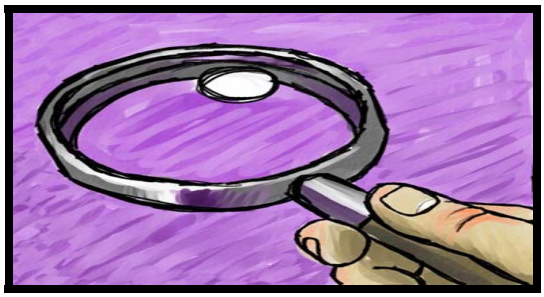
# The transposition of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Århus Convention) with the legislation of Kosovo



The Regional Environmental Center (REC)
*for Central and Eastern Europe*
Field Office Kosovo/a

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The center fulfils this mission by encouraging cooperation among non-governmental organizations, governments, business and other environmental stakeholders, by supporting the free exchange of information and by promoting public participation in environmental decision-making.
The REC was established in 1990 by United States, the European Commission and Hungary. Today, the REC is legally based on a Charter signed by the governments of 25 countries and the European Commission, and on an International Agreement with the Government of Hungary.

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# The transposition of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Århus Convention) with the legislation of Kosovo

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This report was compiled as part of the regional project 'Improving Public Participation: next Steps in Implementing Aarhus Convention in Albania, Bosnia Herzegovina, FYR Macedonia, Serbia and Montenegro and Kosovo"

**Project financed by the Ministry of Foreign Affairs of Netherlands**

March 2006, Pristina

## Abbreviations

| | |
|---|---|
| AoK | Assembly of Kosovo |
| ECHR | European Convention on Human Rights (1950) |
| EIA | Environmental Impact Assessment |
| KEPA | Kosovar Environment Protection Agency |
| MESP | Ministry of Environment and Spatial Planning |
| PISG | Provisional Institutions of Self-Government |
| SRSG | The Special Representative of the Secretary General |
| UNECE | United Nations Economic Committee for Europe |
| UNMIK | United Nations Mission in Kosovo |

*Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations."*

*Kofi A. Annan, Secretary-General of the United Nations*[1]

## 1. Introduction

This paper analyses the process of transposition of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters in environmental legislation of Kosovo. The aim is to highlight the extent to which the Aarhus Convention has been accommodated in applicable legislation related to environmental protection. By providing an overview of the accommodation of the Aarhus Convention, the paper intends to demarcate the degree of transplantation of legal solutions implied in the Aarhus Convention into the environmental laws, including its subsidiary legislation. The study will also try to reflect the degree of implementation of legal solutions contained in the Aarhus Convention by local public authorities, in particular on matters concerning access to environmental information and public participation on environmental decision-making processes, including environmental policy and law development. In order to attain the main objective, the paper is structured into three parts, which seem to provide sufficient platform to address some of the aspects related to the Aarhus Convention from the perspective of the accommodation and implementation by public authorities. The first part offers a brief overview of the aim, relevance and the contents of the Aarhus Convention. Particular emphasizes is made to the three pillars of the Convention, namely the access on environmental information, public participation and access to environmental justice. The second part reviews the accommodation of the Aarhus Convention in the primary and secondary environmental legislation of Kosovo and seeks to reflect the extent to which the key principles of the Aarhus Convention have been reflected in such legislation. This makes the nucleus of the paper and attempts to reveal the process of accommodation of the Aarhus Convention in the domestic law and discerns the deficiencies in the legislation by pointing out recommendations for amendments to give the Aarhus principles a duly expression in the overall environmental legislation. As announced, the third part of the paper is just a wrap up of the analysis as a whole, which is made on the basis of main findings and recommendations related to

[1] Quoted from [http://www.unece.org/env/pp/] 22.01.2006

the accommodation of the Aarhus Convention in the Kosovar environmental legislation. Let us now see what has indeed turned out in this respect.

## 2. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the "Aarhus Convention")

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter to be referred as Aarhus Convention) is an international normative framework with occupies a profound place in the discourse of environmental international law.[2] Since its adoption in 1998, it has been transformed into an international legal document of crucial importance, requiring the attention of national environmental legislations of many countries in Europe and outside Europe.[3] Given its significance and for purposes of this paper, some theoretical background information of the scope and main features of the Aarhus Convention is useful here. The Aarhus Convention was adopted on 25 June 1998 in the city of Aarhus (Århus, Denmark) at the Fourth Ministerial Conference in the "Environment for Europe" process and entered into force on 30 October 2001.[4] The process of drafting the Convention was made under the auspices of the United Nations Economic Committee for Europe (UNECE)[5], which in the field of environment aims to coordinate the activities of countries toward reaching a sustainable development in Europe.

The Aarhus Convention has evidently gained a wide reception by environmental democracies. As Sean McAllister rightly noted, the Aarhus Convention is regarded as a "milestone in European environmental policymaking", as it lays down a number of fundamental principles in the area of

[2] The access on environmental information at the level of European Union is regulated by the EU Directive on Public Access to Environmental Information of 2003 and repealing the Council of Directive 90/313 EEC.

[3] The Aarhus Convention was supplemented with the Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention, which was adopted in the extraordinary meeting of the Parties on 21 May 2003 in Kiev. In the second meeting of the Parties that was held in Almaty, Kazakhstan, on 25-27 May 2005, an amendment to the Convention was adopted "setting out more precise provisions on public participation in decision-making on deliberate release of genetically modified organisms, thereby bringing to a close a long-standing debate on the topic", see more at http://www.unece.org/env/pp/ accessed on (22.01.2006)

[4] The text of the Aarhus Convention is available at http://europa.eu.int/comm/environment/aarhus/.

[5] For more account of programs and activities of the UNECE, see the official web site of the United Nations Economic Commission for Europe http://www.unece.org/about/about.htm.

access to environmental legislation and access to environmental justice.[6] Many European countries have shaped their national environmental legislation conform the principles and framework of the Aarhus Convention. The process of incorporation of the Aarhus Convention in national environmental legislation speaks of the growing application of the Aarhus Convention in national jurisprudences.

It is worth to mention that the spirit and the frame of Aarhus Convention laid down in its preamble appear to have been inspired and thus based in a number of international legal instruments and declarations in the realm of environmental protection and promotion. Accordingly, principle l of the Stockholm Declaration on the Human Environment and principle 10 of the Rio Declaration on Environment and Development have found their place in the very beginning of the Convention's preamble.[7] The same goes for General Assembly resolutions 37/7 of 28 October 1982 on the World Charter for Nature and 45/94 of 14 December 1990 on the need to ensure a healthy environment for the well-being of individuals as well as the European Charter on Environment and Health that was adopted in 1989, for which the Aarhus Convention makes a special attention along with other documents.[8]

A note should be made to the fact that the Aarhus Convention "shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention".[9] Art. 3 para. 7 of the Convention further provides that "each Party shall promote the application of the principles of this Convention in international environmental

[6] Sean T. McAllister, 'Human Rights And The Environment: The Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters', *Colorado Journal of International Environmental Law and Policy*, 1998 p. 187; For an overview of the enforcement of environmental legislation in Eastern Europe, see the paper 'Citizen Enforcement Of Environmental Law In Eastern Europe' by Dr. Svitlana Kravchenko (Carlton Savage Visiting Professor of International Relations and Peace, Law School, University of Oregon; Doctor of Law), Widener Law Review, 2004. The article is available at the LexisNexis. See also STEPHEN STEC, 'Ecological Rights Advancing the Rule of Law in Eastern Europe', *Journal of Environmental Law and Litigation* (1998).

[7] Principle 10 of the Rio Declaration on Environment and Development provides that "environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided".

[8] European Charter on Environment and Health (First European Conference on Environment and Health, Frankfurt, 7-8 December 1989).

[9] Art. 3.5.

decision-making processes and within the framework of international organizations in matters relating to the environment." The Aarhus Convention does not prevent the parties to the Convention "to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention".[10]

The Aarhus Convention is structured into three main pillars. The first pillar regulates the issue of access to environmental information. The second pillar deals with issue of public participation in process of decision making implying environmental matters. Finally, access to justice implying environmental affairs forms the pillar three of the Aarhus Convention.. The three pillar's structure of the Aarhus Convention shall be used to briefly discuss the main requirements arising out of the Convention and obligation of states to adhere to the Convention regulatory framework.

It should be added that EU became a Party to the Aarhus Convention in May 2005. The Decision on conclusion of the Aarhus Convention by the EC was taken on 17 February 2005 (Decision 2005/370/EC). In 2003 two directives concerning the first and second "pillar" of the Aarhus Convention were adopted.[11] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

[10] Art. 3. para. 5
[11] See more on this, http://ec.europa.eu/comm/environment/aarhus/

## 2.1. Access to environmental information

As announced earlier, the first component which the Convention deals with is related to access on environmental information.[12] The access of citizens to environmental data and information being held by public authorities for public interest is significant in any environmental democracy. It forms a bridge of communication between citizens and public authorities in the environmental decision-making processes and it enables citizens to take part in a process of policy development environmental issues in which citizens (NGO's and private sector) have an active role to play. The principle of access to environmental information increases also the general awareness of citizens of the need of public authorities to ensure full transparency and dissemination of information relevant to environmental community.[13]

Article 4 of the Convention makes explicit referral to the right of access to environmental information. It simply provides that Contracting Parties must ensure that public authorities make information available in response to a request for environmental information within the frames of national legislation. Pursuant to Section 4 para. 2, "the environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request".[14] In case of delay, public authorities must inform the applicant of the reasons of delay in the provision of information

[12] Under Article 2 para. 3 of the Aarhus Convention, "Environmental information" means any information in written, visual, aural, electronic or any other material form on: (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements; (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making; (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

[13] Section 5 para. 2 provides that "each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by: (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained; (b) Establishing and maintaining practical arrangements, such as: (i) Publicly accessible lists, registers or files; (ii) Requiring officials to support the public in seeking access to information under this Convention; and (iii) The identification of points of contact; and (c) providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge."

[14] Section 4 para. 2 of the Aarhus Convention

requested.[15] In order to prevent arbitrary discretion of local authorities, Section 4 lays down a number of general rules and procedures which must not be overstepped by public authorities when dealing with requests on access to environmental information.[16]

In addition to subjective rights for access to information, the Aarhus Convention touches upon the issue of dissemination by public authorities of environmental information, which is an important component of access to environmental information. The Convention requires that public authorities disseminate the environmental information to the public to the widest extent possible. Given their importance to the general public, the Convention stipulates the need of making available information in transparent ways, requires establishment and maintenance of practical arrangements to facilitate the information provision including on the basis of public lists, electronic databases, registers, giving active support by officials to those seeking access to information and provide points of contacts etc. The environmental information should be progressively made available in electronic format. (Art. 5.3). Information in this format, if available, should include reports on the state of environment, texts of legislation and when possible, also texts of environmental policies, plans and programmes, including the provision of texts of agreements, conventions, national, regional or local legislation on the environment or relating to it.[17] Each Party should at regular intervals not exceeding three or four years publish and disseminate a national report on the state of the environment. (Art.5.4).

Furthermore, the dissemination of environmental information as minimum must also include inter alia legislation and policy documents (such as documents on strategies, policies, programmes and action plans relating to the environment, and progress reports on their implementation, prepared at various levels of government), international treaties, conventions and agreements on environmental issues and other significant international documents on environmental issues (Art. 5.5). The Convention has also laid down some provisions regarding product information. Art. 5 para. 8 provides that the Parties should design and develop institutional mechanisms "with a view to ensuring that sufficient product information is made available to the public in a manner which

[15] Ibid

[16] Section 3 of the Aarhus Convention provides that a request for environmental information may be refused if: (a) The public authority to which the request is addressed does not hold the environmental information requested; (b) The request is manifestly unreasonable or formulated in too general a manner; or (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

[17] See Article 5 of the Aarhus Convention concerning the collection and dissemination of environmental information.

enables consumers to make informed environmental choices". Furthermore, Parties to the Convention are also expected to undertake steps in establishing progressively "a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting".[18] Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and offsite treatment and disposal sites.

## 2.2. Public Participation in Processes of Environmental Decision-Making

Mindful of the role that individual citizens, non-governmental organizations and the private sector have in environmental protection, the Aarhus Convention provides a normative platform to enable public participation in the development of projects, programs, plans, environmental policy and legislative issues. The public participation in decision-making concerning environmental issues is laid down in Articles 6, 7 and 8 of the Convention.

Article 6.2 provides that "the public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner", inter alia, of proposed activities, the nature of possible decisions or draft decisions, the public authority responsible for making a decision and for respective procedures19 and the fact that "the activity is subject to a national or trans-boundary environmental impact assessment procedure". To enable timely participation in public activities involving environmental protection and promotion, the Convention requires from Contracting Parties to deliver timely information about environmental decision-making procedure, in

[18] Art. 5.9.

[19] Including, as and when this information can be provided:

(i) The commencement of the procedure;
(ii) The opportunities for the public to participate;
(iii) The time and venue of any envisaged public hearing;
(iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
(v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
(vi) An indication of what environmental information relevant to the proposed activity is available

particular of the proposed activity on which a decision will be made.[20] The Aarhus Convention also provides that public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public and for the public to prepare and participate effectively during the environmental decision-making and gives minimum requirements for notification of the public. Given that public participation in decision-making enhances the quality and the implementation of environmental decisions, the Convention provides that the procedures for public participation must enable the public to submit (in writing or, as appropriate, at a public hearing or inquiry with the applicant) any comments, information, analyses or opinions which might be of relevance to the proposed activities and that decisions are taken taking into account, as much as possible, preferences arising out of such public participation.

Under Article 7 of the Aarhus Convention, public consultations and participation must take place whenever a preparation of plans and programmes relating to the environment are made by public authorities within a transparent and fair framework. The same can be said for adoption of legal regulations or normative acts on environmental protection. Pursuant to Art. 8 of the Convention, public authorities should strive to make effective and wide public consultations through all stages in the course of crafting of laws, regulations and other generally applicable legally binding norms that may have a significant effect on the state of environment.[21] For that purpose, national authorities should set out sufficient time-frames for effective participation should be fixed, publish draft rules or make otherwise publicly and ensure that public is given the opportunity to comment, directly or through representative consultative bodies. Finally, Art. 8 of the Aarhus Convention provides that the results of the public participation should be taken into account as far as possible by relevant authorities.

## 2.3. Access to justice

The third component which the Aarhus Convention deals with is related to access to justice in environmental matters. Clearly, access to justice in environmental matters is of key importance to secure the implementation and enforcement of environmental legislation and policies and the rights of the public related to access to information and public participation in decision making on

[20] Article 6.3 of the Aarhus Convention
[21] Article 7 of the Aarhus Convention

environmental matters..[22] The access to environmental information and public participation in the decision making on specific projects, programmes, plans, policies and legislation relating to the environment would be meaningless if citizens would lack appropriate legal instruments to seek redress for violation of their environmental rights. Access to environmental justice is the nucleus of what is already called 'environmental democracy', which must be provided by public authorities in a fair, independent and effective manner.

Pursuant to Article 9.1 of the Aarhus Convention, the Contracting Parties, within the framework of national legislation, must ensure that each person who claims that "his or her request for information under article 4 has been ignored, wrongfully refused…or otherwise not dealt with in accordance with provisions" of the law, is entitled to initiate proceedings before an independent, impartial and lawful court. Under this rule, any person who claims that his right to request on access to environmental information has been ignored, refused or not dealt with in accordance with the Convention by public authorities is entitled to have such decision be reviewed by a court of law under fair and impartial procedure. Art. 9.1 provides that Contracting Parties to a Convention ensure that "such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law". Final decisions of the Court, the Convention reads "shall be binding on the public authority holding the information".[23]

Please clarify that the Access to Justice provisions relate to rights under Article 4 and Article, not the rest!

Further to judicial review of issues implying access to environmental information, Article 9.2 of the Aarhus Convention requires from Contracting Parties to provide judicial review of acts encroaching the rights arising out of Article 6 of the Aarhus Convention. Article 9.2 provides that

"Each Party shall, within the framework of its national legislation, ensure that members of the public concerned (having a sufficient interest or, alternatively, maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition) have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or

[22] For an overview of access to justice under Aarhus Convention, see 'Handbook on Access to Justice under the Aarhus Convention' prepared by Regional Environmental Center for Central and Eastern Europe (REC),Hungary 2003.
[23] Article 7 para. 1 of the Aarhus Convention

omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention".

Three are the categories of procedural errors which emerge out of the requirements of Article 6 of the Aarhus Convention that are subject of judicial scrutiny[24]:

- failure to disclose all information to the public relevant to its participation;
- improper procedures for public participation, such as timely or adequate notice, opportunity to comment, timeframes, restrictions on "administrative standing," or other conditions; and
• inadequate response to comments received (failure to take due account), or failure to reveal the reasons or considerations for the decision.

Any individual from the Contracting Parties, alleging that his or her rights arising out of Art. 6 of the Aarhus Convention have been violated, is entitled to initiate proceedings of judicial review before competent court.

Article 9.3 of the Aarhus Convention provides further protection of individual environmental rights in relation to actions or omissions of public authorities or private individuals contravening environmental legislation. Without prejudice to the review procedures referred to in paragraphs 1 and 2 of Art. 9, each Party must ensure that "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 wording is rather broad and covers a wide range of environmental laws. Two are the main issues arising out of Art. 9.3. The possibility of individuals, NGOs, government bodies to "enforce the law against persons outside the government" (e.g. enterprises) and the right of citizens to complain about the actions or omissions of government authorities contravening the environmental legislation.[25] The Convention further requires that Parties should set up such framework within their national legislation to which national authorities must comply with in the design of procedures of administrative or judicial review of environmental decisions, as well as must apply the obligations in Art.9. 4 regarding providing adequate and effective remedies, equitable, timely and not prohibitively expensive procedures and the establishment of appropriate mechanisms to remove or reduce barriers to access to justice (Art.9.5).

[24] REC Handbook (supra note 22 ) p. 29
[25] REC Handbook (supra note 22) p. 31

# 3. Alignment of the environmental legislation of principles and requirements of Aarhus Convention in the environmental legislation of Kosovo

## 3.1. The Constitutional Framework for Provisional Institutions of Kosovo

A few remarks concerning the scope of Constitutional Framework for Provisional Institutions of Kosovo (hereinafter referred to as "Constitutional Framework") are relevant here. The Constitutional Framework was adopted on May 2001 to regulate the organization and functioning of the legislative, executive and judicial organs of Kosovo.[26] In the backdrop of human rights, the Constitutional Framework lays down the basis for the promotion and protection of human rights relevant to the construction of democracy and maintaining rule of law. It is imperative to note that the text of the Constitutional Framework does not contain a separate chapter of constitutional rights and fundamental freedoms. It only refers to the main international treaties on human rights, stipulating that "provisional institutions of self-government shall respect and ensure that accepted standards in the area of human rights and fundamental freedoms, including here the rights and freedoms" contained in the basic human rights international instruments.[27]

As it is seen, the provisional institutions of self-government of Kosovo are bound to respect the international instruments on human rights, including here provisions related to the right on access to environmental information. The wording of Constitutional Framework is quite general and a manner and legal instruments for the application of international human rights instruments are entirely left upon the discretion of public bodies concerning the right on access to environmental information. Hence the Ministry of Environment of Government of Kosovo, for example, may plainly apply any convention related to access on environmental information. Under current constitutional arrangement, no ratification procedures are required to enable such application. However, from a legal point of view, the exercise is not as simple as it appears to be. It should not be forgotten that the wording of Constitutional Framework leaves a number ambiguities in the context of employment of international human rights treaties in the domestic law. For legal

[26] Constitutional Framework for the Provisional Self-Government of Kosovo is available in the World Wide Web: http://www.unmikonline.org/constframework.htm [20.01.2006]

[27] The Universal Declaration on Human Rights; (b) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; (c) The International Covenant on Civil and Political Rights and the Protocols thereto; (d) The Convention on the Elimination of All Forms of Racial Discrimination; (e) The Convention on the Elimination of All Forms of Discrimination against Women; (f) The Convention on the Rights of the Child; (g) The European Charter for Regional or Minority Languages; and (h) The Council of Europe's Framework Convention for the Protection of National Minorities.

observers, the ambiguities remain quite obvious. The main issue of concern in this respect is that scope of international instruments on human rights remains variable as well as the language used. The wording of rights and freedoms of the human rights treaties appears diverse posing different aims, which prevent competent organs to ensure consistent application of such instruments into the domestic law. To take one example: whereas the United Nation's International Convention on Civil and Political Rights provides for the right to seek information, the European Convention on Human Rights appears to have employed a more restrained wording, providing only for the right to receive and disseminate information, but makes no mention of a right to seek information.

Particular attention must be paid to the enforcement of such treaties in matters involving access on environmental information – which is also rooted in the Aarhus – access to environmental justice. The question which arises from a legal point of view is whether, for example, the international environmental law is legally binding for public institutions and judicial bodies, in case alleged violations of environmental rights appearing in the relevant conventions, seek the answer by justice system. A firm answer to this question requires a detailed theoretical analysis of the matter, which transcends the aim of the paper. It should be briefly noted, however, that from the legal perspective Kosovo is not yet a party to none of international instruments laid down in the Constitutional Framework. No ratification by the legislative has been made so far to give constitutional legitimacy respective treaties and enable their enforcement. The general pronouncement of international instruments leaves somewhat open the question of their binding application in the legal system. A local judge, for example, may easily refuse the application of article 10 (freedom of expression) of the ECHR on grounds of no-ratification of the ECHR by domestic authorities. The present constitutional arrangement and legal uncertainties which may emerge from the application of international treaties may impede administrative and judicial bodies in applying international norms or in securing their enforcement. The same can be said for international environmental norms in general and the Aarhus Convention in particular. Kosovo has not yet ratified the Aarhus Convention and this fact leaves it somewhat open the question of its legally binding character in the legal system of Kosovo. As the legal system stands now, a possible legal invoking of provisions of Aarhus Convention into the legal system of Kosovo may only be made on the basis of Charter III of the Constitutional Framework providing for direct application of international human rights instrument. The Aarhus Convention is such an instrument whose direct enforcement by governmental agencies is possible from a legal point of view.

## 3.2. Law on Access to Official Documents

Before we examine aspects of accommodation of Aarhus into domestic environmental legislation, a brief overview of the Law on Access to Official Documents is relevant for our discussion. On 03 November 2003, the Special Representative of the Secretary General [SRSG] promulgated the Law on Access to Official Documents.[28] The Law defines the principles, conditions and limitation on grounds of public or private interest concerning the right of access to documents of public bodies.[29] The aim of the Law is to ensure the publicity and openness of the work of public bodies in Kosovo and is represents a sound legal ground for the facilitation of individual rights in the acquirement of information of public nature. The Law is broad and inclusive and covers the information of public nature in general. This means that the provisions of this Law can also be utilized for the observance of access to environmental information – which is part of public information. All public institutions and governmental organs dealing with environmental matters should adhere to the requirements of the Law on Access to Official Documents. Practically anyone concerned with environmental matters is entitled to seek written or oral information (document, data and other forms of communication) from relevant agencies and has a right to be informed of environmental policies, decision making as a premise of increasing the public access to environmental information and contributing to raise the awareness of environmental matters towards a more effective participation of the public in environmental decision-making. Governmental organs, on the other hand, must provide environmental information to interested parties without delay and provide unhindered access to requested data or information. View this way, the Law on Access to Official Documents may be perfectly used by any person who claims to be deprived of his right on access to environmental information by public authorities or governmental agencies.

The procedure for access to information requested commences with the submission of an application for access to a document. Under the Law, the public authorities must issue an acknowledgement of receipt to the applicant to confirm the receipt of the application. The access to the requested document must be either refused (by stating the reasons for the total or partial refusal) or granted within 15 working days from the registration of the application. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.[30] Nearly the same procedure is followed when the submission of confirmatory applications is made, as laid

[28] The Law on Access to Official Documents is available in the World Wide Web www.unmikonline.org
[29] Section 1 of the Law on Access to Official Documents
[30] Section 6 of the Law on Access to Official Documents

down in Art. 9 of the Law on Access to Official Documents. Hence, following 15 working days from the registration of confirmatory application, the institution concerned shall either grant access to the document requested or, in a written reply, state the reasons for the refusal of the confirmatory application. In case of refusal, the public authorities must inform the applicant of legal remedies available to him/her, namely the institution of judicial proceedings against the institution, pursuant to applicable law or filing a complaint with the Ombudsperson (laid down in Chapter 10 of the Constitutional Framework and UNMIK Regulation No. 2000/38).

## 3.3. Law No. 2002/08 on the Environmental Protection[31]

The Law on Environmental Protection was adopted on 15 April 2003. It represents an important legal framework that aims to promote healthy environment in Kosovo through gradual introduction of environmental standards affirmed by the European Union and its legislation. To achieve the said objective, the Law has designated a number of legal instruments to ensure duly implementation of the Law and enable effective promotion for a healthy environment in Kosovo.

The principle of access to information, as laid down in the Aarhus Convention, is specifically provided in the Law on Environmental Protection. Article 5 (m) of the Law provides to everyone the right on access to environmental information. It reads that "all persons have a general right to be informed about the state of the Environment". The Law further provides that environmentally relevant information on the procedures and activities of public authorities and public services operators providing public services in the field of environmental protection must be made accessible and available to public as a whole.[32] Hence access to environmental information is provided in a general way – in a form of guiding principles of the Law on Environmental Protection. This means that all specific requirements deriving out of Article 4 and 5 of the Aarhus Convention are by and large implied by the guiding principle on access to information by the virtue of Art. 5 point (m) "to the extent that a public authority is specifically required or authorized by a provision of the present law or a subsidiary normative act issued under the present law" or for implementing the Law on Environment or for the adoption and implementation of a subsidiary normative legislation authorized by the Law.

[31] The Law was promulgated by the UNMIK Regulation 2003/09.
[32] Article 5 (m) of the UNMIK Regulation No 2003/09 on the Environmental Protection

Of particular significance for access to environmental information is the requirement of publicity of Environmental Impact Assessment (hereinafter referred to as EIA) decision-making process. The Law provides that the Ministry of Environment through Kosovar Agency for Environmental Protection must announce and make available to public any draft decision on environmental consent in a period of 30 days from the date the announcement is made. This gives the citizens a possibility to review a draft EIA decision and utter their opinions regarding the state of environment which must, of course, be taken into account by respective authorities before the decision on EIA is reached. Given the scope of Article 21 of the Law and the possibility of citizens to review the EIA decision, the requirements of Article 5 1 (b) of the Aarhus Convention for the provision of mandatory systems to enable adequate flow of information to public authorities of the proposed and existing activities which may significantly affect the state of environment appear to have been met. It should also be noted that the Law on Environmental Protection contains a separate chapter concerning environmental monitoring, which is closely associated with the right on access to environmental information. Given the responsibilities of the Ministry respectively KEPA in the monitoring of the state of environment, KEPA has legal obligations to collect and dispose the data and other indicators of the environment[33] which following the storage in Environment Protection Information System must be made available to public by means of mass media other ways of public information.[34] The provision is in line with Aarhus requirements providing that each Member State is obliged to make within the framework of national legislation, environmental information available to the public in a transparent manner and that environmental information is effectively accessible, *inter alia*, by establishing practical arrangements, such as publicly accessible lists, registers or files for use by public authorities and citizens under the conditions laid down by law.

What should be noted in this context is that law making authorities in Kosovo have failed to address the aspect of public participation in the Law on Environmental Protection. The Law lacks general guiding principle implying the right of citizens to participate in environmental decision making procedures. Practically, all aspects related to Art. 6 of the Aarhus Convention (with the exception of the decision making procedures implying the EIA) have been left unanswered in the present Law. The Law does not provide normative frames for procedures related to public participation in order to enable the public to submit, in writing or, as appropriate, at a public

[33] The data and other indicators of the Environment, including Pollution and Environmental Strain, ionized and non-ionizing radiation and other harmful and hazardous substances into the air, water, soil, Bio-diversity, flora, fauna and climatic atmosphere.
[34] Art. 35 of the Law on Environmental Protection

hearing any comment, information or opinions, which might be relevant to the proposed activity. It also lacks provisions related to public participation for the preparation of plans and programmes relating to the environment in a transparent and fair framework. These requirements of Aarhus Convention should find their pronouncement in the present Law of Environmental Protection in order to facilitate the public participation in the field of environmental decision making procedures.

It is important to highlight that the Law makes no explicit referral of the access of aggrieved parties to justice in the backdrop of environmental information It rather contains a general and inclusive approach to enable the aggrieved parties to seek justice from judicial bodies or administrative agencies for alleged violations of environmental legislation. This means that for any violation of provisions of the Law on Environmental Protection which might occur the parties concerned are entitled to file an administrative complaint with the competent administrative or judicial body. This is clearly pronounced in Art. 5 (l) of the Law on Environmental Protection. Accordingly, any person or undertaking who claims to have suffered material damage or facing a serious threat attributable to a particular activity source of pollutions (claimed to be in violation of environmental legislation) is entitled to seek relief from administrative and judicial organs. This is generally in line with Art. 9 of the Aarhus Convention in which each Party must within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored or wrongfully refused or otherwise not dealt with in accordance with the law has access to a review procedure before a court of law or another independent and impartial body established by law.

As for the procedure, the Law on Environmental Protection refers to the Law on Administrative Proceedings, in which the rights and duties of the parties involved as well as the principles on which the procedure of administrative review is based are provided in greater detail. This also means that the Law on Administrative Proceedings may be also used for access to information rights but not for public participation rights as the Law make no mention of such rights. In principle, the compliant must be made in written form and submitted within legal terms provided by a Law. The claimant must highlight all points relevant for the resolution of environmental disputes. The principle of independence, language equality, administration of evidence and material truth must also be observed by administrative body in the course of administrative review. Here it is important to highlight that the legal procedure for alleged encroachments of environmental rights may travel three levels of legal adjudication. The first stage appeal is

conducted and decided by local authorities (e.g. local environmental inspector).[35] As a rule, it commences with a submission of an administrative complaint before relevant administrative agencies at the local or central level. In the event that a complainant is still dissatisfied with the decision of the first stage organ, then an appeal may be made to the Ministry of Environment, in which a decision of the first level organ is scrutinized from a substantive and formal point of view. The third level procedure is that of the judicial review of the decision of the Ministry made by the Supreme Court. This procedure may be initiated only after all administrative remedies available to the party have been exhausted. The applicant must specify legal grounds which he/she thinks has been violated by the administrative agencies in relation to his right on access to information or substantive environmental rights by a decision of an administrative agency. In any case, the decision of the Supreme Court is final and unchallengeable from a legal point of view.
The Law on administrative proceedings provides that there shall be fair, equitable and timely proceedings so that a party is able to make use of his procedural rights. The decisions of administrative bodies are publicly accessible which makes it in line with provisions of Art. 9 par. 4 and 5 of the Aarhus Convention.

Viewed in general context, it is noted that the Law on Environmental Protection provides a sound platform for the protection of the right on access to environmental information as well as for the so-called substantive environmental rights, to which the Aarhus appears to adhere. As noted earlier, the principle of public participation should be duly incorporated in the Law in line with Aarhus Convention for the facilitation of public participation in the environmental decision making procedures.

[35] Art 47 para. 1 of the Law on Environmental Protection

## 3.4. Law No. 2004/30 on Air Protection

A significant piece of environmental legislation is also the Law No.2004/30 on Air Protection. The Law was promulgated by UNMIK Regulation 2004/48 and came into force on 25 November 2005. It sets forth the legal basis for the regulation of the quality of air. It also determines the rights and obligations of each actor to ensure a healthy and clean air environment by protecting the human health, fauna, flora and natural and cultural values of the Kosovo's environment.[36] To reach the main objective, the Law on Air Protection has foreseen a number of standards of air quality to be observed by governmental bodies in order to ensure that the quality of air meets the acceptable indicators for a healthy air environment. Under the Law, the Government of Kosovo, on the proposal of MESP is obliged to approve the standards on air discharge taking into account the European Union Standards and World Health Organization on Air Quality.[37]

The Law has also foreseen that all natural and legal persons (of local or foreign origin) must acquire an environmental permit when constructing and using pollution sources, in the course of implementation of projects, involving new technologies and products for construction of pollution sources, changing technical standards and norms for gas discharges from different sources of pollution, in cases that they endanger the air protection; producing, importing and trading of fuels, fixed equipment, materials and products which can pollute the air etc.[38] However, a note should be made to the fact that the Law on Air Protection remains silent as far as the access to information is concerned. The Law only provides for the notification about air pollution by public authorities but makes no explicit referral of the right of concerned parties to have access to public data relevant for the quality of air. Under Article 16 of the Law, 'all operators that discharge pollutants are obliged to publish their data regarding air pollution and to submit periodically full information to the MESP'. In this way, any citizen concerned with the quality of air may directly approach the MESP by submitting an application for access to such data not on the basis of the Law on Air Protection, but using the legal opportunities provided in the Law for Environmental Protection, the Law on Access to Official Documents or the Constitutional Framework, the latter providing for the application of international instruments on human rights, to which public authorities must obey. Only in case of extreme pollution and smog, the MESP is obliged to inform public via broadcasting media and the information is thus directly disseminated to public in general. Whether the present legal instruments contained in the Law with regard to access on

[36] Art. 1 of the Law No.2004/30 on Air Protection
[37] Art. 6 of the Law No.2004/30 on Air Protection
[38] Art. 16 of the Law No.2004/30 on Air Protection

information are sufficient to satisfy the requirements of Aarhus is quite doubtful. Given the complexity of the issue, it is not unreasonable to assert that the need for information on matters involving air pollution is not only significant in environmental democracy but is a growing civic demand to which any society must respond through legal instruments and information technology.

It also appears the requirements and conditions laid down in the Aarhus Convention seem not be substantially and inclusively employed in the present Law. Given the importance of the matter and the growing attempt for increase of general awareness concerning the quality of air, much attention should have been paid by legal drafters in order to provide sufficient legal arrangements in place concerning the access of environmental information i.e. data on air pollution. The same assertion can be made with respect to public participation in the context of the Law on Air Protection. The requirement of the Aarhus Convention for the promotion of effective public participation during the preparation by public authorities of applicable legally binding rules (which may have a significant effect on the environment) can hardly be perceptible in the present Law. In the procedure for receiving an environmental permit of activities that may pollute the air, the Law should have secured available legal instruments to enable the public to give their opinions concerning the planned activities on the populated areas.[39] It is necessary for the protection of persons to whom the emission of pollutants into the ambient air from a stationary source of pollution may cause material damage that the authorities granting such pollution permits to hold public sessions (on its own initiative or at the request of a participant in the proceedings) and views of citizens and institutions concerned be taken into account before the permission is issues to the applicant. This is a requirement that lies in the heart of the Aarhus Convention and should be duly incorporated into the Law on Air Protection.

[39] Law No.2004/30 on Air Protection, Art. 17

### 3.5. Law No. 2004/24 on Water

The Assembly Law on Water was promulgated by the UNMIK Regulation No. 2004/41. It regulates issues relating to the management, planning, protection and institutional responsibilities in regard to water and water resources. The Law on Water aims to ensure the development and sustainable use of the water resources necessary for human health, the environment and the socio-economic development of Kosovo. It also purports to ensure protection of water resources from pollution, over-exploitation and misuse. To ensure coherence between legal provisions and to secure long-term protection and sustainable use of water resources, the Law has introduced a number of fundamental principles on water management which must be observed by relevant public authorities in the course of water management. In spite of the importance of other principles of water management laid down in the Law, the most significant principles relevant for our discussion remain the principle of public participation and access to information, as well as the affirmation of the principle of stakeholder participation.

It is worth reading the definition of respective principles in a whole, which in the way it appears resemble largely the wording of the Law on Environmental Protection. 'The public should have access to all information concerning water resources and water management decisions and should be given the opportunity to participate in such decisions" are words that are boldly written in the Law.[40] The Law also provides that 'competent authorities are obliged to take account of and safeguard the interests of all stakeholders in regard to decision-making'.[41] Given the inclusive wording of the respective principles, it seems quite apparent that the lawmakers have shown a high level of openness versus Aarhus Convention, demonstrating a strong commitment on the values and principles which the Aarhus intends to affirm. Concrete procedures and mechanisms have not been set out in the present Law. In fact the principle of access to information and public participation is only laid down in the general way. A further detailed regulation of issues pertaining to access on information and public participation should find its place in the subsidiary legislation conform provisions of the Law on Water.

A few remarks on the accommodation of access to information principle in the water Law are relevant here. As noted, the principle of access to information on water resources and water management provides an appropriate framework to facilitate the receipt and dissemination of information on water management relevant for citizens. The inclusion of the principle of access to

[40] Law on Waters, Art. 5 (h)
[41] Law on Waters, Art. 5 (i).

information meets the requirements of the Aarhus Convention, which places the access to environmental information as fundamental requirement which national authorities must observe. By contrast to the Law on Air Protection, the principle of access to information is not only introduced as fundamental principle on water management, but the Law on Water devotes a special section providing for the establishment of a Water Information System, in which all activities and measures related to registering, transfer, protection and use of data relevant for water management shall be stored, processed and made available to public under the constitutions laid down by the Law. Even the scope of data to which citizens are entitled to access appears to be quite broad. It includes data on water quantity and quality; water journal and water system register; register of all water permits; register of substances discharged by water permit holders; measures for rehabilitation and water protection programmes; incidents of water damage and environmental accidents; register of harmful and dangerous materials in Water Resources; activities which are harmful for public health and environment; analysis of hazardous materials impacts; and register with information on constructions, installations or existing dangerous landfills. Article 6.1 of the Law requires that public authorities make all the information available to the public on matters involving water management and water resources with the exception the data declared to be secret. (Does it refer to what is declared to be secret and on what basis?) The Law furthers notes that practical issues concerning water information system shall be regulated further on the basis of subsidiary legislation, which the Ministry of Environment and Spatial Planning (MESP) must introduce not later October 2006. Given the sensitiveness of the data and noting the diversity of information to be made available to the public, it is imperative that the Ministry address the introduction of subsidiary legislation on Water Information System with the urgency, so that all remaining practicalities and rules of procedure essential for the enhancement of public access to respective files would be sufficiently spelled out. The access to information is further rooted in the Law given the provision of water journal, which would be an official record of all issued water permits and water concessions. [42] The Water Journal shall be introduced by the issuing authority of water permits and shall contain the register of technical documentation, copies of which shall be submitted to the River Basin District Authorities for registration on the Water Information System.[43]

The 'Aarhus' principle of public participation has also found its expression in the present Law. As noted earlier, the Law affirms the public participation under which a sufficient opportunity

[42] Art. 62 of the Law on Water
[43] Ibid Art. 62 para. 4

must be given to citizens to participate in decision-making processes concerning water resources and management. Art. 5 of the Law regarding principles of sustainable water management provides that public must be given access to all information concerning Water Resources and Water Management decisions and the opportunity to participate in such decisions. As it is clearly seen, the principle of public participation is placed in an inclusive and general context which aims to facilitate active communication between public authorities and citizens in the process of decision making as far as water management is concerned.

The Law goes even further and provides that the drafting of basic documents for planning and development of water management must be put for public discussion.[44] With the exception of flood management plan, the development of Strategic Plan for Waters, Water Management Plan and River Basin Management Plans needs active public involvement before their finalization. The Law provides that any authority that proposes the plan must inform the public three (3) years before the drafting process commences, ensuring thus a timely public participation in the course of the drafting.[45] Before the drafting process is launched, relevant authorities must ensure that relevant governmental players from the central and local community, non-governmental organizations, holders of water rights and other interested parties are involved in the process and given the sufficient possibility to contribute in the preparation of the respective plants. After the drafting process is over, the above noted parties have still the possibility to give their comments in the draft plan in period of six (6) months, from the date of the announcement.[46]

[44] Ibid, Art. 64
[45] Ibid, para. 2
[46] Ibid, para. 6

## 3.6. Law No. on Waste[47]

The Law on Waste has been adopted by the Assembly of Kosovo on 22 July 2005. It establishes the legislative framework for the handling of waste and aims to protect the environment and human health from pollution and risk of harm from waste through environmentally sound waste management by establishing conditions for prevention and reduction of waste production and its harmfulness.[48] Following the introductory provisions, the Law lays down a number of principles of waste management for observance by waste management authorities. The Law also speaks about waste types and characterization of waste and it lays down the normative framework for waste management planning documents. The Law on Waste contains provisions concerning the organization and functioning of waste management authorities as well as waste management activities. In terms of reporting and database register on waste management, the Law provides that each municipality should report on implementation of local plans for waste management. The database register, as the Law specifies, should contain information about type, characteristic, amount and classification of waste, facilities for waste, licensing of waste management, permitting for waste management facilities and other information relevant for waste management.

By contrast to the above elaborated laws, the AoK Law on Waste has made a clear and direct reference to Aarhus Convention in matters involving access to information and access to environmental justice. Hence, article 5 para. 8 of the Law (principle of public access to information) provides that all natural and legal persons have the right, without having to prove any special interest, to gain access to any information concerning waste management activities "consistent with the principles enshrined in the Aarhus Convention". Whereas the Law has not provided for a detailed chapter on access to information, the affirmation of the principle on access to information on the basis of explicit referral to the Aarhus is truly an appropriate tool which poses a sufficient normative framework to ensure transparency in policy and decision-making activities on waste and secure accessibility of information and data on waste management activities and authorities. The Law has clearly laid down the standard of Aarhus on access to information which has to be observed by waste management authorities vis-à-vis natural and legal persons.

The Law is also governed by the principle of the protection of rights before courts of law – which covers basically the principle of access to environmental justice, as enshrined in the Aarhus

[47] The Law is pending promulgation by the SRSG to become effective.
[48] Article 1 of the Law on Waste

Convention. The respective principle or legal requirement provides that any person who claims to have been injured or damaged in the course of waste management activities is entitled to bring a case before the court. The Law makes no direct reference to Art. 9 par. 1 and 2 (denial of access to information) of the Aarhus Convention but it pretty much covers the requirements of Art. 9 para. 3 when it comes to the right of public to 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 language used is rather inclusive and consistent with Aarhus requirements on access to environmental justice. It simply provides the possibility of submitting complaints to the competent courts for alleged encroachment of environmental rights made by waste management activities. This is, of course, a general principle on access to environmental justice and it will be subject of further regulations in which all feasible issues on the review of complaints shall be regulated in a more detailed platform.

Very surprisingly, the Law on Waste appears to be silent on matters involving public participation in decision-making. The public participation principle, as enshrined in Aarhus Convention (Art. 7), seems to not have been sufficiently addressed in the present Law. The Law, for example, provides for the drafting of waste management planning documents by competent local or central authorities. In the course of compilation of local plans for waste management, the Law provides for the involvement and consultation of representatives of waste management service providers, different economic associations and representatives of from non-governmental organizations as well as professional institutions but has failed to foresee public involvement in the course of drafting waste management planning documents. Given the importance of waste management activities, a broad participation of the general public in the drawing up the documents and programmes related to waste management would satisfy the requirements of Article 2 of the Directive 2003/35/EC of the European Parliament and of the Council, which provide that Member States must ensure that “the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I” to which Council Directive of 12 December 1991 on Hazardous Waste (91/689/EEC) as last amended by Directive 94/31/EC is included. The compliance of the Waste Law with Art. 7 of the Aarhus Convention and the Directive 2003/35/EC (whose aim is to contribute to the implementation of obligations arising under Aarhus Convention) is significant to facilitate the involvement of general public in the making of strategy documents and programs on waste management in conformity with the EU relevant legislation and practice.

## 3.7 Law on Nature Protection[49]

The Law on Nature Protection was drafted by the MESP and was approved by the AoK on 23 March 2005. The Law established the legal framework for the protection of nature in Kosovo. It defines notions and principles on nature protection and lays down the rules and procedures for the protection of nature values. In addition, the Law aims to re-vitalize the damaged areas of nature, preservation and restoration of ecological balance in nature and for the prevention of excessive exploitation of natural values and endangerment of flora and fauna. The Law shall be guided by the principle of cooperation, sustainability, integration and the principle of public awareness and legal responsibility including the principle of the effective management of nature protection.[50]

As it is clearly seen, the requirement of access to information and public participation has not been accommodated in the present AoK Law. Given the requirements of the Aarhus Convention and having regard to the necessity to introduce uniform application of Aarhus requirements in domestic law, the introduction of principles of Aarhus in the Law on Nature Protection would be an appropriate devise to facilitate the access of environmental information and public participation in the area of nature protection. Instead of providing a clear delineation of access to information and public participation and treating the requirements of Aarhus equally with other laws, the right on public information and public participation in the area of nature protection is only pronounced in the objectives of the Law.[51] Whether the provision of public information and participation laid down in the aim of the Law is appropriate from a legal point of view remains quite questionable. The aims listed in the Law are, of course, binding for public institutions and administrative agencies involved in nature protection but the language used and the context in which the provision is placed makes it somewhat insufficient and ineffective to accelerate profound access on environmental information and facilitate broad public participation in the process of design of relevant documents on nature protection.

The right on access to information is pronounced in Article 35 of the Law on Nature Protection. It is just a general wording of the right on access to information providing that that public must have unhindered access to information on the state of nature.[52] Regulating the system of information and public, the Law provides that the establishment, management and functioning of

[49] The Law was approved by the Assembly on 23 March 2005 and shall enter into force following the promulgation by the SRSG.
[50] Article 6 of the AoK Law on Nature Protection, No 02/L-18 (23 March 2005).
[51] Article 2 (g).
[52] Article 35 para. 4 of the Law on Nature Protection

information system for nature protection shall be part of the Informative System for the Protection of Environment, as laid down in Article 37 of the Law on Environmental Protection. Under paragraph 2 of Article 35, the registration, receipt and analyzing of data, facts and information on the state and exploitation of nature, including the measures that have been undertaken by relevant authorities shall be made available?. To achieve the said objective, an annual report reflecting the status of nature protection must be complied by the Minister of Environment and handed down to Government for a review. It is also important to point out that access to information is also provided in the process of designation of protected areas, to which unhindered access to respective documentation must be made available. Article 29 para. 6 of the Law provide that private citizens have access to documentation on the designation of protected areas 30 days before the act on designation is rendered by competent authority. Taken as a whole, the provision of 30 days for public consultation in the process of designation of protected area appears fairly sufficient to enable all parties concerned to become familiar with the content of such documentation and review the correctness of such data before the protection of certain area is announced.

In addition to access on information, the Law on Nature Protection provides for the participation of public in the procedures for the designation of protected areas. Under the Law, a protected area is designated for purposes of protection and safeguarding of biodiversity, landscapes, natural features and cultural heritage, which in accordance with a decision of competent authorities is placed under special protection of public authorities. These include natural parks, strict nature reserves, nature monuments, protected landscape areas.[53] Looking from the perspective of public participation, the Law provides for the participation of public in the designation of nature protected areas. Article 31 provides that any natural or legal person is entitled to instigate the procedure for the designation of nature protected areas. Such proposal is subject of scrutiny by the Kosovar Environmental Protection Agency on the basis of which the Ministry of Environment shall decide whether or not the proposal for the designation of nature protected area is legally permissible.[54] Whether the requirements of Aarhus (providing for the public participation during the preparation of plans and programmes, and of executive regulations and generally legally binding rules having significant effect on the environment) are fully satisfied in the present provision is difficult to answer. Recognizing the importance of public participation in decision-making and the provision of opportunity to express concerns in that respect, a broad provision of public participation in the course of designation of protected areas is vital in the environmental

[53] See Article 21 of the Law on Nature Protection
[54] See Article 31 of the Law on Nature Protection

democracy and merits to be fully reflected in each legislation piece dealing with environmental matters. Hence, the Law must not only provide for public participation in the initiation of procedures for the designation of nature protected areas but must make sufficient legal arrangements available for the consultation of public before the procedure of the designation of nature protected areas is made. By pursuing wide public participation and consultation in the process of designation of nature protected areas, the public authorities ensure that the concerns of citizens are taken into account in the procedures of declaring nature protected zones. This is a requirement that arises out of the Aarhus Convention and needs to be employed in every piece of environmental legislation, including that of nature protection.

## 4. Municipal Legislation on Environment

As explicitly noted in Aarhus Convention, the regulation and protection of environment is not solely a matter for which central level organs are concerned with. Having regard to the wording of public authorities, Aarhus recognizes that public authorities involved in the area of environmental protection imply government at national, regional and other level, as well as legal persons performing public administrative functions under the law, including specific duties, activities or services in relation to the environment.[55] Looking from a practical point of view, municipal organs remain much better placed than central level bodies in the context of environmental protection. This is not only because of the geographic area observed but also due to the efficiency of measures which needs to be undertaken for purposes of environmental protection. Mindful of the vital role of the municipal organs in the course of environmental protection, the Law on Environmental Protection has laid down a number of responsibilities for exercise by local authorities in the backdrop of environmental protection and shall be thus briefly treated in the following part of this section. Article 3 of the Law on Environmental Protection provides that municipalities may exercise, to the extent it is specifically provided by law, exercise responsibilities for those environmental matters, which originate or are likely to originate within the territory of such municipality, "if such matters can be handled, controlled, prevented, financed or managed by such municipality itself".[56] In particular, municipalities are entitled to set establish and ensure the implementation of such standards by local providers (pursuant to primary and secondary environmental legislation) provided that the matter is not under the management and administration of the SRSG. In addition, municipalities are vested with the authority to develop

[55] Aarhus Convention Art. 2
[56] Aarhus Convention Art. 3
[56] Art. 3 of the Law on Environmental Protection

planning instruments in relation to the protection of the environment within such municipality and establish reasonable local nature conservation measures in a manner that is consistent with sustainable economic development pursuant to primary and secondary legislation. Municipalities may also adopt municipal environmental protection measures made in conformity with the law and secondary legislation.[57]

Different from the Environmental Protection Information System, municipalities may also keep records which include information of all subjects undertaking activities authorized by the Ministry and the municipalities and of the activities themselves; applications for environmental consents, environmental licenses and other environmental authorizations requested and any other information obtained or furnished under the provisions of the law. The records may also contain details of penalties imposed pursuant to the environmental legislation or any ancillary regulation, direction or subsidiary normative act.[58] This is truly an important instrument in light of Aarhus requirements for access to information and public participation, to which citizens of certain municipality may refer if an environmental matter or measure requires a much closer observation. It is therefore a legal obligation from the side of municipalities to provide unhindered access to environmental information and facilitate public participation for purposes of environmental protection. The respective obligation is clearly spelled out in the provisions of Law on Environmental Protection and must be duly observed by local authorities.

It should be noted that it is not the purpose of this study to reflect the extent to which Aarhus requirements and the primary environmental legislation is being implemented by responsible municipal authorities. This transcends the scope of the report and requires a broader and deeper analytical approach to give firm judgment on the process of observance of Aarhus by municipal authorities. What has indeed been noticed in the observations of legal developments at the municipal level is that municipal organs in Kosovo have been generally dormant in the process of accommodating the principles of Aarhus. With the exception of few cases, the municipal legislation on environment is yet in a process of approximation with the primary legislation and respective international acts related to environment. This marks of course a great challenge for municipalities in the efforts to develop modern legislation and in the implementation of the principles arising out of the Aarhus Convention. However, the lack of appropriate legislation in the area of legislation at the municipality level does not necessarily mean complete failure of

[57] Law on Environmental Protection, Article 7 para. 3
[58] Law on Environmental Protection, Article 37 para. 3

municipal organs in the observation of Aarhus principles. The growing awareness of Aarhus principles by the environmental community in Kosovo and the reflections made in the primary legislation in Kosovo have prompted the civil society and environmental related NGO's to launch sustainable campaigns and increase the public awareness of the need to observe the Aarhus principles, a goal which is shared by local authorities and citizens. The organization of public debates for environmental matters relevant to the municipality or a region, such as the public debate held in Peja to discuss the local action plan on environment, is an indication of the increased understanding of access to information and public participation by public authorities and citizens, which as noted earlier, remain the core of Aarhus Convention.

Speaking of the developments at the level of municipalities, one should make mention the lack of civic awareness of the need to observe the environmental legislation. In the meeting of with various actors in the field of environmental protection, organized under the auspices of Regional Environmental Centre (REC), Office in Prishtina on 09 March 2006, the participants noted that there was a lack of public awareness in relation the implementation of environmental legislation in Kosovo. The representatives of the MESP and members of the NGO community acting in the field of environment recognized the need to increase the level of public awareness of environmental legislation and the requirements laid down in Aarhus Convention, as a precondition for successful implementation of such norms and principles. Awareness raising is an important aspect of the effective implementation of environmental legislation in Kosovo and in this context of Aarhus Convention. To achieve this aim, a range of public awareness raising activities need to be launched, as participants to the meeting noted, which would facilitate not only the understanding of Aarhus Convention and the requirements deriving therefrom, but would also improve the level of observance of such norms and principles by public authorities for the benefit of citizens. The general conception in the area of human rights that the human rights need to be understood in order to be effectively used and be of practical assistance is equally applicable in the case of environmental legislation. The same can be said for Aarhus Convention, which in the eyes of participants is still thought to be fairly low at the municipality level.

## 5. Findings and Recommendations

Having briefly reviewed the extent to which the Aarhus Convention has been accommodated in the environmental legislation of Kosovo, a few general aspects of the incorporation of Aarhus in the current environmental legislation remain discernible.

In general, it can be safely asserted that with the exception of few cases, the Aarhus requirements on access to environmental information, public participation and access to environmental justice have been generally incorporated in the present legislation. Starting from examples in which laws have made a direct reference to the requirements of the Aarhus Convention (such as the Law on Environmental Protection and the AoK Law on Waste), other pieces of legislation have, in one way or another, adhered to the principles of Aarhus, providing sufficient legal arrangements relevant for the facilitation of access to information, public participation and access to justice.

The approximation of national law with Aarhus Convention leads us to the assertion that rules of the Convention are no more seen only as abstract formulations having thus no practical relevance for individuals and public institutions concerned with environmental protection - the contrary is true. The Aarhus principles on environmental legislation have been timely received by authorities of Kosovo in the process of environmental law-making and have served as a proper point of departure in the delineation of legal solutions implying aspects of access to information, public participation and access to justice in the field of environment. Mindful of the non-legally binding character of Aarhus Convention (as the Convention has not been ratified – though Chapter III of the Constitutional Framework provides for such observance), the law-making authorities in Kosovo have timely understood the importance of adhering to Aarhus requirements in the environmental legislation in their efforts to provide a sound and appropriate legislation compatible with standards of the European Union legislation. This clearly speaks of the growing understanding of key principles of environmental legislation and of the urgent need to approximate domestic legislation with that the European Union legislation.

However, a closer observation of the accommodation of Aarhus in the current legislation of Kosovo indicates a number of omissions and deficiencies in the legislation which should not be overlooked in the assessment of the approximation of environmental legislation with Aarhus Convention. There are, of course, a number of examples which show that the requirements of Aarhus Convention have not been pronounced sufficiently in the legislation. Examples of such

legislative omissions have already been given but are worth repeating it without entering into detail.

As noted, the principle of public participation should find its pronouncement in the Law on Environmental Protection in line with Article 6 of the Aarhus Convention. The Law should spell out clearly the right of public to be informed, as early as possible of the environmental decision-making procedure, and in an adequate, timely and effective manner. The information must include the proposed activity, nature of possible decisions or the draft decision, public authority responsible for making the decision and envisaged procedure. These are the requirements arising out of the Aarhus Convention and need to be pronounced in the present Law on Environmental Protection.

The lack of appropriate arrangements as regards public participation in the Law on Air Protection in light of Aarhus requirements is evident. As the Law stands now, it provides insufficient legal instruments to facilitate the access to pollution data. It also fails to give the principle of public participation a profound place in the overall structure. A provision of mandatory public consultations in the procedure of environmental permits for activities that may pollute the air would suffice the requirements of Aarhus as such.

The same assertion is applicable in the case of AoK Law on Waste. In spite of the direct referral to the Aarhus, the law-making authorities have failed to give the principle of public participation its deserved place in the overall framework of the Law. This is mainly related to the restrictive approach used in the Law in the course of public participation in the drawing up of the documents and programmes related to waste management. As recommended earlier, the Law must provide for a more inclusive and broader approach, which would facilitate a wider participation of public in the design and adoption of programmes and documents related to waste management. This is an obligation which arises out of the requirements of Aarhus (Art. 6) and as such merits to be incorporated in the existing AoK Law before the entry into force.

As far as AoK Law on Nature Protection is concerned, the principles of Aarhus Convention need to be more robustly pronounced. Despite the Law's proclaimed aim regarding access to information, a clear pronouncement of principles of access to information, public participation and access to justice in the law would bring the Aarhus principles closer to application and acceptance by local authorities. In the same way as the proclamation of other principles to which

the law and respective authorities are based, the inclusion of principles of Aarhus into the Law would lay down the frames upon which individuals and public authorities would operate in environmental-related matters. Even though the accommodation of the Aarhus Convention, taken as a whole, is not mandatory to Contracting Parties, the undertaking, by Contracting States, of necessary legislative, regulatory and other measures to achieve compatibility between the domestic provisions implementing the information, public participation and access-to-justice provisions in the Aarhus Convention is clearly spelled out in the provisions of Aarhus and must therefore find its expression in the domestic legislation.

It should be noted, however, that the making of environmental legislation in Kosovo is yet in a process of introduction and modification to meet the challenges of the growing demands of environmental protection. To achieve this goal, a uniform and consistent introduction of generally accepted principles and rules on environmental protection has to be clearly reflected in the introduction of such legislation. Of the relevant international instruments on environmental law, the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters remains truly a significant instrument to which domestic legislation on environment must be constructed upon. To date, the Aarhus Convention has been largely received by national authorities (after the ratification process) and has laid down the foundations on the basis of which national authorities must comply in the development of primary or secondary legislation in the area of environment. Generally speaking, Kosovo makes no exception to this practice in spite of the lack of membership in the Convention. The receipt of the Convention in the environmental legislation and the stance of law-making authorities towards the Aarhus and the international law in a whole is a clear indicator of the understanding of a need to transplant principles of international environmental law into the domestic legislation and for the making of respective institutions and agencies attentive to the obligations arising out of the Aarhus Convention. In line with the approximation of environmental legislation, the public authorities of Kosovo shall continue to face a rather major challenge with regard to environmental legislation – the implementation and enforcement of such legislation. Whereas the extent to which environmental legislation is observed is conditioned by many factors and the environment in which such legislation is implemented, it is incontrovertible that the adopted environmental legislation shall remain not enforceable unless appropriate mechanisms and legal instruments are available and operative to secure a duly implementation of the legislation.