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## SPECIFIC FEATURES OF HUMAN RIGHTS GUARANTEED BY THE AARHUS CONVENTION<sup>1</sup>

**Abstract:** *The Aarhus Convention legally articulates basic human needs to live in the environment adequate for human health and well-being and to engage in protection and improvement of the environment. It recognized and protected a general human right to adequate environment and three particular rights in environmental matters – to information, to public participation in decision-making and to justice. The Aarhus Convention introduced innovative approach to human rights protection in relation to transboundary issues and legal standing.*

**Key words:** *Aarhus Convention - transboundary issues - legal standing.*

### 1. Introduction

The text explores specificities of human rights, guaranteed by the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter, done in Aarhus on 25 June 1998<sup>2</sup>

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<sup>2</sup> Entered into force on 30 October 2001. Open for signature by state members of the Economic Commission for Europe, as well as states having consultative status with the Economic Commission for Europe by regional economic integration organizations consisting of states members of the Economic Commission for Europe and with competence over matters governed by the Convention. There are 46 parties, including the EU. United Nations, *Treaty Series*, vol. 2161, p. 447. [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=XXVII-13&chapter=27&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XXVII-13&chapter=27&lang=en) Text of the Convention is available at <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

The second Meeting of the Parties, held in Almaty on 25–27 May 2005, adopted the amendment to the Convention inserting Article 6 bis and Annex I bis on public participation in decisions on deliberate release into the environment and placing on the market of genetically modified organisms. Text is available at <http://www.unece.org/fileadmin/DAM/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.2.e.pdf>

(hereinafter: the Aarhus Convention or the Convention). The Aarhus Convention recognized and protected the general right of every person to live in an environment adequate to his or her health and well-being and three particular rights in environmental matters – the right of access to information, the right of public participation in decision-making and the right of access to justice.

The right to an adequate environment has been recognized by constitutions of several countries, but it has not been recognized at international level. International human rights treaties, except the Aarhus Convention, do not protect the right of everyone to live in an adequate environment. The European Court of Human Rights has accepted that a Contracting State can violate some human rights, including the right to life or the right to privacy and home protection by its acts or failures in the field of environment.<sup>3</sup> The Human Rights Committee also found violation of a human right, guaranteed by the International Covenant on Civil and Political Rights by acts a State party taken in environmental field.<sup>4</sup>

On the other hand, the three particular human rights, protected by the Aarhus Convention, have been already recognized and protected by international human rights provisions at international level as human rights generally applicable in various fields of social life. The right to information is recognized as an element of the freedom of expression, or as a separate human right. The right of public participation in decision-making is protected as an element of the right to participate in the conduct of public affairs. The right of access to justice is universally and generally recognized at international level.

This article argues that the three human rights, as protected by the Aarhus Convention, are distinguished by some specific features related to protected object, territorial aspect and status of victim, i.e. locus standi.

## 2. Aarhus Convention

The Aarhus Convention joined human rights and protection of environment. Parties to the Convention have legally recognized a human need for adequate environment in the form of human right. However, the purpose of the Convention is also to recognize and encourage a human need for engagement in protection of environment for the benefit of present and future generations. The

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For the time being, the amendment has not entered into force.

An extraordinary Meeting of the Parties, held in Kiev on 21 May 2003 accepted Protocol on Pollutant Release and Transfer Registers. Text is available at [http://www.unece.org/fileadmin/DAM/env/pp/prtr/Protocol%20texts/PRTR\\_Protocol\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/pp/prtr/Protocol%20texts/PRTR_Protocol_e.pdf)

The Protocol entered into force on 8 October 2009.

<sup>3</sup> See S. Đajić, Pravo na zdravu životnu sredinu i Evropski sud za ljudska prava, *Pravni život*, br.12, IV/2012, 277-290. I. Krstić, Zaštita životne sredine u jurisprudenciji Evropskog suda za ljudska prava, *Pravni život*, br. 9, I/ 2012, 645-661

<sup>4</sup> Communication No. 167/1984, *Lubicon Lake Band v. Canada*, Views of 26 March 1990

Aarhus Convention is not based in interdependence of mutual benefits of the parties, i.e. on the principle *do ut des*. It has been created on the idea of international solidarity for the advancement of common values, such as protection of environment, democracy and the rule of law. Progress of each party in achievement of the goals of the Convention results in particular benefit for the party first and then in general benefit for present and future generations. In fact, the Aarhus Convention may be sorted to human rights field and to environmental field equally.

The Aarhus Convention has established minimal standards in respect of the three rights. Article 3(5) allows each party to ensure more.<sup>5</sup> The Convention requires implementation in national law. Article 3(1) of the Convention obliges each party to take legislative, regulatory and other measures to implement the Convention.

Article 10 of the Convention provides that Meeting of the Parties has to be held regularly once in each two years and that it will review the implementation of the Convention on the basis of regular reporting by the Parties. The Meeting of the Parties is empowered by Article 15 of the Convention to establish *optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention* which will be accessible to the public, enable appropriate public involvement and may include the option of considering communications from members of the public on matters related to the Convention. By Decision I/7 the first Meeting of Parties, held in Lucca, on 21-23 October 2002, established the Compliance Committee and empowered it to consider communications of parties, members of the public and the Secretariat concerning the party's compliance with the Convention and to express its findings and recommendations. A party may opt out of this conciliatory procedure for a period of not more than four years. The Compliance Committee summarized its practice in *Case Law of the Aarhus Convention*.<sup>6</sup>

Disputes on interpretation or application of the Convention have to be resolved by negotiations between parties or by other means acceptable for the parties. Judicial means – the International Court of Justice and arbitration – are optional and may be selected by signing, ratifying or acceding to the Convention.<sup>7</sup>

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<sup>5</sup> By Regulation (EC) No 1367/2006 of the European Parliament and the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies the EU provided, for example, a broader scope of the right of access to information than required by the Aarhus Convention.

<sup>6</sup> *Case Law of the Aarhus Convention Compliance Committee* (2004-2011) second ed. A. Andrushevych, T. Alge, C. Konrad (eds), RACSE, Lviv, 2011

<sup>7</sup> See further on the Aarhus Convention in B. Tubić, Polje primene Arhuske konvencije, *Zbornik radova Pravnog fakulteta u Novom Sadu*, vol. 45, 2/2011, 383-393

The Convention has introduced genuinely new legal concepts and parties must have been worried about possible consequences for their internal economies. They were very careful in shaping the rights and compliance controlling mechanism. The Compliance Committee is itself very careful in controlling compliance of parties with the Convention.

### **3. Human Rights Protected by the Aarhus Convention**

The Aarhus Convention protects a general right to adequate environment and three particular rights – to information, to participation in decision-making and to justice in environmental matters. Article 1 of the Convention states:

*In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.*

Articles 4 and 5 of the Convention relate to environmental information. Article 4 determines an obligation of a party to extend environmental information upon a request of the public. Article 5 establishes obligations of parties in respect to collection and dissemination of environmental information.

Articles 6, 7 and 8 are devoted to public participation in decision-making relevant for protection of environment. Article 6 defines the right of public participation in decision-making regarding permission for performing activities listed in Annex I. The Annex contains a long list of activities in various economic sectors, such as energy, production and processing of metals or metal industry. The energy sector includes, for example, mineral oil and gas refineries, thermal and nuclear power stations, etc. Article 7 regulates public participation concerning plan, programmes and policies relating to the environment. Article 8 is related to public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments.

Article 9 of the Convention guarantees the right to justice in environmental matters. It secures an access to review procedures – judicial or administrative. Article 9 actually covers three separate rights. Article 9(1) provides the public, who has requested environmental information, with an access to review procedure to control whether a party was complying with Article 4 of the Convention in its treatment of the request. Article 9(2) provides the concerned public with an access to review procedures to challenge the procedural and substantive legality of any decision permitting or denying performance of activity listed in Annex I. Article 9(3) provides the public with an access to administrative or judicial procedures to challenge acts or omissions of private persons and public authorities which contravene national law of a party relating to the environment.

All three particular rights are complex and include several entitlements which differ according to their subject-matters and holders. Besides, some of them are overlapping, such as the right to information and the right of public participation in decision-making. The last includes a variant of the previous.

#### **4. Protected Object and Content of the Right to Adequate Environment in the Aarhus Convention**

The objects protected by human rights are certain values, such as human dignity, life or privacy. The Aarhus Convention added to these values a new one – an adequate environment for human health and well-being.

By recital 6 of the preamble of the Aarhus Convention the parties recognized that *adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights...* By the following recital 7 they recognized that *every person has the right to live in an environment adequate to his or her health and well-being*. However, the recital continues: *and duty, both individually and in associations with others, to protect and improve of the environment for the benefit of present and future generations...* In recital 9 the parties stated that the three particular rights *contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns...*

By formulation of a duty of a person that individually and in association with others protects and improves the environment not only for his or her personal benefit but also for the benefit of present and future generations, definition of the human right to adequate environment differs from standard approach to human rights. A human right is generally determined as a personal entitlement of an individual and corresponding obligation of a State. A State is obliged to satisfy the entitlement or to create necessary legal framework that will enable its satisfaction. Fulfilling this obligation, a State can impose certain obligations to individuals to respect human rights. Unlike other human rights treaties, the Aarhus Convention provides for a duty of an individual in respect of the environment. In the context of the Convention, a person can perform the duty to protect and improve the environment by using the three rights – to be informed on environmental issues, to participate in decision-making and to employ justice to protect environment. Indeed, recital 9 of the preamble of the Convention states that the three rights are contributing to public awareness of environmental issues and give the public opportunity to express its concerns.

The protected object of the right to adequate environment, as formulated in the Aarhus Convention, is an adequate environment for human health and well-being. The content of the right is complex. It includes the entitlement of any person to enjoy environment adequate to his or her health and well-being.

It includes, also, the duty of any person to engage individually or in association with others in protection and improvements of the environment. On the other hand, a party to the Aarhus Convention is under obligation to provide a person with means to protect himself or herself from a change of environment detrimental for health and well-being. Equally, a party is obliged to provide a person with means enabling him or her to protect and improve the environment for the benefit of present and future generations.

The three particular human rights, elaborated in the Aarhus Convention serve for realization of the general right to adequate environment.

### **5. Transboundary Element of the Human Rights as Protected by the Aarhus Convention**

Human rights treaties construct a human right as a legal relationship between a State and an individual under its territorial jurisdiction. Article 1 of the European Convention on Human Rights obliges Contracting Parties to secure to everyone under their jurisdiction the rights and freedoms defined in the European Convention. Similarly, Article 2(1) of the International Covenant on Civil and Political Rights obliges each State Party to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. The European Court of Human Rights interpreted the phrase “everyone under their jurisdiction” to mean everyone on the territory of a Contracting Party.<sup>8</sup> Consequently, an effect of an act of a State to an individual on the territory of another State is beyond human rights regulation.

The Aarhus Convention introduced a transboundary element in the protection of human rights. The preamble of the Convention refers *inter alia* to relevant provisions of the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo on 25 February 1991 (hereinafter: the Espoo Convention). The Espoo Convention articulates a cooperation of Contracting Parties, i. e. a Party of origin and an affected Party in environmental impact assessment procedures. “Party of origin” is a contracting party *under whose jurisdiction a proposed activity is envisaged to take place*. “Affected Party” is a contracting party *likely to be affected by the transboundary impact of a proposed activity*. Some elements of the right of public participation in decision-making in a transboundary context are elaborated by the Espoo Convention.

According to Article 3(8) of the Espoo Convention, involved parties are obliged to *ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments*

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<sup>8</sup> *Bankovic v. Belgium* (App. No. 52207/99) Decision of the Grand Chamber of 12 December 2001

*or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin. They are obliged, in accordance to Article 4(2) of the Espoo Convention to arrange for distribution of the documentation to... the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin within a reasonable time before the final decision is taken on the proposed activity. Article 6(1) of the Espoo Convention obliges a Party of origin to take into account the comments and objection of the public of an affected Party, when making a final decision on the proposed activity. Besides, Article 2 of the Espoo Convention envisages that a Party of origin has to provide an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.*

The Aarhus Convention is applicable to transboundary relationships. NGO, based in Austria, the Global 2000/Friends of the Earth Austria submitted a communication to the Compliance Committee in 2009, alleging that Slovakia was in breach of Article 6 of the Aarhus Convention, since it had not provided for public participation in decision-making process for the construction permits related to some units of Mochovce nuclear plant.<sup>9</sup> The Compliance Committee found in 2011 that *by failing to provide for early and effective public participation in the decision-making leading to the ... decisions...concerning Mochovce NPP, the Party concerned failed to comply with Article 6 paragraphs 4 and 10, of the Convention.*<sup>10</sup>

By the same communication this Austrian NGO alleged that Slovakia had been in breach of Article 9 (2,3 and 4) of the Aarhus Convention since, due to restricting rules on standing in Slovakian law, it was not possible to appeal against different decisions. Since a relevant case was pending before national court, the Compliance Committee decided not to consider the claim related to Article 9, waiting for the outcome of the pending case.<sup>11</sup> In 2012 Bratislava re-

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<sup>9</sup> Communication ACCC/C/2009/41, 28.07.2009. available at <http://www.unece.org/env/pp/compliance/Compliancecommittee/41TableSlovakia.html> 26.08. 2013.

<sup>10</sup> Findings and recommendations with regard to communication ACCC/C/2009/41 concerning compliance by Slovakia, adopted by the Compliance Committee on 17 December 2010, p. 12, para 69, available at <http://www.unece.org/env/pp/compliance/Compliancecommittee/41TableSlovakia.html> 26.08. 2013.

<sup>11</sup> Findings and recommendations with regard to communication ACCC/C/2009/41, p. 8, para 47

gional court dismissed a complaint concerning the review of disputed decisions. Together with two other Slovak NGO's, the Austrian NGO submitted a new communication to the Compliance Committee in 2012, alleging again that Slovakia had been in breach of Article 9(2,3 and4) of the Aarhus Convention.<sup>12</sup> The Compliance Committee found in 2013 that the communication was admissible.<sup>13</sup> Obviously, the Compliance Committee considers that the Austrian NGO enjoys the rights protected by Aarhus Convention in respect to Slovakia.

A special feature of human rights, protected by the Aarhus Convention, is that they include transboundary element. They cannot be defined exclusively as a legal relationship between a State and an individual under its territorial jurisdiction, since they cover legal relationships of a State and individuals beyond its territorial jurisdiction. The parties to the Aarhus Convention have recognized the fact that their acts or omissions in environmental matters can produce effects beyond the national borders and attributed to the fact proper legal consequences.

## **6. Status of Victims and Legal Standing in the Aarhus Convention**

International procedures provide protection for victims of human rights violation. The status of victim is a prerequisite of legal standing in domestic proceedings. Article 34 of the European Convention on Human Rights states: *The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.* Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights provides: *A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.* Status of victim denotes that an individual was personally affected by violation of human right. The European Court of Human Rights interprets Article 34 of the European Convention broadly and flexibly. The Court has differentiated direct, indirect and potential victims. Direct victim is an individual affected directly by violation of human right. Indirect victim is an individual affected by injury inflicted on other person, due to a personal and specific link between two persons. It may be a spouse, member of family or close relative of an injured person, especially when the injured person is not able to institute or continue proceedings before the Court. Status of a potential victim presup-

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<sup>12</sup> Communication ACCC/C/20013/89, available at <http://www.unece.org/env/pp/compliance/compliancecommittee/89tableslovakia.html>, 26.08. 2013.

<sup>13</sup> Determination on admissibility, 28. 06. 2013. <http://www.unece.org/env/pp/compliance/compliancecommittee/89tableslovakia.html>, 26.08. 2013.



poses the existence of a high probability that an individual has been affected or could be affected by violation of human right. Serious environmental risk endangering ecosystems and human health is sufficient to provide a status of victim to potentially affected individuals.<sup>14</sup> In spite of broad and flexible interpretation of the status of victim, certain personal detrimental impact of violation of human right is necessary as a criterion for the admissibility of an individual application before the European Court of Human Rights.

Status of victim is generally expressed in internal legal systems as a legal interest which is a condition for admissibility of an individual legal remedy. In other words, internal administrative or judicial proceedings are accessible only to individuals personally affected by violation of human right.

The Aarhus Convention defines victims and conditions for legal standing differently. In Decision I/7 regulating procedure of the Compliance Committee there is no provision similar to Article 34 of the European Convention on Human Right or to Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights. Point 18 of the Decision provides ... *communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention ...*

The Aarhus Convention draws line between “the public“ and “the concerned public”. Article 2(4) of the Convention defines “the public” as *one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups*. The “the concerned public” is defined by Article 2(5) of the Convention as *the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest*.

The public is entitled to information, according to Articles 4 and 5 of the Convention. Under Article 6 of the Convention the concerned public is entitled to participate in decision-making concerning permits for activities listed in Annex I to the Convention. According to Articles 7 and 8 on public participation concerning plans, programmes and policies relating to environment and on public participation during preparation of executive regulations and/or generally applicable legally binding normative instruments, an access to decision-making is open to the public. Under Article 9(1) of the Convention everybody who has requested information has an access to review procedure to control whether a public authority treated the request in compliance with Article 4 of the Convention. According to Article 9(2) of the Convention just the concerned public has the right to review procedures to challenge the procedural and substantive lega-

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<sup>14</sup> *Taşkın and Others v. Turkey* (App. No.46117/99), Judgment of 10 November 2004

lity of any decision permitting or denying exercise of activity listed in Annex I. Also, under Article 9(3) of the Convention the public has the right of access to administrative or judicial procedures to challenge acts or omissions of private persons and public authorities which contravene national law of a party relating to the environment.

A category of “the concerned public” articulates the concept of legal interest in a way similar to traditional concept. It is *the public affected or likely to be affected by, or having an interest in...* Access to justice, as foreseen by Article 9(2) of the Convention is qualified by additional criterion. Members of the concerned public should have sufficient interest or maintain impairment of a right, where administrative procedural law of a party requires this as a precondition. However, the same provision states that any non-governmental organization meeting the requirements referred to in Article 2(5) of the Convention shall be deemed to fulfil the mentioned criterion. So, the concept of the concerned public as foreseen by Articles 6 and 9(2) of the Convention differentiates “ordinary” members of the concerned public, such as natural or legal persons, their associations, organizations or groups who are affected or likely to be affected or have an interest or sufficient interest and “privileged” members of the concerned public – non-governmental organizations promoting environmental protection and meeting requirements under national law. Characteristics of “ordinary” member of the concerned public do not diverge from traditional criteria for the status of victim and legal interest as condition for legal standing. Characteristics of the “privileged” members of the concerned public depart from the traditional criteria.

Radical divergence from standard criteria for legal standing has been introduced by Article 9(3) of the Aarhus Convention, which reads as follows:

*...each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.*

The Article was understood as “the public’s right to enforce environmental law.”<sup>15</sup> The provision overcomes “the fact that the environment has no legal interest defender.”<sup>16</sup> Natural or legal persons, and, in accordance with national le-

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<sup>15</sup> John E. Bonine, The Public’s Right to Enforce the Environmental Law, in *Handbook on Access to Justice under the Aarhus Convention*, The Regional Environmental Center for Central and Eastern Europe,

ed. Stephen Stec, Szentendre, 2003, 31-37

<sup>16</sup> B. Dette, Access to Justice in Environmental Matters; A Fundamental Democratic Right, in: M. Onida (ed.), *Europe and the Environment. Legal Essays in Honour of Ludwig Krämer*, Groningen: Europa Law Publishing 2004, 7. Quoted according to Gertjan J. Harryvan, Jan H.

gislation or practice, their associations, organizations or groups are entitled to challenge acts and omissions of private persons and public authorities which are contrary to provisions of national law relating to the environment in administrative or judicial procedures. However, parties are authorized by the same provision to establish by national law some criteria that members of the public have to meet as precondition of access to the proceedings.

The Convention does not define the criteria and leaves the parties to determine them in good faith, having in mind the object of the Convention. The key issue is whether the clause *where they meet the criteria, if any, laid down in its national law* allows parties to establish criteria, such as “being affected or of having an interest” and to satisfy in this way their domestic procedural provisions concerning traditional requirements of legal standing. Criteria – “being affected or of having an interest” – are foreseen by Article 2(5) of the Convention for the concerned public. If they were allowed, the distinction made by paragraphs 2 and 3 of Article 9 between “the concerned public” (paragraph 2) and “the public” (paragraph 3) would be erased.

For the time being, the Compliance Committee did not formulate clear and consistent standards in respect to the issue. It noted that contrary to paragraph 2 of Article 9, paragraph 3 does not refer to “members of the public concerned”, but to “members of the public”.<sup>17</sup> The Committee was of the opinion that the provisions of Article 9, paragraphs 2 and 3, of the Convention do not require that there be a single set of criteria for standing for these two types of procedure.<sup>18</sup> However, the Committee considered that Article 9(3) does not oblige parties to provide *actio popularis*<sup>19</sup> and that they can escape *actio popularis* by employing criteria, such as “being affected or of having an interest”.<sup>20</sup> The Committee stated also that: *the Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organizations or other members of the public from challenging acts or omissions that contravene national law relating to the environment.*<sup>21</sup>

Jans, Internal Review of EU Environmental Measures, *Review of European Administrative Law*, vol. 3, nr. 2, 2010, 64

<sup>17</sup> Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 28

<sup>18</sup> Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 44

<sup>19</sup> Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 35, Denmark ACCC/C/2006/18, ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 29, European Union ACCC/C/2008/32 (Part I), ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 77

<sup>20</sup> Belgium ACCC/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 36, Denmark ACCC/C/2006/18, ECE/MP.PP/2008/5/Add.4, 29 April 2008, para. 31

<sup>21</sup> European Union ACCC/C/2008/32 (Part I), ECE/MP.PP/C.1/2011/4/Add.1, May 2011, para. 77

The Compliance Committee opted for the interpretation of Article 9(3) of the Convention less irritating for the parties. The opposite interpretation that Article 9(3) has forbidden criteria such as “being affected or of having an interest” would be more in compliance with the text of Article 9, spirit and object of the Convention. Recital 7 of the preamble of the Convention states that *every person has the right to live in an environment adequate to his or her health and well-being and duty, both individually and in associations with others, to protect and improve of the environment for the benefit of present and future generations...* As observed above, the right to adequate environment is complex and satisfies not only a human need for the environment adequate for human health and well-being, but also human need to protect and improve environment. *Actio popularis*, in the context of Article 9(3) would be a proper legal instrument for achieving that end.

In spite of that, Articles 2(5) and 9(2) of the Convention distinguish non-governmental organizations promoting environmental protection and meeting requirements under national law as “privileged” members of the concerned public. The Articles 2(5) and 9(2) established irrefutable legal presumption that these non-governmental organizations have an interest, or sufficient interest and that their rights have been impairment. Consequently, parties are authorized to formulate certain requirements for legal standing of non-governmental organizations, but these requirements cannot deny access to justice due to missing legal interest or missing impairment of rights. The parties to the Aarhus Convention are obliged to accommodate their internal procedural provisions in respect of legal standing of environmental non-governmental organizations. The process is not running without difficulties. The European Union is facing some difficulties concerning the issue.

Article 11 of Regulation (EC) No 1367/2006 of the European Parliament and the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies<sup>22</sup> sets forth four criteria for legal standing of non-governmental organization: (a) *it is an independent non-profit-making legal person in accordance with a Member State’s national law or practice;* (b) *it has the primary stated objective of promoting environmental protection in the context of environmental law;* (c) *it has existed for more than two years and is actively pursuing the objective referred to under (b);* (d) *the subject matter in respect of which the request for internal review is made is covered by its objective and activities.*

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<sup>22</sup> L 264/13, 25. 9. 2006

According to Article 10(1) of Regulation (EC) No 1367/2006 any non-governmental organisation which meets the four criteria set forth in Article 11 *is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act.* Administrative act is defined by Article 2(1g) of Regulation (EC) No 1367/2006 as *any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects.* Determination of administrative act as *any measure of individual scope* has become an obstacle for non-governmental organizations to use internal review procedure.<sup>23</sup> The General Court of the European Union found such determination of the administrative act contrary to Article 9(3) of the Aarhus Convention and annulled it.<sup>24</sup>

## 7. Concluding Remarks

The Aarhus Convention protected general human right to adequate environment and three particular rights in environmental matters – to information, to participation in decision-making and to justice. The right to adequate environment is legal recognition of basic human needs – to live in environment adequate for human health and well-being and to engage for the protection and improvement of environment. The preamble of the Convention denotes legal expression of the first need as a right and legal expression of the second need as a duty. The Convention built a legal framework that parties have to implement in their domestic legal systems in order to provide individuals and their associations with legal means to realize their rights and the duties. In comparison with human rights in general, the three particular rights, protected by the Aarhus Convention, are different in terms of their transboundary element and conditions for legal standing. Human right is understood in general as a legal relationship between State and individual under its territorial jurisdiction. Since acts and omissions of States in environmental matters produce transboundary effects, such traditional understanding of human rights is not sustainable in the field of environment. The Aarhus Convention constitutes particular rights as legal relationships between a party and individuals who have suffered transboundary effects of its acts or omissions. The Convention undermines the traditional concept of victim of human right violation and the traditional concept of legal standing.

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<sup>23</sup> Gertjan J. Harryvan, Jan H. Jans, *Internal Review of EU Environmental Measures, Review of European Administrative Law*, vol. 3, nr. 2, 2010, 53-65.

<sup>24</sup> Case T-396/09, *Vereniging Milieudefensie v. The Commission*, Judgment of the General Court of 14 June 2012, Case T-338/08, *Stichting Natuur en Milieu v. Commission*, Judgment of 14 July 2012. Appeal proceedings are pending before the Court of the European Union.

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## Специфичне особине људских права зајемчених Архуском Конвенцијом

**Сажетак:** Уговорнице су признале Архуском конвенцијом правну релевантност две основне људске потребе у погледу животне средине – потребу за животном средином која омогућава здрав и угодан живот и потребу за ангажовањем на заштити и унапређењу животне средине. То признање учињено је формулисањем оштрије права на одговарајућу животну средину и три посебна права која служе остваривању тој оштрије права – права на информисање о питањима животне средине, право на учествовање у одлучивању о питањима важним за животну средину и право на правне процедуре у вези са животном средином. Архуска конвенција признаје право свакој појединца на одговарајућу животну средину и дужност појединачној и колективној ангажовања ради заштите и унапређења животне средине у интересу садашњих и будућих генерација. Иако се у Конвенцији користи термин „дужност“, реч је пре о праву појединца да се ангажује сам или са другима. Заиста, три посебна права су конституисана тако да служе, с једне стране, одбрани права појединца на живот у одговарајућој живојној средини, и са друге стране, да му омогуће да се ангажује на заштити и унапређењу животне средине у користи садашњих и будућих генерација. За то, ова права одступају од традиционаних услова које појединац треба да испуни да би могао да води унутрашње и међународне процедуре ради заштите повременој права. Архуска конвенција дефинише „стајус жриве“ и услове за покрепање процедурака другачије него што је то учињено Европском конвенцијом о људским правима, Факултетивним протоколом уз Међународни пакт о грађанским и политичким правима или унутрашњим правима уговорница. Такође, пошто акти или пројуси државе у области животне средине могу да походе и субјекте ван територије државе, било је нужно да се ова права дефинишу не искључиво као правни однос државе и појединаца на њеној територији, како се то традиционално чини, већ и као правни однос државе и појединаца ван њене територије.

**Кључне речи:** Архуска конвенција – прекогранична питања – услови доуштености правној средстви.