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**Public Participation in Environmental
Decision-Making: the Implementation
of the Aarhus Convention in the Case-
law of the Compliance Committee**

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Abstract

In using the recent case-law from the Aarhus Compliance Committee as a reference, this article attempts to analyse the implementation of the pillar on public participation in the case-law of the Aarhus Compliance Committee.

Public participation provisions are divided into three parts in accordance with the kind of governmental processes covered. Early public participation should be ensured when all options are open and effective public participation can take place. Public participation procedures are required to include reasonable time-frames for the different phases, allowing sufficient time to inform the public and to participate effectively during the environmental decision-making. Reasonable time-frames require the consideration of the nature, complexity and size of the proposed activity. The input of public participation should finally have a real impact on the decision.

Public participation is often identified with the procedure for environmental assessment. In spite of this understanding, the paper highlights the implied misinterpretation. While environmental assessment may play an important role in facilitating the effectiveness of public participation, the Convention neither makes an environmental assessment a mandatory part of public participation procedure nor regulates situations where the assessment is required.

In conclusion, the paper provides that public participation enhances the quality and the enforcement of environmental decisions. In this context, the Convention explicitly recognises the importance of the role that environmental NGOs can play in environmental decision-making.

Keywords:

Introduction

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted at the Fourth Ministerial Conference “Environment for Europe” on 25 June 1998 in Aarhus, Denmark.¹ It had a considerable impact on national systems in many countries of the UNECE region and at the level of the EU institutions. In nine years of considering communications, the Aarhus Compliance Committee dealt with several significant issues in each of the three areas that the Aarhus Convention covers: access to information, public participation and access to justice in environmental matters. The recent development of the case-law affects the literature review. Much work has been done on the subject of access to information, public participation and access to justice in international law. However, the body of literature seems to be not specifically well established on the Aarhus Convention.

The paper analyses the implementation of the pillar on public participation of the Aarhus Convention, drawing attention to the principles emerging from the Aarhus Compliance Committee. The first paragraph is focused on the general obligation on public participation in environmental decision-making. A particular attention is paid to the requirements to provide early public participation, reasonable time-frames, and appropriate consideration of the outcome of public participation. The second and third paragraphs respectively analyse the definition of 'public' and 'public authority', which are essential to delineate the scope of the Convention. The last paragraph examines the relation between public participation and the procedure of environmental assessment.

Public Participation and the Structure of Decision-Making

Under the Aarhus Convention, public participation aims at reproducing the typical structure of environmental decision-making.² It ideally involves the activity of the members of the public in partnership with public authorities in order to achieve an optimal result in environmental decision-making.³ Public participation provision is divided into three parts, according to the kind of governmental processes covered. The most detailed provision is found in article 6, which concerns public participation in decision-making on specific activities with a potential significant effect on environment. Article 7 covers

¹Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, 2161 U.N.T.S. 447. [hereinafter Aarhus Convention].

²M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 93-94.

³Economic Commission for Europe (2013). *The Aarhus Convention: an Implementation Guide*. 2nd ed. New York and Geneva: United Nation Publication. 115. Available at http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf. [5 August 2013].

public participation concerning plans, programmes and policies relating to the environment. In this regard, the Convention requires Parties to ensure opportunities for public participation in the preparation of policies relating to the environment only to the extent appropriate. Similarly, article 8 provides that each Party shall strive to promote effective public participation during the preparation of executive regulations and normative instruments that may have a significant effect on the environment.

One of the most common issues encountered by the Committee is to properly determine the nature of the decision in question. As their labels under the domestic law are not decisive, the categorisation of the relevant decisions under the Convention must be determined on a contextual basic, taking into account the legal functions and effects of each decision.¹ Nevertheless, the communications show that a clear-cut distinction between the types of decisions is not always possible.

Where different interpretations are equally possible, the Compliance Committee adopts a practical solution that allows to circumvent the problems and to examine compliance with the Convention.² In such a situation, the attention shall be focused on the requirements to provide reasonable time-frames, early public participation and to take due account of the outcome of the public participation. These requirements apply to all three categories of decision-making under the Convention.

Early Public Participation, 'When All Options Are Open'

The Convention requires Parties to ensure early public participation, when all options are open and effective public participation can take place.³ In most countries any environmental decision-making includes a number of consecutive decision-making having a different legal nature.⁴ The crucial issue is whether this requirement is related to the entire chain of decision-making or to each of the decision constituting consecutive stages of this chain.⁵ The requirements for early public participation should be seen, first of all, within the concept of tiered decision-making.⁶ While at each consecutive stage of

¹ACCC/C/2006/16 (*Lithuania*), 4 April 2008, para. 57, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1. Also, ACCC/C/2005/11 (*Belgium*), 28 July 2006, para. 29, U.N. Doc. ECE/MP.PP/C.1/2006/4/Add.2; and ACCC/C/2004/08 (*Armenia*), 10 May 2006, para. 28, U.N. Doc. ECE/MP.PP/C.1/2006/1/Add.1.

²See, in particular, ACCC/C/2005/11 (*Belgium*), 28 July 2006, para. 70, U.N. Doc. ECE/MP.PP/C.1/2006/4/Add.2.

³Aarhus Convention, art. 6, para. 4, and art. 7-8.

⁴Economic Commission for Europe (2013). *The Aarhus Convention: an Implementation Guide*. 2nd ed. New York and Geneva: United Nation Publication.146-147. Available at http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf. [5 August 2013].

⁵M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 133. See, in particular, ACCC/C/2006/16 (*Lithuania*), 4 April 2008, paras. 71-76, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1.

⁶ACCC/C/2006/16 (*Lithuania*), 4 April 2008, para. 71, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1.

decision-making certain options are discussed and selected with the participation of the public, each consecutive stage addresses the issues within the option already selected. Taking into account the particular needs of a given country and the subject matter of the decision-making, a certain leeway of the Parties is allowed in determining which range of options is to be discussed at each stage.¹

In examining compliance with the obligation to provide early public participation, it is essential to check if public participation was provided at the previous stage. Once a decision to permit a proposed activity in a certain location has already been taken without public participation, the provision for such involvement in the other consecutive stage cannot be considered in compliance with the Convention.² It precludes the public from having any input on whether the installation should be there in the first place. A need for clear and transparent sequencing of permitting decisions emerges in order to make clear to the public what is being decided and what options are under consideration at each stage.

It is worthwhile to consider the extent to which the above requirement applies to environmental impact assessment procedure. A clear opinion on the issue has not been established yet, despite the fact it was considered in several communications.³ The Convention does not specify the exact phase from which the environmental impact assessment should be subject to public participation. On one occasion, the Committee welcomed the approach of the domestic law which envisages public participation at the stage of scoping, which is able to provide early public participation in EIA decision-making.⁴

Reasonable Time Frames in Public Participation Procedures

The Convention requires public participation procedure to 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.⁵

Considerable differences in time-frames are observed in national legal systems.⁶ The requirement implies that the public should have sufficient time to get acquainted with the documentation and to submit comments. Under the

¹ACCC/C/2006/16 (*Lithuania*), 4 April 2008, para. 71, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1.

²ACCC/C/2006/16 (*Lithuania*), 4 April 2008, para. 76, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1.

³M. Pallemaerts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 135-136. See, *inter alia*, ACCC/C/2004/04 (*Hungary*), 14 March 2005, U.N. Doc. ECE/MP.PP/C.1/2005/2/Add.4; ACCC/C/2006/16 (*Lithuania*), 4 April 2008, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1; ACCC/C/2008/24 (*Spain*), 8 February 2011, para. 55, U.N. Doc. ECE/MP.PP/C.1/2009/8/Add.1.

⁴ACCC/C/2006/16 (*Lithuania*), 4 April 2008, para. 73, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1.

⁵Aarhus Convention, art. 6, para. 3, and art. 7-8.

⁶Economic Commission for Europe, Report by the Compliance Committee, 22 May 2008, para. 60, U.N. Doc. ECE/MP.PP/2008/5.

Convention, the requirement to provide reasonable time-frames obliges to take account of the nature, complexity and size of the proposed activity. Therefore, a time-frame which is reasonable for a small simple project with only local impact may not be reasonable in case of a major complex project.¹

While times-frames should be differentiated depending on the characteristics of the procedure in question, it is not clear whether such differentiation should be categorical or on an ad hoc basis.² A flexible approach to setting the time-frames seems to be a useful mean in order to allow the public to access the relevant documentation and prepare to participate.³ Such an approach consents to extend a minimum period as necessary to take into account the characteristic of the proposed activities. However, the Parties should refrain to adopt a maximum time-frame for public participation, which runs the risk that in individual cases it may be set at not reasonable level.⁴

Taking Due Account of the Input of Public Participation

The Convention obliges to ensure that the inputs of public participation have a real impact on the decision.⁵ Public authorities have to seriously consider the outcome of the public participation and to address it in decision-making, policy-making and law-making.⁶

According to the Compliance Committee, the obligation does not amount to the right of veto accorded to the public. In particular, this provision should not be read as requiring that the final word on the decision-making always rests with the local community living nearby and their acceptance.⁷ Any special status is not recognised to the local community living nearby the project. It is normally observable a difference between the opinions of the public particularly in cases of major complex projects. While the residents living in the surrounding area contest such a project, the general public might support it,

¹ACCC/C/2006/16 (*Lithuania*), 4 April 2008, para. 69, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1. See also M. Pallemerts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 128.

²M. Pallemerts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 138.

³ See, in particular, ACCC/C/2009/37 (*Belarus*), 24 September 2010, para. 90. U.N. Doc. ECE/MP.PP//2011/11/Add.2.

⁴ACCC/C/2006/16 (*Lithuania*), 4 April 2008, paras. 89-90, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1.

⁵Aarhus Convention, art. 6, para. 8.

⁶Economic Commission for Europe (2013). *The Aarhus Convention: an Implementation Guide*. 2nd ed. New York and Geneva: United Nation Publication. 158-159. Available at http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf. [5 August 2013]. See also M. Pallemerts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 142.

⁷ACCC/C/2008/29 (*Poland*), 25 September 2009, Attachment 3, U.N. Doc. ECE/MP.PP/C.1/2009/6/Add.2.

taking into account an improvement of their conditions of life.¹ Both sides represent their own private interests as well as environmental NGOs are supposed to protect the interest of the environment.² Although it is not possible to accept the substances of all the submission, the public authorities are required to consider all the comments regardless of whether their purpose is to protect private or public interest or whether they are reasoned or not.³ The provision should be seen in the context of the obligation to make the text of the decision accessible to the public, along with the reasons and considerations on which it is based.⁴

Public, Public Concerned and Non-Governmental Organisations

Different approaches are applied to designate subjects of rights granted by the provisions of the Aarhus Convention. The definition of 'public' is the broadest in determining the subject of rights under the Convention.⁵ It includes one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups.⁶

As a subset of the public at large, the public concerned is defined on the basis of the criteria to be affected or likely to be affected by, or to having an interest in the environmental decision-making.⁷ The definition mirrors the principles that those who are affected should have the right to influence the decision-making process.⁸ The term can be found in relation to public participation in decisions on specific permitting activities and the related access to justice provision under article 9, paragraph 2. In the understanding of the Compliance Committee, whether a member of the public is affected by a project depends on the nature and size of the activity.⁹ In addition, an interest

¹M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 143-144.

²M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 143-144.

³ACCC/C/2006/16 (*Lithuania*), 4 April 2008, para. 80, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1.

⁴Aarhus Convention, art. 6, para 9.

⁵M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing, p 125.

⁶Aarhus Convention, art. 2, para. 4.

⁷Aarhus Convention, art. 2, para. 5.

⁸Economic Commission for Europe (2013). *The Aarhus Convention: an Implementation Guide*. 2nd ed. New York and Geneva: United Nation Publication. 40. Available at http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf. [5 August 2013]. See also M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 125-126.

⁹ACCC/C/2010/50 (*Czech Republic*), 29 June 2012, para. 66, U.N. Doc. ECE/MP.PP/C.1/2012/11.

in the decision-making depends on whether their property and social rights or other rights, or interests relating to the environment, may be impaired by the proposed activity.¹ At this regard, the Compliance Committee points out that the Convention does not require an environmental NGO to prove that it has a legal interest in order to be considered as a member of the public concerned.² The Aarhus Convention considers non-governmental organisations to have such an interest as long as they promote environmental protection and meet any requirements under national law.³

One of the most relevant issues in determining the subjects of rights under the Convention is the question whether they include the domestic public only or the foreign public as well. While the Compliance Committee has not formed yet a comprehensive opinion on this legal issue, some consideration may unravel whether the same rights are granted to the public of other Parties. The question is not problematic in relation to EU Member States because the European Union is also a Party to the Aarhus Convention. However, the Aarhus Compliance Committee notes that there are no provisions or guidance on how to involve the foreign public in relevant decision-making.⁴ In the opinion of the Committee, such guidance is particularly needed in cases where there is no requirement to conduct a transboundary environmental assessment and the matter is therefore outside the scope of the Espoo Convention.⁵ Considering the nature of a project and the interest it generates, it may call for proper notification and public participation of civil society and NGOs, foreign or international, which indicate their interest in the procedure.⁶

The issue can also be seen in the light of the non-discrimination provision in article 3, paragraph 9, of the Aarhus Convention. It requires that no person should be excluded from the definition on the grounds of nationality, domicile, citizenship, or seat. Where the area potentially affected by a proposed activity crosses an international border, members of the public in the neighbouring country might be considered as public concerned under the Convention. In this context, one commentator argues that the Aarhus Convention sets out a

¹ACCC/C/2010/50 (*Czech Republic*), 29 June 2012, para. 66, U.N. Doc. ECE/MP.PP/C.1/2012/11.

²ACCC/C/2010/50 (*Czech Republic*), 29 June 2012, para. 66, U.N. Doc. ECE/MP.PP/C.1/2012/11.

³Aarhus Convention, art. 2, para. 5.

⁴ACCC/S/2004/01 & ACCC/C/2004/03 (*Ukraine*), 18 February 2005. Para. 28, U.N. Doc. ECE/MP.PP/C.1/2005/2/Add.3.

⁵ACCC/S/2004/01 & ACCC/C/2004/03 (*Ukraine*), 18 February 2005. Para. 28, U.N. Doc. ECE/MP.PP/C.1/2005/2/Add.3. See also J. Ebbesson (2011). 'A Modest Contribution to Environmental Democracy and Justice in Transboundary Contexts: The Combined Impact of the Espoo Convention and Aarhus Convention.' *Review of European Community & International Environmental Law* 20(3): 248–257.

⁶ACCC/S/2004/01 & ACCC/C/2004/03 (*Ukraine*), 18 February 2005, para. 28, U.N. Doc. ECE/MP.PP/C.1/2005/2/Add.3.

commitment of all Parties toward the public in general, their own public or even the public elsewhere.¹

Public Authorities and Privatisation in Environmental Matters

The definition of public authority is essential in defining the scope of the Convention. The definition does not include bodies or institutions acting in a judicial or legislative capacity.² This exception applies not only to parliaments, courts or local council, but also to executive branch authorities, when they perform legislative or judicial functions.³

The definition of public authorities is broken into three parts. Firstly, public authorities include the government at national, regional and other level, which contains agencies, institutions, department, and bodies of political power at all geographical or administrative levels.⁴ It is crucial to note that public authorities are not limited to environmental authorities within the government. It is not relevant whether public authorities have or not responsibilities related to the environment.⁵

Secondly, it covers any natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment.⁶ Although the notion of 'public' may differ from country to country, there should be a legal basis for the performance of the functions under this category.⁷ In addition, the definition also includes any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of the other categories of public authorities.⁸

Finally, the definition comprises the institutions of any regional economic integration organisation, which is a Party to the Aarhus Convention.⁹ At the moment, the European Union is the only regional economic integration

¹M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 129.

²Aarhus Convention, art. 2.

³Economic Commission for Europe (2013). *The Aarhus Convention: an Implementation Guide*. 2nd ed. New York and Geneva: United Nation Publication. 38-39. Available at http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf. [5 August 2013].

⁴Aarhus Convention, art. 2, para. 2(a).

⁵M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 118-120.

⁶Aarhus Convention, art. 2, para. 2(b).

⁷Economic Commission for Europe (2013). *The Aarhus Convention: an Implementation Guide*. 2nd ed. New York and Geneva: United Nation Publication. 35. Available at http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf. [5 August 2013].

⁸Aarhus Convention, art. 2, para. 2(c).

⁹Aarhus Convention, art. 2, para 2(d).

organisation to become a Party on the Convention. Many EU institutions are considered public authorities under the Convention, such as the European Commission, the Council of the European Union, the Economic and Social Committee, the Committee of the Regions, the European Environment Agency and the Statistical Office of the European Commission.¹

In the last decades, the privatisation and outsourcing of resources, services and functions related to the environment have been increasing.² The definition of public authority seems to make the Aarhus Convention resilient to privatisation. The requirements for public participation do not depend on whether the proposed activity is operated or owned by public or private entities. The Convention is neutral with regard to ownership or privatisation.³ For the purpose of public participation it is crucial that the activity in question may have significant effects on the environment.⁴ Private entities performing public administration functions or having public responsibilities or functions, while acting under administrative control, amount to being public authorities.⁵ Thus, members of the public concerned are granted the right to participate in the decision-making procedure regardless of whether proposed activities are owned or operated by a public authority or by private entities.

The issue is different when the environmental decision-making itself is privatised. In such a situation the private entity is not subject to the decision-making, but in charge of it. Some countries place the responsibility to the developer for organising the entire public participation.⁶ While it is rarely employed in the EU Member States, this approach is quite common in many countries in Eastern Europe and Central Asia.⁷ While direct communication

¹Economic Commission for Europe (2013). *The Aarhus Convention: an Implementation Guide*. 2nd ed. New York and Geneva: United Nation Publication. 37-38. Available at http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf. [5 August 2013].

²J. Ebbesson (2011). 'Public Participation and Privatisation in Environmental Matters: An Assessment of the Aarhus Convention.' *Erasmus Law Review* (4) 2. Available at http://www.erasmuslawreview.nl/files/2_Ebbesson_Volume04_Issue02. [5 August 2013].

J. Freeman (2003). 'Extending Public Law Norms Through Privatization.' *Harvard Law Review* 116(5): 1285-1352.

³J. Ebbesson (2011). 'Public Participation and Privatisation in Environmental Matters: An Assessment of the Aarhus Convention.' *Erasmus Law Review* (4) 2. Available at http://www.erasmuslawreview.nl/files/2_Ebbesson_Volume04_Issue02. [5 August 2013] See also Economic Commission for Europe (2013). *The Aarhus Convention: an Implementation Guide*. 2nd ed. New York and Geneva: United Nation Publication. 32-33. Available at http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf. [5 August 2013]

⁴Aarhus Convention, art. 6, para. 1.

⁵Aarhus Convention, art. 2.

⁶See, inter alia, ACCC/C/2006/16 (*Lithuania*), 4 April 2008, U.N. Doc. ECE/MP.PP/C.1/2006/2/Add.1; ACCC/C/2009/37 (*Belarus*), 24 September 2010, U.N. Doc. ECE/MP.PP//2011/11/Add.2; ACCC/C/2009/43 (*Armenia*), 17 December 2010, U.N. Doc. ECE/MP.PP/2011/11/Add.1.

⁷T.R. Zaharchenko & G. Goldenman (2004). 'Accountability in Governance: The Challenge of Implementing the Aarhus Convention in Eastern Europe and Central Asia.' *International Environmental Agreements: Politics, Law and Economics* 4(3): 229-251.

between the developer and the public concerned is promoted by the Convention, undue reliance on the developer to provide for public participation would not be in line with the Convention.¹ It is implicit in certain provisions that relevant information should be available directly from the relevant public authority, to which the comments should be submitted.² To a certain extent, the Aarhus Convention does not exclude the possibility of entrusting developers with some responsibility with regard to public participation. The Convention does not aim at excluding the involvement of the developer, under the control of the public authority, into the organisation of the public participation procedure.³ What seems not to be in line with the Convention is entrusting the developer with the entire public participation procedure under article 6.⁴ In particular, the procedure which allows the public to submit comments only via the developer and rely solely on them in considering the comments is not acceptable.⁵ Neither the developer nor the consultants can truly provide the degree of impartiality necessary to ensure proper conduct of public participation procedure.

Public Participation and Environmental Assessment Procedures

One of the most interesting issues that arise from the above consideration is the relation between the public participation under the Convention and the environmental assessment procedures. Public participation is often identified with the procedure for environmental assessment. This usually happens in the eastern part of the UNECE region but it is not uncommon also in the EU countries.⁶ A recurrent opinion maintains that early and effective public participation in environmental decision-making can only happen through EIA legislation.⁷ This tendency to identify environmental assessment with public

¹Economic Commission for Europe, Report by the Compliance Committee, 22 May 2008, para. 59, U.N. Doc. ECE/MP.PP/2008/5.

²Economic Commission for Europe, Report by the Compliance Committee, 22 May 2008, para. 59, U.N. Doc. ECE/MP.PP/2008/5.

³Aarhus Convention, art. 2.

⁴ACCC/C/2009/37 (*Belarus*), 24 September 2010, para. 81, U.N. Doc. ECE/MP.PP/2011/11/Add.2.

⁵ACCC/C/2009/37 (*Belarus*), 24 September 2010, para. 80, U.N. Doc. ECE/MP.PP/2011/11/Add.2.

⁶M. Pallemaerts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 99. Also, N. Hartley & C. Wood (2005) 'Public participation in environmental impact assessment - Implementing the Aarhus Convention.' *Environmental Impact Assessment Review* 25(4). Available at http://www.researchgate.net/publication/222556349_Public_participation_in_environmental_impact_assessmentimplementing_the_Aarhus_Convention. [5 August 2013]. T.R. Zaharchenko & G. Goldenman (2004). 'Accountability in Governance: The Challenge of Implementing the Aarhus Convention in Eastern Europe and Central Asia.' *International Environmental Agreements: Politics, Law and Economics* 4(3): 229-251.

⁷ACCC/C/2008/24 (*Spain*), 8 February 2011, para. 55, U.N. Doc. ECE/MP.PP/C.1/2009/8/Add.1.

participation has certain consequences.¹ One of the consequences is an understanding that any negative EIA screening process, if considered not to be impartial and not based on sufficient legal and scientific arguments, must necessarily violate the Convention. Another consequence is that any inaccuracies or deficiencies in the EIA studies are also considered as a violation of the Convention.

The above understandings seem to be based on a misinterpretation. Environmental assessment may play an important role to facilitate the effectiveness of public participation.² However, it should be noted that the Convention neither makes an environmental assessment a mandatory part of public participation procedures nor regulates situations where the assessment is required.³ It only requires that, wherever public participation is required under an environmental assessment procedure, such public participation shall be carried out in accordance with the requirement of the Convention.⁴

Conclusion

The rights granted to the public by the Convention aim not only at the protection of the individual right to a healthy environment, but also at improving the environment and enhancing the quality and the enforcement of environmental decisions.⁵ In this context, the Convention explicitly recognises the importance of the role that environmental NGOs can play in environmental decision-making. Access to information, public participation and access to justice are closely connected parts of the regime provided under the Aarhus Convention. The concomitant implementation of the Convention should be strengthened over time in the light of the right of every person of present and future generations to live in an environment adequate for health and well-being.

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¹M. Pallemarts (2011). *The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law*. Groningen: Europa Law Publishing. 100.

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