



POLICY PAPER

HOW TO ACHIEVE EFFICIENT AND EFFECTIVE ENVIRONMENTAL JUSTICE?



ЦЕНТАР ЗА ПРАВНИ
ИСТРАЖУВАЊА И АНАЛИЗИ
CENTER FOR LEGAL RESEARCH AND ANALYSIS



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HOW TO ACHIEVE EFFICIENT AND EFFECTIVE ENVIRONMENTAL JUSTICE?

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ABBREVIATIONS LIST

GD	General Directorate
EU	European Union
EC	European Commission
LAAQ	Law on Ambient Air Quality
MOEPP	Ministry of Environment and Physical Planning
RNM	Republic of North Macedonia
CLRA	Centar for Legal Research and Analysis
EM	Environmental management in EU member states
EIA	Environmental Impact Assessment
EIS	Environmental Information Systems
IS	Information Systems
CAP	Common agricultural policy
GAP	Good Agricultural Practises
PRBM	Plan for river basin management
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
ES	Spain
FI	Finland
FR	France
GR	Greece (EL)
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LV	Latvia
LT	Lithuania
LU	Luxembourg
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal

RO	Romania
SI	Slovenia
SK	Slovakia
SE	Sweden
UK	United Kingdom

“The truth is: the natural world is changing, and we are completely dependent on that world. It supply us with food, water and air. That is the most precious thing we have and we should defend it.”

Sir David Attenborough

1. Introduction

The **policy paper** was developed as part of the project "Establishing Efficient and Effective Environmental Justice" implemented by the Center for Legal Research and Analysis - CLRA, funded by UK aid through the Government of the United Kingdom. The aim of the project is to introduce a policy model for effective supervision and implementation of environmental policies and regulations, strengthening the implementation of international environmental standards. The project is focused on identifying problems related to supervision of the implementation of environmental legislation and through a broad consultation process to provide recommendations that will improve the environmental audit and implementation of the environmental regulatory framework.

The attached policy paper is consisted of three parts:

1. **Summary observations and recommendations** that together constitute a systematized approach to address neuralgic points and determining directions and future steps to improve the state of the environment.
2. **Traffic lights of formal and functional compliance** through the prism of the value categories efficiency, transparency, timeliness, quality and access to justice in the areas of environment, nature protection, water, waste management, ambient air, human resources and supervision and execution of decisions.
3. **International experience from European Union (EU) member states and good practices** in the field of environmental governance.

2. CHALLENGES IN ENVIRONMENTAL PROTECTION

The neglect of the environment and the expected environmental crisis in all aspects, namely, organizational level, strategic set-up, material-technical and human resources, legal concepts and principles and the (im)possibility of effective legal protection endanger not only the human life, but also the survival of all living nature (human and non-human environmental victims).

The current condition of the environment turns on the red alert for a high degree of concern, both due to the lack of effective measures and activities to perceive and overcome the situation, ineffectiveness in the identified threat, and in terms of the preconditions that must be met to protect the health of people, in the widest context, starting from the right to a healthy environment to judicial protection for disrespecting, endangering or violating such right.

Opening the door to the full entry of environmental justice in today's world is very slow. This is not due to the fact that people ignore the environment, rather it is very likely that this is a result of the fact that the business and industrial development, on one hand, and the preservation of a healthy environment and nature, on the other hand, do not always complement each other. On the contrary, for the most part they are in constant mutual tension and are inversely proportional.

A concerning fact is that there is no comprehensive legally binding instrument for environmental protection on a global level, which greatly contributes to non-compliance of the legislation, undeveloped monitoring and control mechanisms, and all this directly leads to a lack of accountability of the countries.

Internationally, countries have more or less identified the problems and the priorities, they are placed in a certain legal framework, opportunities and priorities are assessed at the country level, but the effect is completely absent. Certain actions and business interests lead to a situation where the consequences on the environment are often difficult to be corrected and are often irreversible.

Through the activities of the UN, CoE and EU, the process of adopting instruments, strategic plans, long-term programs is intensified, activities are undertaken and meetings are organized where the issue of environmental protection has a central focus.

A defeating fact is that, although the Council of Europe has adopted two environmental conventions, they have not been ratified by a sufficient number of the Member States and have not entered into force, namely, Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment,¹ and Convention on the Protection of Environment through Criminal Law.²

The ECtHR has found in its case law that environmental issues may affect the right to life (Article 2); the right to respect private and family life, as well as the home (Article 8); the right to a fair trial and access to a court (Article 6); the right to receive and exchange information and ideas (Article 10); the right to an effective remedy (Article 13) and the right to the peaceful enjoyment of one's possessions (Article 1 of Protocol No. 1).

The right to health protection (Article 11) of the European Social Charter includes the right to a healthy environment.

¹ Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, ETS No. 150, Lugano 1993; signed by nine states, none has ratified it, and three ratifications are required to enter into force; available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/150>.

² Convention on the Protection of the Environment through Criminal Law, ETS No. 172, Strasbourg 1998; It has been signed by 14 states, only Estonia has ratified it, and it has not entered into force because three ratifications are needed for entering into force; available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/172/signatures?p_auth=c3srDH7J.

European environmental policy is based on the principles of:

- **caution** - risk management tool when there is scientific uncertainty about a suspected risk to human health or the environment arising from a particular activity or policy;
- prevention and removal of the **source of pollution** and
- "Polluter Pays" Principle.

Framework Principles on Human Rights and the Environment dated 2018,³ contain a total of 16 framework principles. Within these principles, according to the UN Special Rapporteur on Human Rights and the Environment, three groups of liabilities can be identified for the states and the legal entities:⁴

- **Material liabilities** - individuals to have access to effective remedies against both private companies and government authorities in the event of non-compliance with state environmental laws (Framework Principles 11 and 12);
- **Procedural liabilities** - liabilities to provide information, facilitate public participation in decision-making and provide access to remedies (Framework Principles 9 and 10);
- **liabilities to vulnerable groups** – increased liabilities to these groups (Framework Principles No. 14 and No. 15).

The arrangement and humanization of the space and the protection and promotion of the environment and nature, according to Article 8 of the Constitution of the RNM, are among the fundamental values of our constitutional order, and the right to a healthy environment is proclaimed as a fundamental right in Article 43 of the Constitution of the RNM. However, while on the one hand the Constitution prescribes the right of every person to a healthy environment, at the same time on the other hand it prescribes an obligation for the country to provide conditions for the realization of this right by the citizens.⁵

The state of the environment in our country is serious, as our country is not a signatory to any of the above-mentioned conventions of the Council of Europe.

There is no doubt that the 1998 Aarhus UN Convention, which recognized the legal right of European citizens to access information, to participate in decision-making and to exercise their legal rights in environmental matters, has a major impact. Practice shows that both individuals

³ <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>.

⁴ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59, 24.01.2018.

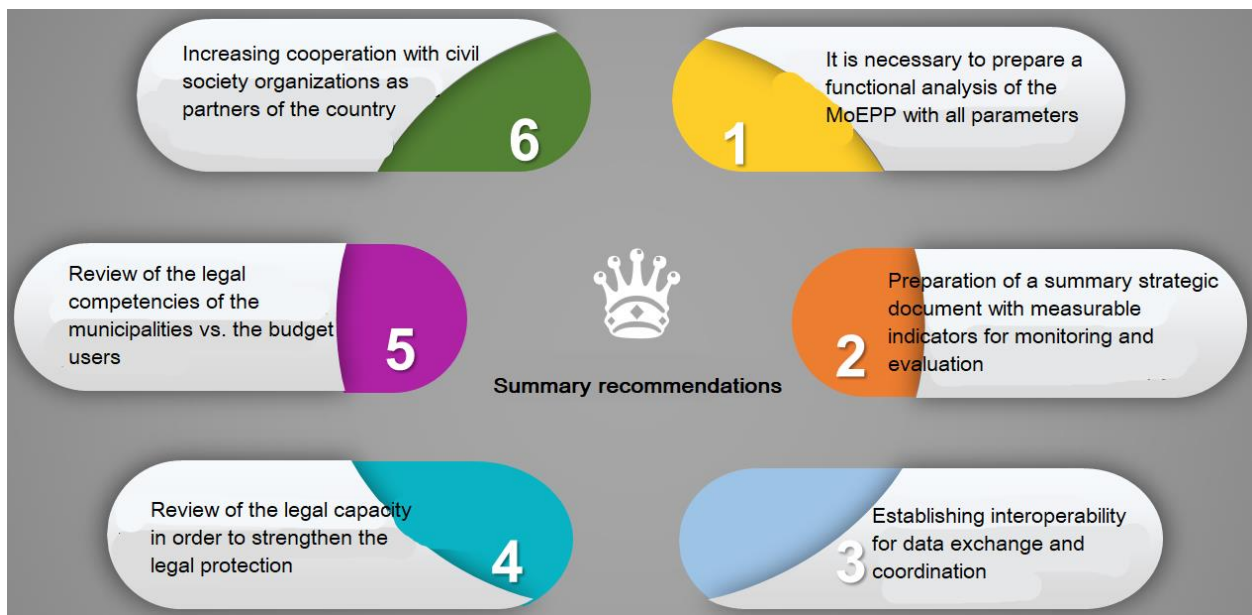
⁵ This is in the context of the claim that the constitutions of the countries should not contain anything related to the environment, but to prescribe this right as one of the fundamental rights of the citizens, Tim Hayward, Constitutional Environmental Rights, Oxford University Press, Oxford 2005, page 5.

and associations that seek to exercise these rights in court encounter serious obstacles that contribute to the right of the environment to remain ineffective.

The summary guidance given in this introduction should provide the context in which policy makers in the field of healthy environmental law should move, guided by international standards and obligations, modern practices, institutional, economic and systemic opportunities in anticipation of the challenges of the future.

The conclusions of the GAP and shortcomings analysis are starting point of this policy paper, and together they form a systematized approach to the neuralgic points and future steps to improve the condition of the environment.⁶

3. SUMMARY RECOMMENDATIONS AND SUGGESTIONS



⁶ GAP and shortcomings analysis, Challenges and opportunities for the institutional and legal framework of the environment, January 2021, Center for Legal Research and Analysis.

EFFICIENCY

(UNCORDINATION, INSTITUTIONAL AND ORGANIZATIONAL DEFUNCTION)

The analysis showed that there is a noticeable lack of coordination in two main directions:

- inter-ministerial coordination and
- the coordination of the relation central - regional - local.

SUMMARY OBSERVATIONS

In almost all analyzed areas there is a lack of inter-ministerial coordination, due to the fact that in the field of environment with its competencies, measures and activities are included the following ministries:

- MOEPP as home ministry,
- Ministry of Health,
- Ministry of Economy,
- Ministry of Interior
- Ministry of Agriculture, Forestry and Water Economy,
- Ministry of Transport and Communications and
- Ministry of Finance, which is not involved with measures and activities from the individual analyzed areas, but with the decisions that affect the available budget and the budget rebalance "dictate" the pace and significantly affect the effectiveness and efficiency of the planned measures and activities

Regarding the coordination of the relation central - regional - local, the same problems are observed in all areas:

- the municipalities have neither the opportunities nor the resources in staff and financial means to be able to exercise the competencies legally provided to them
- In some of the analyzed areas (for example, waste management) it is necessary to place emphasis on the regional level and the existence of regional landfills, which will achieve the goal, and will help the municipalities.

Overlap of the competence to adopt policies with the competence to implement them

	<p>There is no monitoring of the implementation of the strategic and planning documents in all analyzed areas</p> <p>Bureaucratized and slow procedures for establishing new departments or management structures due to the rigid and ineffective norms for the number of departments versus the number of employees, set by MISA, and which the MoEPP is obliged to adhere to</p> <p>According to the percentage of employees pursuant to the systematization act, which has been amended several times since 2017 and is harmonized with the bylaws (Decree and Rulebook) regarding the internal organization and systematization, it is noted that the waste management department is one of the most neglected areas</p> <p>Failure to prepare annual plans and programs with measures and activities for appropriate monitoring</p>
<p>SUGGESTIONS</p>	<p>Establishment of a Permanent Inter-Ministerial Body within the Government of RNM for monitoring, evaluation and proposing concrete measures through continuous monitoring of the implementation of the laws in all analyzed areas</p> <p>Accepting an inter-ministerial approach in the preparation and monitoring of strategic documents, national plans and programs</p> <p>To increase the utilization of the funds that we as a country have at our disposal for investment in improving the measures in the waste sector with emphasis on the support of the regional waste management system</p> <p>Inclusiveness and partnership with CSOs in identifying problems, analyzing the situation, proposing solutions and next steps</p> <p>Distinguish the competence to decide on policies and the obligation for their implementation, which should not be accumulated in either a body or in the same organizational unit in which one part of the staff creates policies and the other implements such policies</p>

Adoption of an act prescribing the environmental management and audit schemes (EMAS)

Establishing a Platform for monitoring and verification of GHG emission reduction and monitoring the measures proposed in the strategic documents

Functional tool for calculating energy savings

Functional sector / department for monitoring strategic and planning documents at national and local level staffed with professional and staff for monitoring, preparation of analyzes and reports

Regular preparation and publication of annual plans and programs regarding the planned measures and activities to improve the situation in all analyzed areas

Prescribing the technical conditions, means and equipment as a precondition for accreditation of legal entity and natural person authorized to evaluate the technology, technological line, products, semi-products or raw materials in accordance with the Law on Environment

Establishment of the bodies indicated in the analysis in the separate analyzed areas: (for example, National Council for Nature Protection; Institute for Nature Protection; National Water Council; New Water Management Basis of RNM, etc.)

Statutory amendments:

The Directorate for Environment to obtain status of an independent body in the form of an agency or directorate with its own budget, structure and organization, which as a prerequisite implies appropriate amendments to the laws

Law amendments:

- **obligation for existence of measuring instruments for air quality in all units of local self-governance**
- **Reconsideration of the legal competence that allows the national parks to acquire 75% of the funds from logging, which consciously causes damage due to corporate lucrative purposes**

Compliance with the legal obligations regarding the technical inspection stations:

- **regular measurement of the exhaust emission level and submission of information to the MoEPP;**
- **misdemeanor and penalty provisions regarding the technical inspection stations that do not comply with the stated obligations;**

TRANSPARENCY

SUMMARY OBSERVATIONS

Information do not reach to MoEPP

It is impossible to monitor the situation and identify problems in a timely manner

There is no adequate creation of measures and dynamics of activities for overcoming the perceived conditions

Late update of websites of ministries and other state bodies

Inaccessibility or absence of current data, which makes analysis difficult

Lack of data on the website for adopted reports on budget implementation

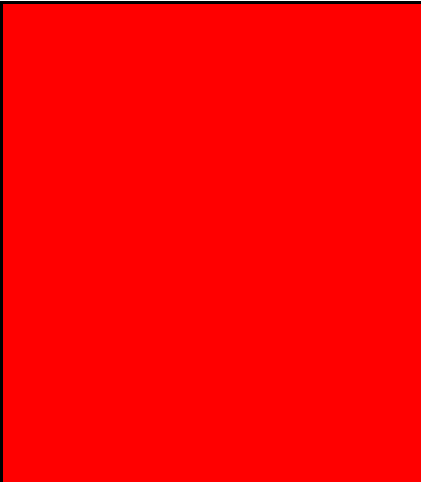
Lack of public hearings, round tables in order to raise awareness among citizens

SUGGESTIONS

Establishment of a National Environmental Information System within the MoEPP, in which complete, relevant, current data from various ministries, agencies, legal entities, etc. will be submitted in a timely manner

Existence of a special part of the Platform for Environmental Justice - Forum for comments, remarks and ideas constantly available to the citizens

Effective application of the mechanism for informing the public in conditions of alarming air pollution in accordance with the Law on Ambient Air Quality



Greater involvement of appropriate CSOs acting on behalf of citizens as stakeholders in the policy-making process (participation in working groups for drafting strategic documents, laws and bylaws), but also in preparing analyzes, comparisons, organizing public events, etc.

More frequent organization of public hearings, debates, focus groups, consultations and round tables in order to raise awareness among citizens, exchange experiences and promote environmental protection with the presence of all stakeholders, representatives of state bodies, CSOs, stakeholders, domestic and international experts

Regular and up-to-date keeping records, cadastres, calculations, etc. in accordance with the legislation and the ratified protocols

DILIGENCE

(INEFFECTIVE LEGAL FRAMEWORK)

The legal framework, no matter how rich or extensive, in the absence of proper implementation and above all opportunities for implementation, risks to be declared ineffective and the entire environmental protection system to be declared as clumsy and outdated.

The framework in this context cannot and should not be seen only through the prism of the regulations that directly affect the area, but within the complexity of the legal order, other material and procedural laws and regulations through which the norms should be implemented, in order to realize the right to a healthy environment in practice.

SUMMARY OBSERVATIONS

In all areas it has adopted special strategic documents, laws and bases for the need to adopt a huge number of bylaws (close to 190)

Strategic documents are not complementary, and do not coincide even during implementation

Laws in all analyzed areas are changed too often, they are not always completely complementary, nor synchronized, which weakens the impact of the bylaws that should complete the legal framework understood in an extensive sense of the word

In some areas, for example: Water, 50% of the envisaged bylaws have not been adopted at all

Instead of synergy, activities are planned and undertaken on separate tracks due to which there are many overlaps, inconsistencies and even contradictions between some laws

In terms of the obligation to comply with the legislation is left to the inspectorate, which is not a prosecution body, but a supervisory body

SUGGESTIONS

Timely preparation of strategic documents by interdisciplinary working groups which will include domestic and foreign experts, as well as CSOs

Preparation of a quality Regulatory impact Assessment of the laws and other regulations in the field of environmental protection

Introduction of mandatory periodic Impact Assessments of existing regulations in all their aspects (quality, efficiency, effectiveness, etc.)

Harmonization of the Law on Nature Protection with the Law on Hunting and the Law on Forests

Improving the functionality of the State Inspectorate for Environment, which is not a prosecuting authority, but a body that should perform expert supervision

Review or revision of the legal concepts related to the administrative act, and individual protection from such an act.

Both acts or actions or omissions addressed to an indefinite circle of people who are nevertheless determinable should be considered an administrative act and should be an opportunity to achieve judicial protection

QUALITY

(LACK OF HUMAN AND TECHNICAL RESOURCES, BUDGET RESOURCES AND TRAINING OF STAFF)

SUMMARY OBSERVATIONS

There is a lack of adequate human resources in the analyzed areas within the protection of the environment, from two aspects:

- lack in quantitative sense (lack of employees according to systematization acts)
- lack of staff in qualitative terms (employees who do not meet the legally prescribed conditions for the job position)

Non-compliance with the legal requirements to be met by the management staff in some of the analyzed areas

Lack of necessary technical capacities at national, regional and local level, due to which it is significantly difficult to fully, efficiently and timely fulfill the legal obligations and take relevant measures and activities for protection and improvement of the quality of the environment

The Ministry of Finance cuts the projected funds during the rebalance of the budget

Municipalities do not have the capacity, budget or opportunity to take effective measures, and those on which territory the protected area is located, do not have sufficient capacity to deal with issues related to environmental protection

0.2% of the total amount of funds needed for the realization of the Nature Protection Program were allocated from the Budget of RNM for 2020

	<p>There are not enough funds from the budget of RNM for implementation of the adopted national plans and programs in the analyzed areas</p> <p>Low awareness of the state of the environment in all analyzed areas, which in part is due to insufficient training and education</p> <p>Lack of specialist studies for environmental protection</p> <p>Poor knowledge of law enforcement agencies in the field of environmental protection</p>
SUGGESTIONS	<p>Providing sufficient funds from the budget of RNM for staffing the services working in the field of environmental protection in all analyzed areas</p> <p>Providing sufficient funds from the budget of RNM and foreign partners / donors for effective implementation of national plans and programs in the analyzed areas</p> <p>Consistent compliance with the legally prescribed conditions (qualifications and experience) in the selection of professional and quality staff</p> <p>When preparing and monitoring the level of realization of the measures / activities contained in the plans and programs, use input from external experts</p> <p>Control whether the envisaged measures for nature protection contained in the infrastructure projects, studies and elaborations are observed during their implementation</p> <p>Changing the way of granting concessions in some of the analyzed areas, especially in the part of minimum water flow and following the international practices in all of the analyzed areas</p> <p>Interdisciplinary studies for environmental protection from a legal, economic and engineering aspect</p> <p>Special thematic trainings at the Academy for Judges and Public Prosecutors:</p> <ul style="list-style-type: none">- for judges from the administrative, civil and criminal areas- for public prosecutors regarding the criminal legal protection of the environment and nature

Conducting continuous trainings for practitioners, civil society organizations on the modern achievements in this field, with emphasis on the views expressed in the Decisions and Judgments of the ECtHR, but also the European Court of Justice in Luxembourg

Expert hearings with the judges of the Constitutional Court of RNM regarding Article 43 of the Constitution of RNM

ACCESS TO JUSTICE

(FORMS AND CHALLENGES IN ACHIEVEMENT PROTECTION OF THE RIGHT TO A HEALTHY ENVIRONMENT)

In practice, although *de lege lata* there are practical protection mechanisms, in essence the approach to the protection of the right to a healthy environment has not been raised to the level it deserves.

To a large extent, the current concept leaves the institutions to care on behalf of all, but there is no room for individuals or groups to be proactive in effectively providing protection of the environment and nature neither in their own name, nor in the name of others.

Segmented legislation, inflation and proliferation of norms, although well-intentioned, in practice still do not support effective and quality protection.

Individual steps taken in the last few years, primarily by individuals and civil society organizations, encounter practical barriers, of which the following are most clearly outlined:

- Low legal awareness of the importance of the right to a healthy environment and the obligation of the state in this regard
- Obsolete understandings and restrictive interpretation of legal concepts, especially the terms action / omission, individual / general act and the like.
- Insufficiently clearly defined competence limits of bodies / courts (civil, administrative)

Procedural legal protection arises from the obligation of everyone to promote and protect the environment and nature, thus the law is widely established and as such an extensive list of those who will seek its protection should be provided.

**SUMMARY
OBSERVATIONS**

The constitutional principles of nature protection and ensuring a healthy environment are understood too declaratively, without practical steps

The difficult protection of the law and access to the institutions, primarily the courts, and part of the reasons are due to the following aspects:

- Limited opportunities for access to justice when it comes to the country and its omission to act. The citizens are in fact left at the disposal of the country to intervene in their protection (which is in fact a positive obligation and constitutional duty), and in its absence, there is no effective form of administrative or judicial protection due to failure in this domain;
- Absence of legal possibility to cause *erga omnes* effect with individual case;
- Administrative courts do not decide in full jurisdiction;
- International trends and legal reasoning in the field are not followed, especially the views of the ECtHR;
- Excessive restrictive interpretation of legal principles (damage, danger of damage, offender and harmful action, illegal action), whereby the omission is not given treatment of action.

SUGGESTIONS

Effectiveness of the following existing forms of environmental protection:

o **Constitutional protection** - Art. 43 of the Constitution of the RNM guarantees the right to a healthy environment, and the Republic is obliged to provide conditions for exercising this right. Apart from the declaration in the Constitution, there is no possibility for direct constitutional protection of this right before the Constitutional Court;

o **Civil protection** - Environmental lawsuit - based on the Law on Contracts and Torts for prevention of alleged damage

o **Administrative protection** - lawsuit before the Administrative Court - redefining the administrative act as a legal concept (if a document does not have the status of an administrative act, the citizen does not have the opportunity for judicial protection). The protection of the rights is too restrictive, and in practice there is no extensive interpretation of the laws by the authorities and especially the courts

o **Criminal protection** - prosecution and sanctioning for crimes against the environment and the nature

o **International protection** - in the part of the international legal order which *obiter dictum* at least in the part of the ECtHR domestic courts may, when they consider that the application of the law in the specific case is contrary to the provisions of an international agreement ratified in accordance with the Constitution, apply the provisions of the international agreement, provided that they can be directly applied, and more importantly, in specific cases directly apply the final and enforceable decisions of the ECtHR, the International Criminal Court or another court whose jurisdiction is recognized by the RNM. In any case, the courts are obliged to apply the views expressed in the final judgments of the European Court of Human Rights. Most often, the proceedings before the domestic authorities and courts by the parties themselves are seen only as an opportunity to reach the ECtHR.

Legislative regulation of clear provisions for access to administrative and judicial bodies in the field of protection of the right to a healthy environment, including the Constitutional Court of RNM

Predicting an environmental lawsuit with characteristics of *actio popularis*

Environmental Task Force - model of cooperation and joint teams for performing control and supervision between the State Inspectorate and the investigative bodies with a mechanism for detection and prevention of crimes in the environment

4. Traffic lights of formal and functional compliance

OVERVIEW OF FORMAL AND FUNCTIONAL COMPLIANCE								
			Formal compliance			Functional compliance		
			X	+-	√	X	+-	√
1	AREA - ENVIRONMENT							
		EFFICIENCY						
		TRANSPARENCY						
		DILIGENCEY (LEGAL FRAMEWORK)						
		QUALITY						
		ACCESS TO JUSTICE						
2	AREA – PROTECTION OF THE NATURE							

		EFFICIENCY		Yellow	Green			
		TRANSPARENCY			Green			
		DILIGENCE (LEGAL FRAMEWORK)		Yellow	Green			
		QUALITY		Yellow			Yellow	
		ACCESS TO JUSTICE	Red	Yellow		Red	Yellow	
3.	AREA - WATER							
		EFFICIENCY		Yellow			Yellow	
				Yellow			Yellow	
		TRANSPARENCY		Yellow			Yellow	
		DILIGENCE (LEGAL FRAMEWORK)	Red	Yellow		Red	Yellow	
		QUALITY	Red	Yellow		Red	Yellow	
		ACCESS TO JUSTICE	Red	Yellow		Red	Yellow	
4.	AREA - WASTE MANAGEMENT							
		EFFICIENCY		Yellow	Green	Red	Yellow	
		TRANSPARENCY		Yellow			Yellow	
		DILIGENCE (LEGAL FRAMEWORK)		Yellow	Green		Yellow	

		QUALITY		Yellow	Green		Yellow	
		ACCESS TO JUSTICE	Red	Yellow		Red	Yellow	
5.	AREA – AMBIENTAL AIR							
		EFFICIENCY		Yellow			Yellow	
		TRANSPARENCY		Yellow			Yellow	
		DILIGENCEY (LEGAL FRAMEWORK)		Yellow			Yellow	
		QUALITY		Yellow			Yellow	
		ACCESS TO JUSTICE	Red	Yellow		Red	Yellow	
6.	HUMAN RESOURCES AND ORGANIZATIONAL MANAGEMENT							
		EFFICIENCY		Yellow				Red
		TRANSPARENCY		Yellow			Yellow	
		DILIGENCEY (LEGAL FRAMEWORK)		Yellow			Yellow	
		QUALITY		Yellow			Yellow	
		ACCESS TO JUSTICE	Red	Yellow		Red	Yellow	
7.	SUPERVISION AND EXECUTION OF DECISIONS							
		EFFICIENCY		Yellow		Red	Yellow	

		TRANSPARENCY		Yellow			Yellow	
		DILIGENCY (LEGAL FRAMEWORK)		Yellow		Red	Yellow	
		QUALITY		Yellow		Red	Yellow	
		ACCESS TO JUSTICE		Yellow		Red	Yellow	

5. INTERNATIONAL EXPERIENCES AND GOOD PRACTICES IN THE FIELD OF ENVIRONMENTAL GOVERNANCE

This chapter follows the findings of the „ *The analysis of gaps and shortcomings - challenges and opportunities for the institutional and legal framework of the environment*“, assessment of the performance of North Macedonia in terms of law enforcement and environmental policy. Taking into account the identified gaps and needs, it highlights the general lessons learned by EU Member States during the environmental governance implementation process [1] and offers recommendations [4] for overcoming the causes of weaknesses in implementation and of poor environmental governance.

The main purpose of this chapter is to offer some good practices (GP) from the 28 EU member states. It contains a list of examples of GPs highlighted in the Commission [1] and the reports of the European Environment Agency [4]. More details about these GPs can be found in the reference literature.

The term environmental governance is used here "to describe how we as human beings exercise our authority over natural resources and natural systems" [6]. It involves much more than the work of governments and decision-makers at all levels - government heads and ministers, but also businessmen, property owners, farmers and consumers. In short, it is about who is responsible, how they use their power and how they are accountable for it".

In environmental governance discussions, five aspects are considered: **transparency; public participation; access to justice; ensuring compliance and accountability; and effectiveness and efficiency**. Within these five aspects the focus was on the areas of environment, nature protection, water management, waste management and ambient air, including Environmental Impact Assessment, Strategic Impact Assessment and Access to Information about the Environmental, along with the multidisciplinary contextual theme that examines governance structures.

Consideration of the context and characteristics of environmental governance for specific issues, such as environmental policy⁷, the division and implementation of responsibilities and the role of civil society are related to the multi-level governance arrangements. Based on EU-sponsored research, it may be concluded that the Member States with a high level of decentralization of responsibility for policy-making at regional level (DE, ES, IT, AT with a large number of regions, as well as BE and UK with a more specific federal structure), also apply a decentralized approach in relation to liabilities for implementation at regional level. Almost all Member States also have some degree of liability for local implementation, although the scope of their liabilities and the freedom to adjust their approach varies considerably **Error! Reference source not found..**

On the question of the size and other geographical features of the Member States, it seems clear that the smallest Member States face various challenges in managing the full range of environmental issues with a smaller national administration.

⁷ Pre-dominant in Member States with a federal structure

The approach to the role of CSOs in policy making varies between member countries. In general, there is a relatively well-established understanding of the conditions for their participation, but the practical experience of national authorities in creating such a dialogue, the capacity levels of CSOs for effective participation, and the trust between the administration and NGOs need to be further developed.

It is important to note that there are no "good" or "bad" practices in the widest sense of the word. They depend on the distribution of environmental competencies at different levels of administration embedded in the constitutional and governing culture of each country, reflecting the population density, geography and nature of the environmental challenges facing each country. Furthermore, there is an opportunity to learn from each other regarding approaches to coordination between different administrative levels and different stakeholder groups.

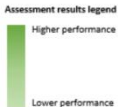
By its nature, this chapter is a collection of information and good practices gathered from existing EU documents developed either for the whole of the EU territory or within various projects ([References](#)).

Note: Figures 1 to 5 are an overview of the performance categorization according to the report of the Plan for Management with the Environment [1]. For more information on the applied methodology, criteria and existing data, see the Report

5.1 Transparency

5.1.1 General overview in relation to the EU member states

The results of the EM assessment [1] show that, overall, Denmark, Slovenia, Finland, Sweden, Bulgaria and Germany have shown the highest level of achievement in terms of



transparency issues. Good institutional and legal frameworks for making environmental information and data available to the public are characteristic of these countries, including the low cost of information requests.

Poor performance in some countries [Figure 1] is mainly due to poor public availability of information, including databases on EIA processes and charging for access to information about the environmental.

The results of some other projects that are focused on environmental governance, content, dissemination and usability of information about the environmental at

the national level by using the National Environmental Information Systems (EIS) [5] indicate that Ireland, the Netherlands and Sweden is the most successful among EU member states.

Figure 1 Map of the transparency overview (Source **Error! Reference source not found.**)

5.1.2 Examples of good practises

Table 1 Examples of good practices for Transparency

Clusters of good practises	Good practices identified in the member states																		
	BE	BG	HR	CZ	DK	EE	FI	DE	IE	IT	LT	LU	MT	NL	PL	PT	SK	SI	UK
Web tools		2		2	2	1, 3, 5	2, 6	2		2	2		1	4	2	2	1, 2	2	
Agencies	7, 9		8	10				11	8								7	8	8, 12
Social networks			13									14							
Other								15											

List of good practises

1. Public websites follow the same format for easy navigation.
2. Comprehensive EIA databases or lists.
3. Use of geographic information systems, including GIS databases and e-services available through the "Geoportal" Land Board.
4. Digital service "Portal Atlas Living Environment" that enables environmental and health information to be available to the public in the form of search maps.
5. The centralized website and map application of the Environmental Register (EER) provides updated and verified data and GIS-based data relating to natural resources, natural heritage, environmental status and environmental factors.
6. The online services of several administrations and environmental institutions are merged into a common website.
7. Central information points for the Aarhus Convention.
8. The Information Commissioner acts as an independent compliance monitoring mechanism that checks and reports on governance transparency and compliance with transparency rules.
9. Individual agencies aim to provide good information on how to file complaints to the public administration.
10. A specialized agency disseminates environmental information to the public administration and the public, including through a public online service to assist and support decision-making processes.
11. The Environmental Advisory Council and the Expert Committee on the process for monitoring of energy of the future, complemented by independent expert institutions during policy processes.
12. Chief Scientific Adviser in the main sectors of the Government that provides clear, well-structured and easily understood information to businesses and individuals on how to comply with their environmental obligations.
13. Widespread use of social networks in communication with citizens.
14. Development of mobile applications for a range of issues to support public access to information.
15. The System of Key Indicators (SKI) for the environment records the status of the environmental policy and the results related to the environment.

5.2 Participation of the public

5.2.1 General overview in relation to the EU member states



The results of the EM assessment [1] show that, overall, Croatia, Latvia, Sweden, Denmark, Estonia and France showed the highest level of achievement in terms of public participation issues. Good institutional and legal frameworks for individuals and organizations to participate in environmental decision-making processes are characteristic of these countries.

Poor performance in some countries [Figure 2] is mainly due to either a weak or inconsistent approach (for example, allowing participation in some policy-making areas but creating barriers to doing so in others).

Figure 2 Map of the participation of the public overview (Source **Error! Reference source not found.**)

5.2.2 Examples of good practises

Table 2 Examples of good practises for participation of the public

Clusters of good practises	Good practices identified in the member states														
	AT	BE	HR	DK	EE	FR	DE	LV	LT	MT	NL	PL	PT	RO	UK
Processes of decision-making and planning		1		1	3		2		4	1	5				
Preparation of laws					6			6							
Online platform	7		7										7		7
Practical information / guidance	8		8			8					8	8			
Trainings and grants			9											9	

List of good practises

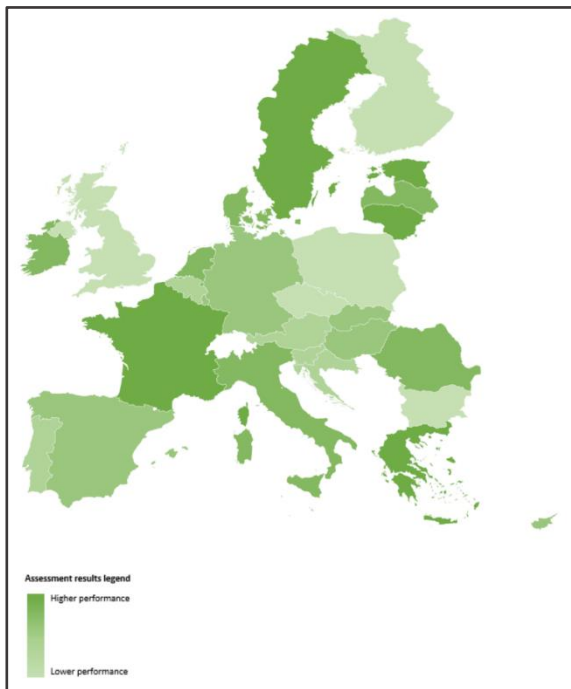
1. Effective and visible integration of public participation in the decision-making process in order to ensure its credibility and impact on results.
2. Public participation at an early stage in the decision-making and planning process.
3. Annual partnership events to exchange work program information and priorities with stakeholders.

4. Establishment of committees or working groups within public bodies, with the participation of public representatives to participate in the processes (for example, development of PRBM).
5. Administrative organizational arrangements to facilitate public participation
6. Involve stakeholders in drafting or initiating legislation.
7. Establishing online platforms for participation, either on all policy issues or specifically on the environment.
8. Developing and publishing guidelines for public participation in order to assist the competent authorities and officials.
9. Other support such as training for staff to coordinate participation procedures and grants to the NGO to improve their contribution to environmental decision-making through participation.

5.3 Access to justice

5.3.1 General overview in relation to the EU member states

The results of the EM assessment [1] show that, overall, Estonia, Greece, France, Lithuania and Sweden showed the highest level of achievement in terms of access to justice,



and Sweden showed the highest level of achievement in terms of access to justice, while Bulgaria, the Czech Republic, the United Kingdom, Finland and Poland have more challenges in this area. Good institutional and legal frameworks for making environmental information and data available to the public are characteristic of these countries, including the low cost of information requests.

Poor performance in some countries [Figure 3] is mainly due to the low availability of transparent information on access to justice and legal status issues; as well as significant weaknesses in the cost of access to justice or the effectiveness of remedies available to the courts.

Figure 3 Map of the access to justice overview (Source **Error! Reference source not found.**)

5.3.2 Examples of good practises

Table 3 Examples of good practices for access to justice

Clusters of good practises	Good practices identified in the member states															
	AT	BE	BG	DK	FI	FR	DE	GR	IE	IT	LV	LT	LU	PL	PT	ES
Legal state and costs								1			1	1				
Web-sites for access to justice	5					6	2, 3					4	4			
Web-sites for the Aarhus Convention		8				7			8	8						
Practical information for access to justice				10			9									
Training to the judiciary					11						12	12			12, 13	12
Corruption			15									14		15		

List of good practises

Legal state and costs

1. Wide interpretation of the legal situation in relation to cases and appeals in administrative courts for environmental protection, granting the public, individuals and non-governmental organizations a very wide access to justice in cases related to the environment (*actio popularis*).

Web sites that provide information for access to justice

2. Comprehensive information for access to justice on environmental issues provided through the websites of the Ministries of Environment and Environmental Agencies.
3. The website of the Ministries of Environment which provides information on the law on appeals to national and EU courts, for the environment.
4. Internet portals of the courts that provide easy and understandable information to users regarding access to justice in general.
5. Portal on one-stop-shop⁸ business services provides general access to justice information on environmental issues.
6. The websites of the State Council and / or the Commission for Access to Administrative Documents present guidelines on access to justice and general information on access to justice.

Web sites – information on the Aarhus Convention

7. Special portals that provide information on national legal provisions on access to justice in relation to the Aarhus Convention, including issues of access to justice by environmental NGOs, legal proceedings, costs of proceedings, access to legal aid and effective remedies.
8. The joint national portals acted on behalf of the competent governmental authorities responsible for the provisions of the Aarhus Convention.

Practical information for access to justice

9. Specialized brochures on the rights of citizens and environmental organizations in the context of the Aarhus Convention.
10. Transparent, easy and understandable communication for members of the public on access to justice on environmental issues.

⁸ <https://www.dataguidance.com/opinion/eu-one-stop-shop-under-gdpr>

Training to the judiciary

11. The Judicial Training Board, together with the Ministry of Justice and the courts, conducts training of staff involved in law enforcement in the courts (internship and additional training). Judicial staff are also welcome to participate in the environmental crime prevention training program.
12. Training of judges on environmental topics.
13. Innovative and technological tools, such as online data-sharing portals, are used to facilitate access to justice and build capacity to better address the environmental challenge.

Corruption

14. A special part "hotline" on the homepage of the competent authority provides information on how to file a complaint about environmental damage or corrupt behavior of government officials. All public requests and complaints are handled by applying the principle of one-stop shop system.
15. Dedicated e-mail address where citizens can report environmental corruption issues.

5.4 Ensuring compliance and accountability

5.4.1 General overview in relation to the EU member states



The results of the EM assessment [1] show that, overall, Ireland, the United Kingdom, Denmark, Slovakia and the Czech Republic showed the highest level of achievement on compliance and accountability issues, while Greece, Austria, Luxembourg and Cyprus faced more difficulties in these areas [Figure 4]. It is important to point out that the assessment for these countries was mainly based on publicly available sources, where they were poorly assessed on most issues, probably due to significant gaps in data transparency and actions taken by the authorities.

Figure 4 Map of the ensuring compliance and accountability overview (Source **Error! Reference source not found.**)

5.4.2 Examples of good practises

Table 4 Examples of good practices for ensuring compliance and accountability

Clusters of good practises	Good practices identified in the member states																	
	AT	BE	BG	HR	CY	DK	EE	FI	FR	DE	GR	HU	LV	MT	PL	RO	SK	UK
Prevention of compliance problems			2			1						1						1, 3
Monitoring of compliance			4	5			6										6	
Further activities and implementation	7																8	
Cooperation and training								9				1	1		1			
Acting upon appeals (1)	1								1	1	1			1	1			
Acting upon appeals (2)	2								2	2	2			2	3			
Acting upon appeals (3)		1			1						1							
Use of citizens' knowledge		4			5						6						1	
Use of citizens' knowledge (continued)																7		

List of good practises

Prevention of compliance problems

1. Detailed information on obligations related to business activities is available on the designated website of the relevant ministries (for example, for farmers related to fertilizer use and fertilizer storage in nitrate vulnerable zones and Natura 2000 sites), including pdf manuals for specific rules and geographical indications.
2. Responsible bodies / offices organize regular information events on key issues for business entities and stakeholders (eg. GAP for farmers).
3. Specialized advisory services provide free advice, including online advisory services, to farmers and land managers on how to meet cross-payment requirements under CAP.

Monitoring of compliance

4. Integrated, transparent and participatory inspections are carried out with good coordination between the competent authorities and clear delineation of functions and powers, while site visits, plans and reports are publicly available.
5. The designated portal of the Agencies for protection of the environment and nature provides geospatial data for distribution of emissions, mobile and stationary sources of emissions, habitats and places of Natura 2000, illegal landfills in speleological facilities, waste management facilities and landfills and a national air quality network.
6. The websites of the Ministries of Environment or Environmental Inspectorates provide easily accessible and understandable inspection plans, as well as applications for monitoring illegal activities for waste or industrial emissions on its website.

Further activities and implementation

7. Establishment of specific environmental ombudsmen in order to facilitate the implementation of environmental law.
8. Opportunity for online detection and monitoring of complaints received by inspection bodies during the year.

Cooperation and training for ensuring compliance

9. Establishment of a working group for cooperation between the national authorities for environmental crime, which prepares a National Strategy for Prevention of Environmental Crime and Action Plans with the proposed structure of activities throughout the whole country.
10. Formal cooperation agreements for effective fight against environmental crime, exchange of information and provision of training between national authorities and services.
11. Cooperation between rangers, forest managers, parks and the police, including the sharing of local knowledge and technical equipment to combat environmental crime. Hunters and various stakeholders may also be involved.

Acting upon appeals (1): complaints about environmental problems or non-compliance

12. Websites, applications and an accessible and transparent grievance system at national and local level in the field of environmental protection.
13. A step-by-step guide guides citizens on how to file a complaint, when they will be informed, how to proceed and within what timeframe.

Acting upon appeals (2): complaints about the administration

14. Central information point on the Internet for the implementation of the Aarhus Convention.

15. The Commissioner for Environment and / or the Commissioner for Administration and Human Rights has specific powers to review the decisions of public bodies in the field of environment.
16. The investigative team appointed by the Ombudsman is responsible for cases of mismanagement by national authorities.

Use of citizens' knowledge

17. Forest inspectors and the National Environmental Guard collect information from citizens on a voluntary basis and decision makers use this data to protect forests.

5.5 Effectiveness and efficiency

5.5.1 General overview in relation to the EU member states



The results of the EM assessment [1] show that, overall, France, Denmark, the Netherlands and Sweden showed the highest level of achievement in terms of effectiveness and efficiency. High levels of environmental integration and coordination are characteristic of these countries, including good frameworks for absorption of funds.

Poor Performance in Some Countries [Figure 5] are mainly due to poor performance in green public procurement and intergovernmental implementation of goals for sustainable growth and gaps in mechanisms for addressing environmental issues in the *Regulatory Impact Assessments*.

Figure 5 Map of effectiveness and efficiency overview (Source **Error! Reference source not found.**)

5.5.2 Examples of good practises

Table 4 Examples of good practices for effectiveness and efficiency

Clusters of good practises	Good practices identified in the member states												
	AT	BE	BG	HR	FI	FR	IE	IT	LV	LT	PL	SK	SE
1										1			
2	2						2	2					
3						3					3		
4				4				4	4				
5	5	5			5								5
6			6		6								
7												7	7

List of good practises

1. Administrative and legal mechanisms have been adopted to bring the functions closer together in order to be more accessible to users. (Eg. principle of one-stop shop system⁹ in the public administration that obliges state and municipal institutions to serve to individuals and consider their requests and complaints).
2. Rationalization of the decision-making process related to the Environmental Impact Assessment (EIA), jointly and coordinated between the competent institutions.
3. Rationalization of processes for issuing permits was also identified, including a single procedure for environmental authorization, and an electronic one-stop shop system is planned to further facilitate the required procedures.
4. Various proposals for the use of electronic services in the environmental administration for dissemination of information, as a tool for consultation or to help citizens following the developed principle of one-stop shop system.
5. Green and sustainable public procurement policies, with specialized agencies or services and continuous measurement of the percentage of public procurement where environmental requirements are to be applied.
6. Introduce framework or mechanisms of the council for improvement of the use of regulatory impact assessments (RIAs) to ensure better decision-making and an understanding of environmental impacts.
7. Development of comprehensive environmental strategies to improve the coordination of activities and decision-making, while obeying the national environmental goals and the goals for sustainable growth.

⁹ <https://www.dataguidance.com/opinion/eu-one-stop-shop-under-gdpr>

6. LIST OF REFERENCES

- {1} Development of an assessment framework on environmental governance in EU Member States, Final Report, May 2019
- {2} Environmental Implementation Overview 2019: Policy Background, GD on Environment, EC
- {3} Environmental Implementation Overview 2019, Report on the countries, GD on Environment, EC
- {4} Best Practices from the 2019 Environmental Implementation Overview across the 28 EU countries, by Eileen O'Leary (Center for Clean Technology, Cork Institute of Technology)
- {5} Project "Promoting best practices for national environmental information systems and data collection tools at EU level", <http://www.eis-data.eu/>

„HORIZONTAL“ DIRECTIVES

- {6} Requirements for notification defined with the Directive 91/692/EE3
- {7} The Directive 97/11/E3 on amendments and addition of the Directive 85/337/EE3 on the assessment of the effects of certain public and private projects on the environment;
- {8} The Directive 2001/42/E3 on the assessment of the effects of certain plans and programmes on the environment;
- {9} The Directive 2003/4/E3 for public access to environmental information and the abolition of the Directive 90/313/EE3;
- {10} The Directive 2003/35/E3 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment;
- {11} Responsibility for the environment, for which the Directive 2004/35/E3 establishes a framework for prevention and remediation of environmental damage
- {12} Directive 2009/90 / EC of 31 July 2009 on technical specifications for chemical analysis and monitoring of water status



POLICY PAPER
HOW TO ACHIEVE EFFICIENT AND EFFECTIVE ENVIRONMENTAL JUSTICE?

PROJECT:
“Establishing efficient and effective environmental justice”

IMPLEMENTER:
CENTER FOR LEGAL RESEARCH AND ANALYSIS

PERIOD OF IMPLEMENTATION:
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