public Access to Information, Official Gazette of Serbia nos. 120/2004, 54/2007, 104/2009 and 36/2010; Law on Environment Official Gazette of Macedonia nos. 53/2005, 81/2005, 24/2007, 159/2008, 83/2009, 47/2010, 124/2010, 51/2011, 123/2012, 93/2013, 187/2013, 43/2014, 44/2015, 129/2015, 192/2015; Law on Environmental Protection Official Gazette of Kosovo 2009/03-L-025, Law on Environmental Impact Assessment Official Gazette of Kosovo 2010/03-L-214.

²⁹ Ibid.

³⁰ Ibid.

³¹ About Serbian Law (n. 28) p. 6.

³² About Directive 2003/4/EC (n 16) p.4.

³³ About Macedonian Law (n. 28) p. 6.

³⁴ About Kosovo Law (n. 28) p. 6.

³⁵ Convention on Environmental Impact Assessment in a Transboundary Context, 1989 UNTS 209, C.N.443.2014.Treaties-XXVII (entry into force 10.9.1997).

³⁶ Official Air Quality Web Portal <<http://airquality.moepp.gov.mk/?lang=en>> accessed 11.3.2016.

replace the trees that continue to be cut for the remainder of 364 days. The 2015 EU progress report underlines the pollution problems in eight big cities in Serbia.³⁷ Croatian towns have also not been spared from the environmental hazards.³⁸

Therefore, the question is raised about how well NGOs can use the above laws to secure access to information and influence the urban decision-making. Croatia shows a higher level of compliance with the environmental law, with an advantage of having proactive NGOs. There are environmental NGOs that have been continuously working for 26 years on the protection of the environment.³⁹ However, in 2009 the Ministry for environmental protection started minor offences proceedings in the court against the NGO Zelena Akcija alleging that the NGO dropped waste in front of the Ministry's building.⁴⁰ The NGO argued that it held educational activities regarding improper implementation of the waste law in urban areas, and that a threat with court proceedings represented a breach of the Aarhus Convention. The NGO was acquitted. Nowadays, the NGOs are accepted by some local self-government units as partners. Therefore, Croatian environmental NGOs should become more active regionally and share their knowledge vis-a-vis urban areas. In 2015, an agreement on cooperation for the protection of the environment was signed with Serbia for knowledge transfer regarding the EU environmental acquis.⁴¹ In Serbia, a positive example is the inclusion of NGOs in the preparation of the Local Environmental Plan for the municipality of Zemun, which underlines the citizens' concern for the protection of the green areas and foresees creation of green areas around environmental hot spots in the city.⁴²

In Macedonia, access to environmental information was restricted in the past years and towns fail to carry out environmental impact assessment for urban plans, although they negatively affect the quality of air and green areas.⁴³ It happens, although rarely, that the authorities include unknown NGOs in the process of policy or legislation drafting, which afterwards "disappear" from the environmental scene. Some towns "forget" to conduct public participation at all, although that is a legal requirement, but they do not bear any consequences.⁴⁴ Environmental democracy should not be limited to ticking a box in an environmental impact assessment, or to including a paragraph on public participation in the local environmental plan, but a failure to organize a public participation phase is a breach of the respective law. Therefore, the NGOs must challenge those acts before the Administrative Court or before the Constitutional Court in line with domestic procedure. The NGOs should continue submitting civil claims for alleged environmental damages in the towns to basic courts.⁴⁵

To realize their law entitlements, the Macedonian NGOs use different tools. For example, they support the requests to measure the environmental impact of various projects like a smelting factory in the town of Veles. The NGO Arsena combats water pollution in the town of Gevgelija. Macedonian NGOs use networking, information-sharing and address joint recommendations to the city authorities. However, the cooperation with the city authorities is not at a satisfactory level, neither there is a proper follow-up to the NGOs' recommendations and initiatives, despite the law provisions.⁴⁶

³⁷ Serbia 2015 Report, European Commission Staff Working Document, SWD(2015) 211 final (issued 10.11.2015) p. 66.

³⁸ Zelena Akcija <http://zelena-akcija.hr/hr/publikacije/zeleni_telefon> accessed 12.3.2016.

³⁹ For example, the NGO Zelena Akcija was founded in 1990, the Association Marjan in 1903.

⁴⁰ Inspection unit, UR no. 531-07-1-5-2-6-09-2.

⁴¹ Taken from <<http://www.blic.rs/vesti/drustvo/srbija-i-hrvatska-potpisale-sporazum-o-zastiti-zivotne-okoline/tcl640n>> accessed 1.3.2016.

⁴² Zemun Local Ecological Plan <www.zemun.rs/cms/sites/default/files/Lokalni_ekoloski_akcioni_plan...> accessed 6.5.2016.

⁴³ The NGO Eco Sense interviewed March 2016, questionnaire of the NGO Front 21/42 March 2016.

⁴⁴ Ibid, representative of the NGO involved.

⁴⁵ Municipal Court of Veles, judgment no. TC no. 479/08.

⁴⁶ For NGOs (n. 42). 7.

The Kosovo environmental NGO sector does not give an impression of being assertive in the area of public participation at urban level. Moreover, Kosovo environmental NGOs need additional capacity building for research and for drafting quality inputs for environmental strategies, projects and plans in the towns.⁴⁷

Insufficient involvement of the NGO sector in public consultations at local level regarding environmental protection, despite existing legislation, is a shared concern of Serbia, Macedonia and Kosovo. Irregular update of registries of environmental information is a shared concern of Serbia and Macedonia. With respect to cross-border water and air pollution⁴⁸, it does not appear that Macedonian or Kosovo NGOs have had any experience with public participation in the environmental cross-border decision-making. Balkan NGOs' networking in Croatia, Serbia, Macedonia and Kosovo occurs sporadically, with the South Eastern European Environmental NGOs Network as a positive example. It is more likely that an environmental NGO is included in a European NGOs network, than in a regional network.

3.2. Dynamism of the NGOs

The above examination shows that all four subjects have motivated environmental NGOs that are involved in public education, trainings, awareness raising and legal protection of green urban areas. The NGOs organize protests when trees are cut and parks are transformed into buildings and garages under hasty changes of urban plans. In 2013, in Macedonia, the peaceful "park defenders" who were trying to protect trees from being cut by staying in their vicinity 24hrs per day, were arrested by the police and special police forces were deployed to protect the construction site.⁴⁹ Skopje has not seen such a number of special forces with full equipment deployed in the centre of the city even during the 2001 armed conflict. Although in the past 5 years many citizens' protests were staged in order to protect green areas and clean air in the towns of Skopje, Tetovo, Bitola⁵⁰ the environmental degradation continues. The citizens are losing hope that their protest and activism can make a difference, as noted by the NGO Eco Sense.

Public protests against polluted air were staged in 2015 in the Serbian towns of Sombor and Backa Topola, and in 2014 in Novi Sad against disappearance of green areas.⁵¹ In Kosovo, public protests are part of everyday life, however they are not staged for greening urban areas. Except for the protests, in all four subjects there are not many NGOs' initiatives to encourage citizens' volunteerism, or to promote voluntary adherence to pro-environment recommendations, such as a use of bicycles, trees planting, picking up garbage, etc.

Looking from advocacy and lobbying perspective, the NGOs' capacities to contribute to environmental policies were strengthened by EU/IPA project in Croatia.⁵² However, it does not appear that public hearings regarding urban problems are high on the agenda of the Croatian Parliamentary Committee on Protection of the Environment and Nature.⁵³ The Serbian Parliamentary Environmental Protection

⁴⁷ Green Art Center <www.greenartcenter.org> accessed 2.3.2016, field presence, contacts with Kosovo NGO representatives.

⁴⁸ Regional Environmental Centre, Updated list of priority investment projects - Kosovo UNSC 1244 November 2008 <web.rec.org/.../lists/kosovo_unscr_1244_november_2008.pdf> accessed 30.4.2016.

⁴⁹ Time.mk <<http://www.time.mk/c/05170d4737/uapseni-pa-oslobodeni-desetina-parkobrani-megju-niv-sovetnik-od-centar-i-direktorot-na-jp-parkinzi.html>> accessed 5.5.2016.

⁵⁰ Ibid.

⁵¹ Serbian media review <<http://www.soinfo.org/vesti/vest/14905/1/Protest-za-vazduh-bez-smrada/>>; <<http://www.021.rs/story/Novi-Sad/Vesti/89260/Sutra-protest-protiv-izgradnje-parkinga-kod-Spensa.html>>

⁵² IPA is the EU Instrument for Pre-Accession Assistance.

⁵³ <<http://www.sabor.hr/odbor-za-zastitu-okolisa-i-prirode>> accessed 5.2.2016.

Committee seems more active in comparison to its “sister” committees from other subjects of examination, as it has organized at least nine public hearings on environmental draft laws and topical issues. Thus, it provided the NGOs with some opportunity to contribute to the environmental debates.⁵⁴ There were also capacity building activities offered to NGOs in this regard.

Advocacy and lobbying with the authorities for greening the urban areas have been used minimally by the Macedonian environmental NGOs. In the Parliament, despite heavy pollution and controversial (ever-changing) urban plans in several cities, the ecological issues are aggregated together with transport and communication under the competence of a single Parliamentary committee.⁵⁵ In the last few years, in the Parliament there were no real discussions, let alone public discussions regarding greening of urban living. Recent draft law on green areas received a weak coverage from the media. Media are not very interested in reporting about the NGOs’ activities for the protection of the environment, unless it is a public protest.

To balance, in Bitola Green Agenda project is a positive example of NGO’s proactive approach. The funding was secured by the NGO Milieukontakand⁵⁶ based in the Netherlands and implemented by the NGO Biosphera. The latter secured a commitment for the Green Agenda from the mayoral candidates, facilitated the preparation of the municipal environmental action plan and the municipal tourism strategy. As a result, the municipal environmental unit was opened, the 2010 green local action plan was adopted, the green areas were ameliorated and the communal hygiene was improved.

The reality in Kosovo in this regard is more grey than green. The Parliamentary commission on environment is also competent for forestry, agriculture and for spatial planning, and it does not appear that public hearings with the environmental NGOs are on its priorities.⁵⁷

The NGOs mostly use web and social media to share and disseminate environmental information for urban areas. There is a webpage “Croatian Information Service for Environment”⁵⁸ for sharing environmental information by scientists with NGOs and authorities in Croatia. However, it has not been updated the last 20 years. This webpage which promotes cooperation between environmental experts, NGOs and authorities might become very valuable, if renewed.

One of the Serbian NGOs organized an environment forum with the participation of NGOs, Government officials and EU representatives regarding implementation of the EU environmental acquis in the country.⁵⁹ It appears that the NGO did not manage to sustain a real dialogue with the authorities. Another interesting project of a consortium of Serbian NGOs concerned creating a platform of stakeholders in order to link the citizens with decision-makers regarding traffic problems and their impact on the air pollution in the cities.⁶⁰

⁵⁴ <<http://www.parlament.gov.rs/народна-скупштина/састав/радна-тела/одбори> 57.13html> accessed 5.3.2016.

⁵⁵ Committee for Transport, Communication and Ecology <http://www.sobranie.mk/rabotni-tela-2014-2018-ns_article-komisija-za-transport-vrski-i-ekologija-2014.nsp> accessed 5.5.2016.

⁵⁶ Green Agenda – Macedonia <<http://www.greenagenda.net/wp/?cat=18>> accessed 5.1.2016, questionnaire of the Front 21/42.

⁵⁷ Committee for Agriculture, Forestry, Environment and Spatial Planning <<http://www.kuvendikosoves.org/?cid=2,110,129>> accessed 20.3.2016.

⁵⁸ <<http://www.botanic.hr/cise/doc/index.html>> accessed 10.3.2016.

⁵⁹ For Cekor (n. 39) p. 8.

⁶⁰ Marta S. Bonifert, *Promoting Public Participation beyond the EU*, in Gyula Bandi (ed), *Environmental Democracy and Law*, Europa Law Publishing 2014, pp. 237, 49, 56.

A Macedonian NGO's project, which was meant to be a platform for making public and sharing environmental information, was in some way "boycotted" by the city of Skopje and the municipalities, as none of them agreed to become a part of the platform.⁶¹ The Kosovo environmental NGOs keep low profile.⁶²

Free legal aid to the citizens in Croatia is provided through the original project: "Green Telephone Network", which enables the citizens to report urban environmental problems, for example cutting of trees. The NGOs provide advice, support, take action and report about the problems encountered by the citizens.⁶³ Croatian NGOs also provide free legal aid, including to pro-environmental protestors who were protesting against the changes of the Zagreb urban plan and who were of taken into police custody in 2010.⁶⁴ In Serbia, free legal aid is offered to citizens regarding environmental issues in a form of legal advice and briefing about applicable legislation. The capacity of the environmental NGO sector in Macedonia to provide free legal aid is meagre and reportedly limited to only one NGO. The Kosovo NGOs need to become proactive in this regard, in order to protect the remaining few green areas in Prishtina.

In general, the environmental NGO sectors are supported by the EU and other international or bilateral donors financially, organizationally and politically.⁶⁵ Although some government funds for environmental NGOs are available in Serbia, Macedonia and Kosovo, there is a lack of transparent funding.⁶⁶ In Macedonia, government grants are of small amounts. The NGO Eco Sense, which is active since 2002, had received a government grant only once, amounting only to 5,000 Euros.⁶⁷

3.3. Access to Court for Environmental NGOs

The Constitutions of all four subjects foresee the right to a healthy environment and well-being, as well as a responsibility for the protection of the environment.⁶⁸ They all reveal various possibilities for the NGOs to challenge the constitutionality and legality of acts and decisions that have a negative impact on the environment.

In Croatia and Serbia every natural or legal entity can initiate a review of the constitutionality and legality of acts and decisions, including environmental issues. This opportunity was successfully used by the environmental NGOs in Croatia to initiate a review of the constitutionality of the Law on Gulf Terrains, which was finally abrogated.⁶⁹

In Macedonia everybody, including NGOs, can submit an initiative for a review of constitutionality and legality of a law or of a local self-government decision to the Constitutional Court. This constitutional

⁶¹ For NGOS (n 42) p. 7.

⁶² Contacted NGO representatives were not interested to discuss urban environmental issues.

⁶³ For Zelena Akcija (n. 38) p. 7.

⁶⁴ Environmental Justice Atlas <<https://ejatlas.org/conflict/flower-market-square-redevelopment-plan-zagreb-croatia>> accessed 5.4.2016.

⁶⁵ See for example information from CEKOR's website <http://cekor.org/index/pagelist/id_page_node/11/lg/sr> accessed 12.3.2016.

⁶⁶ For Macedonian NGOs (n. 43), p. 7. Information is collected from a discussion with the Ministry of the Environment, presence in Kosovo and EU progress reports for all four subjects. The Croatian NGO Zelena Akcija and the Serbian NGO Cekor were not interested to fill-in the questionnaires or to be interviewed.

⁶⁷ For EcoSense ibid.

⁶⁸ Constitutions: Croatia (1990) Article 69; Serbia (2006) Article 74, Macedonia (1991) Article 43, Kosovo (2008) Article 52.

⁶⁹ Elvin Jelenkovic, Golf turizam, (2015), p.33 <<https://dr.nsk.hr/islandora/object/unipu%3A182/.../vie...>> accessed 5.4.2016.

remedy amounts to “*actio popularis*”. In 2004, the Constitutional Court abrogated a decision of one of the Skopje municipalities, which was not based on an outcome of a public survey, as required by law.⁷⁰

In Kosovo there is a possibility for NGOs to submit *amicus curiae* to the Constitutional Court upon its invitation or approval. Individuals can complain about an infringement of their individual rights set out in the Constitution, which also includes the right to public participation in environmental matters, as well as the ECHR rights connected with the environment.

Administrative proceedings to challenge administrative decisions can be brought in all subjects of the examination. In Croatia the NGOs participation in administrative dispute proceedings regarding environmental information is a clear-cut case. According to the interpretation by a Croatian administrative law expert, the legislation allows the NGOs that fulfil a requirement of “public concern” to start an administrative dispute for administrative decisions affecting adversely the environment.⁷¹ The rationale is that such a decision (administrative act) will have a negative impact on the environment surrounding them and on their well-being. In practice, the pro-environmental NGOs successfully challenged a Ministerial decision that declared certain area suitable for building a golf terrain. In Serbia, the NGOs must show that as part of the general public they are affected or may be affected in order to have *locus standi*.⁷²

Regarding Macedonia, the NGO ECO SVEST informed that they initiated a number of proceedings before the Administrative Court, on the account that legal requirements for a public consultation and for a complaint procedure were not observed during a number of environmental impact assessments. However, all the procedures are still pending before the Administrative Court, despite the fact that a significant time has lapsed. The NGO ECO SVEST, in addition to complaining to the European Bank for Reconstruction and Development (the project investor)⁷³, successfully complained to the Secretariat of the CoE Bern Convention regarding a construction of 22 power plants in the national park Mavrovo arguing, *inter alia*, that the comments provided by the public were not taken into consideration. A highlight of the NGOs providing free legal aid is the case of the “Municipality of Veles v. the Republic of Macedonia”, about a heavy pollution caused by a smelting factory in the town of Veles.⁷⁴ The citizens of Veles had to pay high court fees amounting approximately to 2,500 Euro to obtain access to court. The court did not accept the expert report prepared by the National Institute of Chemistry, but it required a new expert report which had to be paid by the citizens. On a positive note, the Veles Green Coalition obtained a timely decision from the second level government Commission, which abrogated the decision from the Ministry responsible for the environment allowing the smelting factory to restart its work and returned it to the Ministry to issue a new decision.⁷⁵

In Kosovo, the current law regulating administrative disputes⁷⁶ dates from ex-Yugoslavia, whereas the procedure for minor offences, including those affecting environment is inconsistent and full of ambiguities. Therefore, access to court regarding environmental administrative disputes and minor

⁷⁰ Constitutional Court, U no. 44/2004.

⁷¹ Dragan Medvedović and others, ‘The Legal Position of Associations in Environmental Protection Procedures in the Republic of Croatia, *Facta Universitatis*,’ 9(1) Series: Law and Politics 69 (2011) pp. 74, 77, 82.

⁷² Mirjana D. Ivanovic and others, *Practicum about the Right to Legal Remedy about the Right to Protect the Environment in Administrative Procedure and Administrative Dispute Procedure*, in Tina Janjatovic (ed), OSCE 2013, pp. 64, 85, 103.

⁷³ Complaint Boshkov Most Hydro Power, Request no. 2011/05.

⁷⁴ For smelting factory case (n. 44) p. 7.

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⁷⁶ Law on Administrative Disputes, Official Gazette no. 82/10.

offences has been impaired to a certain extent by the imperfect legal framework. Draft legislation in this regards is still pending before the Kosovo Parliament.

Regarding criminal protection, all examined subjects envisage criminal liability for certain environmental crimes. Croatia, as an EU member has harmonized its ecological offenses with the EU Directive 2008/99/EC on the protection of the environment through criminal law.⁷⁷ The harmonization of the criminal law provision has resulted in increased penalties, inclusion of new criminal offences, criminal liability also for negligence and attempt in most of the offences, and abstract endangerment.⁷⁸ According to 2012 statistics, the courts can be regarded relatively effective regarding processing of environmental criminal offences on pollution, pollution by waste disposal and illegal construction. In particular, out of 4 reported crimes on pollution 1 person was indicted and nobody was convicted; out of 6 reported crimes on pollution by waste disposal 2 persons were indicted, 2 perpetrators were convicted and out of 155 reported crimes of illegal construction 145 persons were indicted and 79 were convicted.⁷⁹

Criminal offences relevant for the environmental protection of the urban areas in Serbia are similar to the aforementioned criminal offences. In some cases, the NGOs represent the citizens in the municipality in criminal proceedings of public interest. According to the official statistics for 2014, for pollution 12 criminal offenses were reported; for failure to undertake measures to prevent pollution 3 criminal offences were reported and for illegal construction of objects that pollute the environment 1 criminal offense was reported.⁸⁰ However, there were no indictments whatsoever and there were no convictions.

Macedonia also has a chapter on ecological crimes in its Criminal Code.⁸¹ However, the provisions need a further harmonization with the aforementioned EU Directive. The official statistical information for 2014 does not disaggregate information about criminal offences that are more relevant for the cities. According to 2014 statistics, in total 137 crimes against the environment were reported, 103 persons were indicted and 90 persons were convicted.⁸² From this information and from the table below, it transpires that generally speaking, the courts are somehow effective in processing eco-crimes. However, the biggest problem according to an NGO appears to be the detection of the perpetrators, as the majority of their criminal complaints are submitted against unknown perpetrators who remain undetected by the police.

Table of criminal cases in relation to environment in Macedonia
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⁷⁷ About EU Directive (n 22) p. 4.

⁷⁸ Barbara H. Paksic and others, *Criminal law protection of the environment in Hungary and Croatia in the context of harmonization with the regulation of European Union*, in Tímea Drinoszi and others (eds), *Law – Regions – Development*, Faculty of Law University of Pécs 2013, pp. 435, 439-442, 450.

⁷⁹ Reports against unknown perpetrators are included.

⁸⁰ Statement about Adult Perpetrators of Criminal Offences 214, Republic Statistical Office of Serbia <<http://webzrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=146>> accessed 1.3.2016.

⁸¹ Official Gazette of the Republic of Macedonia nos. 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015.

⁸² State Statistical Office, Press Release on reported, accused and convicted adult perpetrators of criminal offences and children in conflict with the law, 2014 <<http://www.stat.gov.mk/PrikaziSoopstenie.aspx?rbtxt=14>> accessed 2.3.2016.

(taken from Macedonian NGO Front 21/42)											
Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total number of reported cases	108	119	90	157	136	159	172	136	152	214	182
Total no. of indicted persons	32	36	69	75	69	42	89	138	53	89	90
Total no. of convicted persons	24	27	60	52	63	34	66	117	49	71	82

Kosovo also has a legislation on combatting environmental crimes, in particular destruction of vegetation, polluting, destroying and degrading environment, illegal construction of objects that pollute the environment. According to official statistics, in 2014, 6 persons were convicted for polluting the environment, 4 for illegal construction of objects that pollute the environment and 1 for destruction of vegetation.

Regarding civil claims for environmental impairment Serbia introduced the so-called “ecological lawsuit”, according to which anybody may request a suspension of an activity which can cause damage to him or to indeterminate number of people, thus amounting to *actio popularis*.⁸³

4. CONCLUDING REMARKS

The results from the examination show that Croatian, Serbian, Macedonian and Kosovo legal frameworks enable NGOs’ access to environmental information and public participation. The other side of the coin is the implementation of that legislation in urban areas, which definitely shows weaknesses in the cases of Macedonia and Kosovo. The biggest boost for proper implementation of the above legislation comes from the EU. There is a correlation between the prospects for EU approximation and proper implementation of the Aarhus convention.

Sustainability of the environmental NGOs with developed capacities is endangered by the lack of funds, or staff, as the considerable chunk of funds comes from the EU or from another international donor. The NGOs should promote more voluntary work and activities for the environmental protection.

Furthermore, the NGOs undervalue cross-border cooperation and the impact that environmental issues in a town of a neighbouring country have on their own town.

⁸³ Aleksandra Acimovic, *Ecological-legal protection in civil proceedings with special focus on moral damages*, in Mirjana D. Ivanovic (ed), *Protection of the Environment in Law and Practice*, OSCE 2015, pp.33-34.

It appears that efforts and expertise of the NGOs are not sufficiently validated by local politicians and decision-makers. It also seems that with certain exceptions, local politicians and decision-makers do not want to understand that the aim of the public consultation is to provide public support for policy or draft laws and to ensure the legitimacy of the process.⁸⁴ Therefore, the NGOs must be more engaged with the lobbying and advocacy activities, especially with the members of the parliament, the town mayors and councillors.

Access to court must be insured in all cases relating to environmental protection in the urban areas, including access to information. The examined NGO sectors have tested access to justice in environmental cases, with varying results. In some of the examined subjects (Kosovo), the gap in effective environmental protection initiated by the NGOs is more related to a legislative deficiency in other areas (administrative justice). In Macedonian case, the legislative deficiency is related to the ecological crimes in the Criminal Code, which must be revised. Regarding implementation of legislation, the need to develop the capacities of the NGOs for effective combat against the pollution in the cities by use of legal remedies is evident.

The ECHR tools and instruments are available in all countries including Kosovo to a certain extent. However, Croatian, Serbian and Macedonian NGOs have not devoted sufficient time and energy to use them. Just as an example, if there is a substantial delay in court proceedings (administrative, criminal) they can initiate proceedings before the ECtHR invoking a breach of Article 6 of the ECHR, after exhausting all adequate and effective domestic remedies.

From the above it follows that there is still a lot of room for further development of the respective legislation and practice, as well as of the NGOs' skills for preventing and deterring environmental damage in the cities, in light of the specific needs of each examined subjects.

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