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Climate and Environmental Justice and Public Participation Assessment Report

Montenegro

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CONTENTS

1.	LIST OF ABBREVIATIONS	4
2.	EXECUTIVE SUMMARY	6
	2.1 CEJ Assessment findings	8
	2.2 Key Recommendations	9
3.	INTRODUCTION	11
	3.1 The Rationale	11
	3.2 Background and Context	13
	3.3 Why This Report?	13
4.	METHODOLOGY	14
5.	DIAGNOSTIC OF THE ENVIRONMENTAL JUSTICE SYSTEM	15
	5.1 System Overview	15
	5.1.1 Legal Framework	15
	5.1.2 Legal Framework on Public Participation in Environmental Decision-Making	17
	5.1.3 Institutional Framework	20
	5.1.4 Enforcement and Judicial Practices	24
	5.1.5 Enforcement of Public Participation Practices	26
	5.1.6 Alternative Dispute Resolution Mechanisms	31
	5.2 Case Analysis	32
	5.2.1 Access to Justice Key Case Studies	32
	5.2.2 Available Legal Tools	34
	5.2.3 Access to Justice Challenges	35
	5.2.4 Analysis of Participation Mechanisms	36
	5.2.5 Public Participation Key Case Studies	37
	5.3 Existing Assessments	40
6.	NEEDS ASSESSMENT	42
	6.1 Legislative Needs	42
	6.2 Public Participation Needs	44
	6.2.1 Public Engagement	44
	6.2.2 Tools for Participation	47
	6.3 Institutional Needs	49
7.	COMPARATIVE ANALYSIS	51
	7.1 Environmental Justice and Participatory Mechanisms on the EU Accession Path	51
	7.1.1 Environmental Justice	51
	7.2 Comparative analyses between targeted countries	58
	7.3 French Best Practices	59

7.3.1 Illegal Logging, Deforestation and Independent Administrative Authority of Controls	59
7.3.2 Biomass/Biofuel Plants	60
7.3.3 Water Pollution by a Food Processing Industry	60
7.3.4 Emergency Procedure for the Right to a Safe and Healthy Environment: The “Référé Liberté”	60
7.3.5 Environmental justice	64
8. GENDER AND VULNERABLE GROUP INCLUSION.....	66
8.1 Barriers to Access	66
8.1.1 Gender-based violence and inequality	66
8.2. Legal and Institutional gaps.....	66
8.3 Economic and Employment barriers.....	67
8.4. Barriers to environmental justice	67
8.5 Inclusion Strategies	68
8.5.1 Gender-Responsive Approaches and Inclusion in Environmental Justice	68
9. RECOMMENDATIONS.....	69
9.1 Environmental Justice Recommendations	69
9.2 Public Participation Recommendations	70
9.3 CEJ Convergence Project Roadmap.....	72
9.3.1 Strategic Vision and Goals	72
9.3.2 Priority Actions and Timeline	72
9.3.3 Main Project Components.....	72
9.3.4 Implementation Framework	73
9.3.5 Key Outcomes and Success Metrics	73
10. ANNEXES.....	74
Annex I. Environmental Justice Stakeholder Mapping.....	74
Annex II. List of Analysed Legal Acts, Court Rulings, Policy Documents and Other Resources	75
Annex III. Summaries of Stakeholder Interviews and Focus Group Discussions	79
III.1 Summary of Semi-Structured Interviews on Environmental Justice and Public Participation in Environmental Matters in Montenegro	79
III.2 Summary of focus group discussions on Environmental Justice and Public Participation in environmental matters in Montenegro.....	81
Annex IV. Environmental Crimes in Montenegro and Statistics on Legal Proceedings.....	86
IV.1 Criminal Offenses in Eco-crime Directive and Montenegrin Criminal Code	86
IV.2 Environmental Crime Cases Rejected by Prosecution, Convictions and Unsuccessful Charges before Basic Courts in Montenegro in 2018-2022	88
Annex VII: Additional Resources.....	89
VII.1. Some Examples of Local Participation.....	89
VII.2 Bibliography of Environmental Law in the Western Balkans	93
VII.3 Directive 2024/2013 on the Protection of the Environment Through Criminal Law	103
VII.4 Gender issues and the environment	105

1. LIST OF ABBREVIATIONS

ABS	Access and Benefit-Sharing
AC	Aarhus Convention
AFD	Agence Française de Développement
BAT	Best Available Techniques
CADA	Commission for Access to Administrative Documents
CBD	Convention on Biological Diversity
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEJ	Climate and Environmental Justice
CESE	Conseil Economique, Social et Environnemental (French for 'European Economic and Social Committee')
CITES	Convention on International Trade in Endangered Species
CJEU	Court of Justice of the European Union
CJIP	French-style Deferred Prosecution Agreement (Convention Judiciaire D'intérêt Public)
CLP	Classification, Labelling, and Packaging
CNDP	Commission Nationale du Débat Public (French for 'National Commission on Public Debate')
CPDP	Commission particulière du débat public - independent ad hoc
CSOs	Civil Society Organizations
CZIP	Center for Protection and Research of birds of Montenegro
DSF	Document Stratégique de Façade (French for 'façade strategic documents')
DSIPs	Directive-Specific Implementation Plans
DT	Disposition Time
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EF	Expertise France
EIA	Environmental Impact Assessment
EIPA	European Institute of Public Administration
ELD	Environmental Liability Directive
ENPE	European Network of Prosecutors for the Environment
EPA	Environment Protection Agency
EPI	Environmental Performance Index
EPCG	Elektroprivreda Crne Gore – Electricity company of Montenegro
ESIA	Environmental and Social Impact Assessment
EU ETS	European Union Emissions Trading System
EU	European Union
EUFJE	European Forum of Judges for the Environment
GBV	Gender-based violence
GHG	Greenhouse gases
GJIE	Global Judicial Institute on Environment
GMO	Genetically Modified Organisms
HPP	Hydro Power Plant
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
IPPC	Integrated Pollution Prevention and Control
IUCN	International Union for Conservation of Nature
LFS	Labour Force Survey
LGU	Local Self-Government Unit
LLC	Limited Liability Company
MAB	Man and Biosphere Programme
mHPs	Mini-hydro power plants

MNE	Montenegro
NGO	Non-governmental organisation
OG	Official Gazette
OPDAT	U.S. Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training
OSCE	Organization for Security and Co-operation in Europe
PIC	Prior Informed Consent
PP	Public Participation
PPVE	Electronic Public Participation
Ramsar	Convention on Wetlands of International Importance
REACH	Registration, Evaluation, Authorisation, and Restriction of Chemicals
REC	Regional Center for Environmental Protection
SCCOC	Special Courts for Corruption and Organized Crime and the Special Court of Appeals for Corruption and Organized Crime
SEA	Strategic Environmental Assessment
SLAPP	Strategic Lawsuits Against Public Participation
SHPP	Small Hydro Power Plant
TPP	Thermo Power Plant
UNDP	United Nations Development Programme
UNWOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
VOC	Volatile Organic Compounds
WB	Western Balkans
WEEE	Waste Electrical and Electronic Equipment Directive

2. EXECUTIVE SUMMARY

This report provides an overview of the national system of environmental justice in Montenegro, including public participation practice, mapping of key actors and an assessment of their needs, a comparative analysis of the state of environmental justice of the countries in the region, as well as an overview best practice from France. The report also sheds some light on inclusion of vulnerable groups and the gender dimension of environmental and climate justice. Finally, some recommendations to address identified deficiencies are included.

Environmental and climate justice requires transformative action based on the rule of law and the respect, protection and fulfilment of environmental rights. Within its EU accession process, Montenegro received a positive Interim Benchmark Assessment Report from the EU Commission for negotiation Chapters 23 (Justice and Fundamental Rights) and 24 (Justice, Freedom, and Security). However, there many challenges remain. Justice efficiency needs improvement: by year end of 2023, cases older than three years rose by 20%, with the average case disposition time increasing to 309 days.

According to the available statistics, Illegal logging is a predominant environmental crime in Montenegro. Small organized, criminal groups are involved in illegal logging in areas along the border with Albania and Kosovo. A mid-term evaluation of the National Gender Equality Strategy highlighted declining budget allocations for gender initiatives, and the marginalization of gender equality in political agenda.

This report is prepared by a group of national and international experts. In terms of methodology, desk research, structured interviews and focus group discussions were used to gather data and opinions of targeted stakeholders and assess the state of environmental justice in Montenegro. More than 80 legal acts, court rulings and policy documents were used during the desk research phase. As a part of the mapping and analyses of the stakeholders and their role in the process, structured interviews were prepared and conducted with representatives of various stakeholders' groups. Two focus group sessions were organized in Podgorica in October and December 2024.

'Diagnostic of the Environmental Justice System in Montenegro' provides insight into the legal and institutional framework, enforcement and judicial and public participation practices backed by case analysis. Montenegrin legal framework is comprehensive and complex, largely aligned with EU Acquis and international standards. The right of the public to participate in environmental decision-making processes and access to justice in environmental matters in Montenegro is a special and fundamental right, guaranteed and protected by the Constitution. A citizen can report an environmental concern to the Inspectorate, and file a misdemeanour or criminal complaint with the prosecutor or the police. The responsibility of state authorities to redirect the report to the appropriate body if they are not competent to address the issue was discussed with focus group participants: a common opinion is that this feature should be improved. In general, access to justice is granted to citizens and civil society organizations (CSOs) but it takes more effort to make a strong case due to limited knowledge of all environmental justice actors.

The assessment of the judicial practice is based on statistics of cases rejected by prosecution, convictions and unsuccessful charges before basic courts in Montenegro in the period 2018 - 2022. Findings show that the court epilogue ends with conviction in the majority of cases, especially with "traditional" criminal acts such as illegal logging, hunting and fishing. All three cases for environmental pollution were dismissed. The share of terminated cases (dismissed, along with the defendant's acquittal) is significant (one third), pointing to possible capacity issues on collecting and interpreting evidence. Judges tend to apply the minimum level of fines

and use mitigating circumstances when the Law provides for a fixed fine. In many cases, the judges face significant difficulties in establishing causal links between an offence and its environmental impact. During 2023 and 2024, based on the Chapter XXV of the Criminal Code (which covers crimes against environment and spatial planning) Montenegrin courts issued 157 convictions in 2023 and 51 in 2024, only one acquittal and five refusals. Most convictions are based on suspended sentences (164); there were 21 prison sentences, 14 penalties related to work in public interest and 49 fines. There is no data on environmental cases that were solved in an alternative manner, but there is a possibility to use mediation in disputes related to environmental justice especially when there is a request related to compensation of damage.

Public participation practice is assessed through statistics on public hearings in the period 2021 – 2024 and appeals filed to the second-instance body on public participation issues. The assessment shows that many of the appeals filed to the second instance were adopted, indicating that legal remedies for citizens and NGOs that challenged those decisions are effective. Moreover, public participation practices were assessed through several cases presenting a span of 20 years of environmental activism in Montenegro. Case Studies underline the effectiveness of public participation in regulating environmental impacts in Montenegro and in influencing project outcomes. It could be concluded that almost all positive examples of citizen activism are related to protests, not court proceedings.

A SWOT analysis of the public participation practice is also presented, showing that the system of informing the public about public hearings is outdated and that there is a need to embrace modern digital tools and go beyond the legal minimum in engaging the public in environmental decision-making.

An overview of previous studies on environmental justice in Montenegro shows that main identified deficiencies are lack of institutional capacity, especially in inspection bodies and an evident lack of inter-institutional coordination, but also corruption among government officials and institutions. The Report on Environmental crimes, prepared by the Organization for Security and Co-operation in Europe (OSCE) Mission states that the realization of the “dark number” of unrecorded environmental offenses underscores a critical training need within competent authorities responsible for combating environmental crime in Montenegro. The limited number of completed cases reflects a gap in detection and processing activities, highlighting the necessity for enhanced skills and knowledge among law enforcement agencies, regulatory bodies, and other relevant institutions.

Comparative analysis shows that, when it comes to access to justice in environmental matters, in Albania, Montenegro and Northern Macedonia, the admissibility of associations and individuals, as in many Member States, may constitute the first barrier (or sometimes a strong filter) in which this European framework should nevertheless encourage an extensive approach to the interest to act. Difficulty in proving the environmental and/or material damage alleged by the environmental associations is significant in all three countries. Non-governmental organisations’ (NGOs) moral damage, understood as reparation of non-material harm, does not seem to be recognised by the legal systems in Albania, Northern Macedonia and Montenegro. In the three countries studied, the difficulties of demonstrating the risks or damage to the environment are highlighted. None of the countries studied - even though they are exposed to the problem of deforestation - appear to have introduced obligations to monitor the management of illegal timber risks within forestry companies. In all three countries, public participation faces the same challenges. Firstly, effective participation does not always seem to be guaranteed. This difficulty may be linked to the conditions under which the procedures are organised (dates, places and times of public meetings not adapted), but also to the lack of public awareness of environmental issues. Secondly, the independence of environmental authority assessment from the public authority making the decision and from the project owner does not seem to be a given.

However, this point is essential to ensure that the environmental and health impacts of projects are fully and objectively assessed and that the public is fully informed. Finally, the public's influence on the decision often appears to be weak. This observation points to the difficulty of developing projects, plans or programmes within the framework of consultative procedures. This observation undoubtedly calls for a reflection on the timing of participation procedures - do they come too late in the decision-making process? - but also on their methods or on the way in which the authorities perceive these mechanisms: instruments of legitimation, information tools and instruments for improving decision-making processes.

The assessment also finds that gender disparities persist in access to sustainable agricultural resources and renewable energy technologies. It also suggests some elements of inclusion strategies to promote fair access to justice, increase public participation and enhance civic engagement while addressing systemic barriers faced by marginalized groups.

The last section summarizes key entry points and future opportunities which may yield a comprehensive strategic offer for environmental justice. This includes consolidating best practices and lessons learned from international practice to inform increased support to this portfolio and build strategic partnerships with key actors in this and related areas.

2.1 CEJ Assessment findings

This assessment focuses on the challenges and gaps to be addressed in order to strengthen institutions to deliver public participation, environmental justice and empower citizens, communities and environmental NGOs to defend rights to a healthy environment. Desk research, work in focus groups and structured interviews helped to formulate key findings, which can be summarized as follows:

- The Constitution of Montenegro guarantees the right to participate in environmental decision-making and ensures access to relevant environmental information.
- Laws, such as the Law on Environmental Impact Assessment (EIA) and the Law on Strategic Environmental Impact Assessment (SEA), align with EU directives, mandating public hearings and consultations during various stages of project assessments.
- Public access to information and participation opportunities is often undermined by limited proactive outreach. Informing the public typically meets the legal minimum, with insufficient utilization of digital tools for broader engagement.
- Focus group discussions highlighted a recurring issue where public hearings are poorly timed, limiting accessibility for broader involvement of citizens.
- Responsible authorities have formal mechanisms for public consultations but lack capacity for effective follow-up on citizen feedback.
- Appeals against EPA decisions indicate the efficacy of appeal mechanisms for NGOs and citizens.
- Positive outcomes from public participation are often linked to civic protests rather than formal consultation processes. This suggests that institutional engagement mechanisms need strengthening.
- Though Montenegro proved satisfactory regarding the rule of law in its EU accession process, there are many challenges to be addressed such as justice efficiency, corruption and lack of mechanisms for inter-institutional cooperation.
- Institutions dealing with environmental justice are understaffed and need capacity building at all levels. Establishment of the specialized departments (e.g., environmental police, green prosecutors) are needed but remain a challenge due to understaffing.
- Ambiguities persist in punitive provisions and enforcement, leading to inconsistent application and interpretation of environmental laws and the Criminal Code.
- A lack of effective tools such as guidance documents and user-friendly databases.

2.2 Key Recommendations

Key recommendations aimed at enhancement of the public participation in environmental decision making and environmental justice in Montenegro include the following:

- **Legal Precision/Coherence Between Laws:** Improved alignment between the Criminal Code and sectoral laws is required to avoid ambiguities regarding criminal acts and misdemeanours, such as environmental pollution crime.
- **Strengthening People-Centred Institutions/Capacity Building:** Institutions involved in environmental protection must enhance their ability to safeguard environmental rights. Limited collaboration among entities like inspectorates, police, prosecutors, and judges hampers effective enforcement. Institutionalizing a national mechanism for coordination, training, and knowledge sharing is recommended. Train officials in participatory methods and allocate more financial resources, especially for local governments.
- **Legal Empowerment/Empowering Communities:** Legal empowerment focuses on enabling individuals and communities to understand and utilize the law to protect their environmental rights. It emphasizes community-led approaches over traditional legal aid. Supporting CSOs and activists by providing strategic guidance and legal aid is a key component of this approach. This includes supporting the work of legal professionals, including community paralegals in environmental matters, whose primary role is to work directly with the communities they serve using mediation, organization, education and advocacy. Additionally, undertaking capacity building efforts with CSOs that are close to communities affected by environmental and climate challenges can allow them to be stronger agents of change and advocate for community needs.
- **Improve legal standing of CSOs** through legal provisions and promote alternative solving of environmental cases.
- **Environmental Justice Tools/Guidance Documents: Create resources to help both citizens and institutions address environmental crimes**, with reference to national and international case law. Develop a user-friendly database of case law linked to specific Criminal Code articles for public and judicial use.
- **Improve exercise of environmental rights:** Guarantee public access to participation rights and improve transparency of information.
- **Beyond legal minimum:** Exceed minimum legal requirements in public notifications, deadlines, and information accessibility. Extend consultation periods beyond legal minimums and implement pre-registration for public hearings.
- **Modernize Communication:** Integrate digital platforms and social media for broader public outreach and avoid engagement during holidays. Avoid overly technical language and improve public understanding.
- **Tailored Approaches:** Adapt participation methods based on project sensitivity and community needs, using diverse channels like workshops, TV debates, and SMS alerts.

- **Quality Control:** Establish mechanisms to assess environmental decision quality and meet overdue action plan deadlines.
- **Awareness Campaigns/ Continuous Engagement:** Strengthen media campaigns on public participation rights, especially under the Aarhus Convention. Maintain environmental topics in public focus and improve Aarhus centres' transparency and effectiveness.

3. INTRODUCTION

Environmental and climate justice requires transformative action based on the rule of law and the respect, protection and fulfilment of environmental rights. Throughout the 1990s, the environmental justice movement expanded its focus on social inequalities, such as disparities between environmental conditions experienced by the richest and poorest sectors of society. Accordingly, environmental justice is often understood to seek the equitable treatment and involvement of people of all races, cultures, nations, and socioeconomic backgrounds in the development, implementation, and enforcement of environmental programs, laws and policies¹.

The challenges related to addressing environmental justice, including climate justice, require equitable solutions and the respect, protection and fulfilment of human rights in the context of climate change mitigation and adaptation, biodiversity conservation and pollution control efforts. Examples include efforts to enhance protected areas and forest coverage for climate mitigation purposes, rights of youth, children and future generations with regards to climate impacts and ensuring public participation and access to information for all in society with regard to climate change policy and decision making, as well as access to justice for human rights violations caused or triggered by the changing climate and environmental degradation.

Another important aspect is the need to promote just transitions to a low emissions and sustainable economy, and equity in reaching global net zero emissions by the middle of the century, as required by the Paris Agreement. This requires not only an enabling legal framework, but also adherence to the rule of law, and the respect of human rights.

3.1 The Rationale

To set the scene for discussion on the state of environmental justice in Montenegro, a short overview of the state of rule of law and environmental governance in the country is presented below.

On June 25, 2024, the European Commission announced that Montenegro was the first Western Balkan country to receive a positive Interim Benchmark Assessment Report (IBAR) for negotiation Chapters 23 (Justice and Fundamental Rights) and 24 (Justice, Freedom, and Security) in its EU accession process. This milestone highlights the country's progress in establishing the rule of law. The 2024 EU Progress Report provides a deeper analysis:

- **Justice Efficiency:** The justice system requires significant improvements. By the end of 2023, cases older than three years rose by 20%, with the average case disposition time increasing to 309 days (up from 238 days in 2022). The situation in the Administrative Court is particularly concerning, with the average disposition time reaching 1,411 days. However, there is a positive trend in alternative dispute resolution. More work is needed to digitize the justice system, especially in court communications.
- **Fundamental Rights:** While the general framework for fundamental rights is adequate, there are gaps in access to justice, particularly for vulnerable groups. By mid-2024, 2,440 cases were pending in the Constitutional Court, with 2,107 related to human rights.

¹ Environmental Justice, Securing our right to a clean, healthy and sustainable environment, UNDP 2022, https://www.undp.org/sites/g/files/zskgke326/files/2022-06/Justice-Environmental%20Tech%20Report%2001%5B36%5D_0.pdf

Efforts are needed to align criminal legislation with EU standards and ensure victims' rights are upheld.

- **Social Issues:** Social polarization persisted, with marginalized groups such as Roma, Egyptians, individuals with disabilities, and LGBTQI persons facing discrimination, hate speech, and hate crimes. Amendments to the Criminal Code in December 2023 marked progress in addressing racism and hate speech.
- **Gender Equality:** A mid-term evaluation of the National Gender Equality Strategy highlighted declining budget allocations for gender initiatives and the marginalization of gender equality in political agenda. Women's access to justice and institutions promoting gender equity require improvement.
- **Judicial Cooperation:** Montenegro cooperated intensively with Eurojust in 2023, processing 76 cases, 58 of which it initiated. However, the working arrangement with the European Public Prosecutor's Office (EPPO) has yielded limited practical outcomes.
- **Environment and Climate Change:** Montenegro must strengthen administrative capacities at both central and local levels to meet EU benchmarks under Chapter 27. Key challenges include staff shortages, weak inspection services, poor inter-institutional coordination, and inadequate financial frameworks. Establishing a cohesive institutional structure for environmental and climate planning is critical to promote investments in these sectors.

The fourth Environmental Performance Review of Montenegro (2024) notes that environmental crime in the country include both flora and fauna crimes, which refers to illegal trade and possession of species covered by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and national legislation. Wildlife crimes mainly relate to poaching, and illegal, unreported and unregulated fishing. These types of environmental crimes have an increasing trend lately. Illegal logging is a predominant crime in Montenegro. Small, organized criminal groups are involved in illegal logging in areas along the border with Albania and Kosovo. Corruption among government officials and institutions is reported to facilitate these criminal activities. Lake Skadar is known to attract illegal, unreported and unregulated fishing mainly by locals. International cooperation in the fight against environmental crime has improved in recent years. This also applies to relations with neighbouring countries.

On March 6, 2024 an anti-corruption forum on environmental protection, organized by the Balkan Investigative Reporting Network Montenegro and the Civic Alliance, was held in Podgorica. This was attended by representatives of the executive and legislative powers, environmentalists and journalists. At the forum, it was stated that environmental corruption at all levels of government is one of the biggest challenges in Montenegro. It was recommended that inspectorates respond more adequately to reports of environmental corruption and that local authorities cooperate more with citizens who report corruption. It was also suggested that higher standards be set for punishing environmental crime. Procedures for obtaining (building) permits and waste management appear to be susceptible to environmental corruption. The forum mentioned a need for a more deterrent and effective criminal justice policy and response to avoid the perception of impunity.

In the area of environmental crime, 97 new cases were registered in the reporting period from June 2022 to June 2023, and 53 cases were closed. The lack of administrative capacity at central and local levels and inspection bodies needs to be addressed, as well as insufficient interagency coordination.

3.2 Background and Context

The Project on Climate and Environmental Justice Convergence in the Western Balkans, financed by the Agence Française de Développement (AFD) and implemented by Expertise France (EF) seeks to improve access to justice and effectiveness of citizen participation in the field of environmental justice, thereby contributing to convergence towards European standards in Albania, North Macedonia and Montenegro.

In a regional context, the project aims at improved common understanding, coordination and governance of justice in the field of environment and strengthened capacities of legal professionals in the field of environmental justice, as well as improved environmental justice reporting channels, legal remedies, their coordination and public accessibility.

While Albania and North Macedonia have more substantial project programme, activities in Montenegro are limited to this assessment report. The intention is for the report to serve as a tool for implementation of the EU accession priorities by focusing on key aspects of environmental governance. The assessment describes legislative, institutional, and participatory frameworks and their implementation, with the aim of identifying existing gaps and opportunities to enhance public participation and access to justice in environmental matters, i.e. essential components of democratic governance and environmental sustainability. Montenegro will also be involved in the regional activities of the project, bringing together professionals from all three countries to discuss common issues, methodologies, tools, good practices, etc.

3.3 Why This Report?

This report provides an overview analysis of the national system regarding environmental justice and public participation, mapping of actors and identification of their expectations and interest in participating in the regional activities of the project, and relevant recommendations on how to involve Montenegrin actors in the multi-country activities of the project.

Apart from the review of the current legal and regulatory frameworks and practices, the report shall also identify gaps and flows in the existing system with focus on the implementation and recognize and promote some good practices from the targeted countries and France. In addition, international and national expertise focuses on two cross cutting issues such as:

- EU Accession process: using the French experience of Environmental *Acquis* and use of other international legal tools and mechanism in the pursuit of environmental justice;
- Gender equality: using the French experience of gender balance in environmental justice.

4. METHODOLOGY

In terms of methodology, desk research, structured interviews and focus group discussions were used to gather data and opinions of targeted stakeholders and assess the state of environmental justice in Montenegro.

More than 50 legal acts, court rulings and policy documents were used during the desk research phase. They are listed in Annex II.

As a part of the mapping and analyses of the stakeholders and their role in the process, structured interviews were prepared and conducted with representatives of various stakeholders' groups. On October 29, 2024, an initial meeting of the focus group was held in Podgorica. Comprising 20 participants, the condition of climate and environmental justice in Montenegro (see *Annex III – Summaries of stakeholder interviews & Report from the Focus Group Meetings*) was discussed

Structured interviews on environmental justice comprised of five sections with several questions focusing on the following topics:

- Stakeholders of the Environmental Justice system in Montenegro and their respective roles;
- Condition of Environmental Justice in Montenegro, including legal and institutional framework;
- Obstacles to Environmental Justice and recommendations to overcome identified issues;
- Experience of the respondents in Environmental Justice, including referral to particular cases;
- Knowledge about capacity building activities in this area and suggestions on needs and expectations.

Structured interviews on public participation in environmental decision making were also divided into five sections, each addressing key aspects of the topic:

- Understanding the roles and responsibilities of various actors in public participation in the environmental decision-making process.
- Assessing the adequacy of existing laws, regulations and institutions in facilitating effective public participation.
- Identifying barriers faced by stakeholders and proposing recommendations to enhance inclusivity and transparency.
- Collecting first-hand experiences of participation in environmental decision-making, including reference to specific cases.
- Evaluating current knowledge levels and suggesting initiatives for improving awareness and skills related to public participation.

Findings and recommendations of this assessment were shared and discussed with the focus group in order to serve as a feedback mechanism for this process. This iterative approach ensured that the findings are refined to accurately reflect the needs of stakeholders. Validation meeting with the focus group was held in Podgorica on 19th December 2024. This helped the CEJ Convergence Project shaping the component activities according to the stakeholder's needs.

5. DIAGNOSTIC OF THE ENVIRONMENTAL JUSTICE SYSTEM

5.1 System Overview

5.1.1 Legal Framework

Constitution and Constitutional Appeal

Environmental justice has a special place in the Montenegrin constitution. Apart from Article 1, in which Montenegro is declared as a “civil, democratic, ecological and the state of social justice, based on the rule of law”, all three pillars of the Aarhus Convention are transposed in the Article 23: “Everyone shall have the right to a sound environment. Everyone shall have the right to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment, and to legal protection of these rights. Everyone, the state in particular, shall be bound to preserve and improve the environment.”

The Constitution also provides the possibility to use the constitutional appeal in cases of, *inter alia*, non-conformity of laws with the Constitution and confirmed and published international agreements or non-conformity of other regulations and general acts with the Constitution and the law, or due to the violation of human rights and liberties granted by the Constitution, after all the available legal remedies have been exhausted. Any person may file an initiative to begin the procedures required to assess constitutionality and legality before the Constitutional Court.

When the Constitutional Court establishes that the law is not in conformity with the Constitution and confirmed and published international agreements, that is, that other regulation is not in conformity with the Constitution and the law, that law and other regulation shall cease to be valid on the date of publication of the decision of the Constitutional Court. The law or other regulation, *i.e.*, the individual provisions found inconsistent with the Constitution or the law by the decision of the Constitutional Court, shall not be applied to the relations that have occurred prior to the publication of the Constitutional Court decision if they have not been solved by an absolute ruling by that date.

Horizontal Environmental Legislation

The Law on Environment² is a key legal act in the management and protection of the environment. It establishes principles, mechanisms and the institutional framework for environmental protection in line with the requirements stemming from Montenegro’s international commitments.

European legislation falling under the “horizontal legislation” sub-Chapter, namely Directive 2001/42/EC (SEA), Directive 2011/92/EU (EIA) as amended, Directive 2003/4/EC (access to environmental information), Directive 2003/35/EC (public participation and access to justice), Directive 2004/35/EC (environmental liability), as amended, and Directive 2008/99/EC (on the protection of the environment through criminal law) are fully transposed in Montenegrin legislation through the following legal acts: Law on Strategic Environmental Impact Assessment,³ Law on Environmental Impact Assessment,⁴ Law on Confirmation of the Convention on the Availability of Information, Public Participation in Decision-Making and the

² Law on Environment Official Gazette of Montenegro No. 52/2016, 73/2019

³ Law on Strategic Environmental Impact Assessment Official Gazette of Montenegro No. 80/2005, 40/2011, 59/2011, 52/2016

⁴ Law on environmental impact assessment, Official Gazette of Montenegro No. 75/2018

Right to Legal Protection in Environmental Matters,⁵ Law on Liability for Environmental Damage⁶ and the Criminal Code⁷.

Strategic environmental assessment (SEA)/Environmental Impact Assessment (EIA)

Public consultation on EIA Study and SEA Report is to be organized and conducted by the competent authority. The duration period is a minimum of 30 days from the date of public/media announcement. The meetings should be announced in electronic and printed media. The competent authority is obliged to inform the interested public of the decision on granting or rejecting the application for approval of the EIA study within five working days from the date of the decision and to publish it on its website and e-government portal.

Although these rules are in accordance with relevant EU legislation, focus group participants noted the need for more pro-active involvement of the public (see Annex III).

Aarhus Convention / Directive 2003/4/EC and Directive 2003/35/EC

These international/EU instruments are fully integrated into Montenegrin environmental legal framework through multiple instruments starting from the Constitution and the Law on Environment to the more specific legal acts, such as Law on EIA and the Law on Industrial Emissions. The Aarhus Convention has been ratified and introduced into Montenegrin legal system by the Law on Confirmation of the Convention on the Availability of Information, Public Participation in Decision-Making and the Right to Legal Protection in Environmental Matters, backed by the Article 9 of the Montenegrin Constitution which gives supremacy to the ratified and published international agreements, and generally accepted rules of international law over the national legislation, prescribe their direct application if they regulate relations differently to the national legislation. In addition, the Law on Free Access to Information⁸ enable citizens and CSOs to access information in possession of the public administration, without needing to prove their interest in particular issues.

Law on Liability for Environmental Damage

In accordance with Directive 2004/35/EC on environmental liability, the Law on Liability for Environmental Damage sets out specific legal tools available for environmental justice. OSCE publication 'Environmental Crime in Montenegro'⁹ contains an overview of its implementation in the period 2021-2023. The analysis shows that until the end of 2022, only one case of determining damage or imminent threat of environmental damage was prosecuted, while from the end of 2022 to date (September 2023) more than 20 cases have been initiated. Among the cases, illegal exploitation of gravel in the lower reaches of the Morača River absolutely dominated the reports. One case is related to the management of hazardous chemicals and the ignition of waste in an illegal landfill, while two reports refer to the outflow of inadequately treated wastewater. The Environmental Protection Agency is responsible for initiating the procedure to determine damage or immediate risk of environmental damage. This institution may initiate proceedings *ex officio* or upon an initiative/application.

⁵ Law on Confirmation of the Convention on the Availability of Information, Public Participation in Decision-Making and the Right to Legal Protection in Environmental Matters, Official Gazette of Montenegro (International Agreements) No. 3/2009

⁶ Law on Liability for Environmental Damage Official Gazette of Montenegro No. 27/2014, 55/2016

⁷ Criminal Code, Official Gazette of Montenegro No. 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017, 49/2018, 3/2020, 26/2021, 144/2021, 145/2021

⁸ Law on free access to information, Official Gazette of Montenegro No. 44/2012 and 30/2017

⁹ Environmental crime in Montenegro, D. Cakovic, OSCE Mission to Montenegro 2023

Criminal Code

The EU Directive on Environmental Crime (2008/99/EC), defines nine offences which, when unlawful and committed intentionally or with at least serious negligence, constitute criminal offence. The Montenegrin Criminal Code recognizes all of them through eight articles, but also lists other 22 offenses under Chapter XXV - Criminal Offenses Against Environment and Spatial Planning. Some of the criminal offenses recognized by the Criminal Code of Montenegro are also defined as 'misdemeanours' in environmental legislation. For a comparative table of environmental crimes formulated in the Montenegrin Criminal Code and EU Directive on environmental crime, including the statistics on legal proceedings (see the *Annex VI - Environmental crimes in Montenegro and statistics on legal proceedings*).

Sectoral and procedural legislation

Environmental legislation in Montenegro is complex and comprehensive, in line with the EU environmental framework. Key legal acts in this area marked as "sectoral" are Law on Air Protection, Law on Waters, Law on Waste Management, Law on Nature Protection, Law on Industrial Emissions, Law on Safe Management of Chemicals, Law on Protection from Environmental Noise, Law on Protection from Negative Impacts of Climate Change, etc. Numerous environmental laws contain prohibitions and punitive provisions, while access to justice is regulated by procedural laws such as Law on Administrative Procedure,¹⁰ Law on Misdemeanours,¹¹ Law on Civil (litigation) Procedure¹² and the Code on Criminal Procedure¹³.

5.1.2 Legal Framework on Public Participation in Environmental Decision-Making

The right of the public to participate in environmental decision-making processes in Montenegro is a special and fundamental right, guaranteed and protected by the Constitution. In addition, it is also derived from other rights and freedoms guaranteed by the Constitution, such as the right to access information, the right to local self-Government, the right to vote, freedom of thought, conscience and religion, the right to propose Laws, the right to submit proposals to call a state referendum, freedom of expression, freedom of association, the right to a healthy environment, etc. Thus, the right to public's participation in decision-making, both at the national and local level in Montenegro, is derived from numerous rights and democratic principles, both those that belong to national legislation and those that are found in international acts ratified by Montenegro. This normative framework enables the public to get involved in important political processes and contribute to decision-making at both national and local level.

The **Constitution of Montenegro** guarantees basic rights and freedoms that enable public participation. It establishes a fundamental right for every citizen to access information held by public authorities and participate in environmental decision-making processes (article 23 cited on p.15). Article 51 explicitly provides that citizens have the right to a healthy environment and mandates that authorities must ensure public access to environmental information.

On November 2nd, 2009, Montenegro acceded to the **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters - the**

¹⁰ Law on Administrative Procedure OG MNE No. 56/2014, 20/2015, 40/2016 i 37/2017
https://www.paragraf.me/propisi-crnegore/zakon_o_opstem_upravnom_postupku.html

¹¹ Law on Misdemeanors ("Official Gazette of Montenegro", No. 01/11, 06/11, 39/11, 32/14, 43/17, 51/17)

¹² Zakon o parničnom postupku (Sl. list Crne Gore br. 22/2004, 28/2005 - odluka US i 76/2006 i "Sl. list CG", br. 47/2015 - dr. zakon, 48/2015, 51/2017, 75/2017 - odluka US, 62/2018 - odluka US, 34/2019, 42/2019 - ispr. i 76/2020)

¹³ Zakon o krivičnom postupku (Sl. list Crne Gore br. 57/2009, 49/2010, 47/2014 - odluka US, 2/2015 - odluka US, 35/2015, 58/2015 - dr. zakon, 28/2018 - odluka US i 116/2020 - odluka US)

Aarhus Convention (1998)¹⁴ which enforces the right of public access to information, participation in decision-making and access to justice in environmental matters. By accepting the Convention, the Government and the competent authorities, and even the private sector, undertake to establish a system for informing the public about environmental protection issues and involve the public in decision-making processes. As far as its accompanying protocols are concerned, in 2017 Montenegro adopted **Law on Ratification of the Protocol on Pollutant Release and Transfer Registers** ("Official Gazette of Montenegro – International Treaties", No. 01/07, 38/13), while the country is not a member of the GMO amendment to the Convention. Montenegro is the signatory of the UN Convention on Environmental Impact Assessment in a Trans Boundary Context – ESPOO and of the respective Protocol on Strategic Environmental Assessment – SEA Protocol (1991) (**Law on Confirmation of the Multilateral Agreement of the Countries of Southeast Europe on the Implementation of the Convention on Environmental Impact Assessment in a Trans Boundary Context** ("Official Gazette of Montenegro – International Treaties", No. 02/09)) and the UN Convention on the Trans Boundary Effects of Industrial Accidents (1992). Montenegro ratified both Conventions in 2008.

Key horizontal environmental legislation relevant for the public's participation in environmental decision-making is as follows:

Law on the Environment ("Official Gazette of Montenegro" No. 52/16, 73/19) stipulates that everyone has the right to be informed about the condition of the environment and to participate in the decision-making process (article 5). This increases public participation in informed decision-making, and ultimately improves the condition of the environment. The State must ensure that the information is: accurate, up-to-date, well organized, easy to access and comparable. It is prescribed that non-governmental organizations (NGOs) participate in the preservation of the environment and that the State encourages the participation of the NGOs in making decisions of importance for environmental protection. *Directive 2003/4/EC on public access to environmental information* is transposed through this Law.

Law on Environmental Impact Assessment (EIA) ("Official Gazette of Montenegro" No. 75/18) prescribes, among other things, that for all projects that are planned and implemented, which may significantly affect the environment, the competent authority informs the interested public (natural and legal persons, associations, organizations or groups). *Directive 2014/52/EU amending Directive 2011/92/EU on environmental impact assessment* and *Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programs relating to the environment* are fully transposed through this law and related implementing acts.

Law on Strategic Environmental Impact Assessment (SEA) ("OG of Republic of MNE" No. 80/05, "Official Gazette of Montenegro" No. 73/10, 59/11, 52/16) regulates participation of the public in the decision-making phase on giving consent to the SEA Report. The authority responsible for the preparation of the plan or program (also responsible for the implementation of the SEA) should inform the general public and the interested public about the method and deadlines for viewing the content of the SEA Report and submitting opinions, as well as the time and place of the public hearing. *Directive 2001/42/EC on Strategic Environmental Assessment (SEA Directive)* and *Directive 2003/35/EC* provides for public participation when drawing up plans and programs relating to the environment.

¹⁴ Based on the Law on Ratification of the Aarhus Convention ("OG of Montenegro", International Treaties No. 77/09), the Convention entered into force on the 90th day after the date of deposit of the instrument of ratification, article 20 paragraph 3 of the Convention. However, activities aimed at the early implementation of the Aarhus Convention in Montenegro have been present since the end of the 90ies of XX century, under the auspices of the Regional Center for Environmental Protection (REC).

Law on Industrial Emissions ("Official Gazette of Montenegro", No. 17/19, 3/23, 34/24) stipulates that the competent authority informs interested bodies, organizations and the public about each step in the process of issuing integrated permit (IPPC permit). Directive 2003/35/EC provides for public participation when drawing up plans and programs relating to the environment.

Law on Spatial Planning and Construction ("Official Gazette of Montenegro", No. 64/17, 44/18, 63/18, 11/19, 18/20, 86/22, 4/23) ensures mandatory implementation of prior public participation, in the initial, earliest phase of planning document preparation, in order to familiarize the interested public with the goals and purpose of the planning document, as well as possible planning solutions. Through the organization of public hearings on the draft planning document, active participation of the public and interested users of the space is ensured.

Law on Nature Protection ("Official Gazette of Montenegro", No. 54/16, 18/19) stipulates that administrative authorities are obliged to, at the request of interested legal and natural persons, submit data on the state and protection of nature, except for data that are considered secret in accordance with the law.

Other relevant legislation¹⁵ :

Law on Free Access to Information ("Official Gazette of Montenegro", No. 44/12, 30/17) mandates transparency and open access to environmental data held by public authorities. *Directive 2003/4/EC on public access to environmental information* is transposed through this Law.

Law on State Administration ("Official Gazette of Montenegro", No. 78/18, 70/21, 52/22) regulates the public and transparent work of state administration bodies, i.e., the obligations of state administration bodies to inform the public about the performance of tasks within their scope. The law prescribes the obligation to hold public hearings in the preparation of laws and strategies.

Law on Local Self-Government ("Official Gazette of Montenegro", No. 2/18, 34/19, 38/20, 50/22, 84/22) establishes frameworks ensuring transparency in local administration practices. It stipulates the obligation for the Municipal Assembly to regulate the manner and procedure of citizen' participation in the performance of public affairs, with the aim of local citizens' participation in making decisions of immediate and common interest (Article 166). The decision on the participation of the local population in the performance of public affairs regulates: forms (surveys, media plans, notice boards, boxes for remarks, proposals and suggestions, websites, organizing workshops in local communities, visiting lecturers, expert meetings and round tables etc.), subjects, procedures, deadlines and methods of participation of the local population in the

¹⁵ Law on Genetically Modified Organisms ("Official Gazette of Montenegro", No. 22/08), Law on Chemicals ("Official Gazette of Montenegro", No. 51/17), Law on Waste Management ("Official Gazette of Montenegro", No. 34/24), Law on Air Quality ("Official Gazette of Montenegro", No. 25/10, 43/15, 73/19), Law on Forests ("Official Gazette of Montenegro", No. 74/10, 47/15), Law on Waters ("OG of the Republic of MNE", No. 27/07, "Official Gazette of Montenegro", No. 32/11...84/18), Law on protection against ionizing radiation and radiation safety ("Official Gazette of Montenegro", no. 56/09, 58/09, 55/16, 84/24), Law on protection against non-ionizing radiation ("Official Gazette of Montenegro", No. 35/13), Law on Protection and Rescue ("Official Gazette of Montenegro", No. 13/07, 05/08, 86/09, 32/11, 54/16, 146/21, 3/23), Law on protection against noise in the environment ("Official Gazette of Montenegro", No. 28/11, 1/14), Law on Spatial Data Infrastructure ("Official Gazette of Montenegro", No. 37/17), Law on Foreign and Invasive Foreign Species of Plants, Animals and Fungi ("Official Gazette of Montenegro", No. 18/19), Law on Biocidal Products ("Official Gazette of Montenegro", No. 54/16, 34/24), Law on the Protection from the Negative Effects of Climate Change ("Official Gazette of Montenegro", No. 73/19), Law on the Protection of the Marine Environment ("Official Gazette of Montenegro", No. 73/19) and Law on Game and Hunting ("Official Gazette of Montenegro", No. 52/08, 48/15).

performance of public affairs, a report on the success of the procedure and other issues of importance for the activities of the local population in decision-making.

Law on NGOs ("Official Gazette of Montenegro", No. 39/11, 37/17) facilitates the operational environment for NGOs, allowing them to work in environmental advocacy and educational activities.

Other relevant legislation.¹⁶

5.1.3 Institutional Framework

Environmental Justice

Institutional framework related to environmental justice is observable using a bottom-up approach, beginning with the citizen who is entitled to access to justice in environmental matters by Constitution, but also with a series of other acts, including Law on Administrative Procedure, Law on Misdemeanours, Law on Civil Procedure and the Code on Criminal Procedure. Furthermore, while communities and informal citizens associations do not have legal standing in environmental cases, their strength in starting initiatives, protesting and advocating should not be neglected. On the contrary, their impact and input resolving environmental issues is especially highlighted in case studies analysis related to public participation (see Section 5.3).

Civil Society Organizations have also an important role in advocating and defending individual freedoms. Environmental NGOs are granted some rights in environmental matters, but they are in many cases limited and conditioned with proof of interest, not only in Montenegro, but globally. Recent changes in European environmental *Acquis* are tailored towards overcoming these limitations (e.g., an environmental NGO should not have to prove its interest in the case related to the protection of environment¹⁷). Apart from environmental NGOs, legal aid NGOs have a very important role to play in promotion of Environmental Justice.

Legal Entities can play a variety of roles in the context of environmental justice, but in the majority of cases they perform, or intend to perform, an economic activity which can pose a threat to the environment. Montenegrin environmental legal framework requires operators of such economic activities to respect certain emission values, possess permits and licenses for their activities, monitor the condition of the environment affected by their activity, report on it and pay certain fees. Prior to commencing such an activity, the project proponent is obliged to pass through an EIA process which will show the level and scope of environmental threat and propose mitigation or elimination measures. These obligations are often the reason behind many administrative proceedings. Unlike citizens and NGOs who benefit from legal aid, legal entities can usually afford lawyers who 'game the system' e.g. misuse and exploit the right to appeal by appealing and objecting to every decision. This results in delays, making many administrative procedures

¹⁶ Law on Electronic Administration ("Official Gazette of Montenegro", No. 72/19), Law on Administrative Procedure ("Official Gazette of Montenegro", No. 56/14, 20/15, 40/16, 37/17), Law on administrative disputes ("Official Gazette of Montenegro", No. 54/16), Law on civil servants and employees ("OG of the Republic of MNE", No. 2/18, 34/19, 8/21, 37/22), Law on preschool education and training ("OG of the Republic of MNE", No. 64/02, 49/07, 80/10, 40/16), Law on Basic Education and Upbringing ("OG of the Republic of MNE", No. 64/02, 49/07, "Official Gazette of Montenegro", No. 45/10, 39/13, 47/17, 59/21, 3/23), Law on Adult Education ("Official Gazette of Montenegro", No. 20/11, 47/17), Law on the Protector of Human Rights and Freedoms of Montenegro ("Official Gazette of Montenegro", No. 42/11, 32/14, 21/17"), Law on Prohibition of Discrimination ("Official Gazette of Montenegro", No. 46/10, 18/14, 42/17), Law on prohibition of discrimination against persons with disabilities ("Official Gazette of Montenegro", No. 35/15, 44/15), Law on Media ("Official Gazette of Montenegro", No. 54/24), Law on Data Confidentiality ("Official Gazette of Montenegro", No. 14/08, 76/09... 48/15, 74/20), Law on Misdemeanors ("Official Gazette of Montenegro", No. 01/11, 06/11, 39/11, 32/14, 43/17, 51/17), Law on Inspection Supervision ("OG of the Republic of MNE", No. 39/03, "Official Gazette of Montenegro", No. 76/09, 57/11, 18/14, 11/15, 52/16) and Law on Free Legal Aid ("Official Gazette of Montenegro", No. 20/11, 20/15).

¹⁷ Directive (EU) 2024/2881 of the European Parliament and of the Council of 23 October 2024 on ambient air quality and cleaner air for Europe, Article 27, <https://eur-lex.europa.eu/eli/dir/2024/2881/oj/eng>

unnecessarily long. Use and misuse of political pressure can lead to allegations of corruption. Public cynicism further erodes their participation and willingness to contribute if the belief is criminal sanctions can be evaded by the rich, powerful and influential.

The process of beginning a legal case or initiative involves both citizens and NGOs, which have first contact with various institutions, depending on the procedure. Those are: **environmental inspectorate, police, basic prosecutor office, basic courts.**

Environmental Inspectorate recently (October 2024), a part of the Inspection Administration, was abolished. Inspectors and inspections have been absorbed into relevant ministries. Environmental Inspection is now a department within the Ministry of Ecology, Sustainable Development and Development of the Northern Region. This poses questions around conflicts of interest: both first instance and second instance bodies in administrative procedure are under the same roof.

Police are a first point of contact to citizens and other entities in exercising their rights. They receive reports and inform the competent prosecutor in criminal matters. There is no department dealing exclusively with environmental matters. Many stakeholders support the idea of the creation of a specialized department, senior management hesitate because of the pressure on already underfunded and understaffed services.

State Prosecutor also does not have dedicated departments or prosecutors specializing in environmental justice. According to the OSCE,¹⁸ 59.8% of respondents believe that the State Prosecution Service is generally efficient in its work. Of this number, 13.7% claim that it is very efficient, while 46.1% think that the State Prosecution Service is somewhat efficient. Respondents who think that the State Prosecution Service is generally inefficient cite as the main reasons for inefficiency as State corruption (87.6%), fear of criminal organizations (82.3%), and dependence on the Government (71.4%).

- **Judiciary** - The legal system in Montenegro encompasses various types of courts, each with distinct jurisdiction and functions collectively ensuring the effective administration of justice. At the foundational level are the **Basic Courts**, which mainly handle civil and criminal cases. These courts serve as the first instance level and are present in almost every municipality, allowing accessible justice throughout the country. Each Basic Court has jurisdiction over specific geographic areas, and with Hearings ranging from minor civil disputes to more serious criminal offenses. There are no specific court departments or experts for environmental cases. Moreover, since distribution of cases is random, it is not possible to establish it in accordance with the current Law on Courts.
- Above the Basic Courts are the **Higher Courts**, which operate as appellate courts. Their primary role is to review decisions made by Basic Courts, ensuring that legal procedures were properly followed, and that justice was served. Higher Courts also have jurisdiction over specific types of cases, including certain criminal cases that are of greater complexity or seriousness. This two-tier system allows for an essential check on the decisions made at lower levels, promoting fairness and accountability within the judicial system.
- **Administrative Court** plays the role of third-instance in administrative disputes, deciding on compliance of decisions taken by public authorities in administrative matters with the Law on Administrative Procedure. Decisions of the Administrative Court can be challenged before the **Supreme Court**.

¹⁸ Perception of the State Prosecution Service in Montenegro, OSCE 2022

- The apex of the judicial hierarchy is the **Supreme Court of Montenegro**. As the highest court in the country, it has the authority to interpret laws and ensure their uniform application across all courts. The Supreme Court also plays a critical role in resolving conflicts in lower court decisions and often handles cases of significant national importance. Additionally, it hears appeals on decisions from Higher Courts. Furthermore, specialized courts, such as commercial and administrative courts, address specific types of legal matters, contributing to a comprehensive legal framework tailored to the needs of society.

Both the **Environmental Protection Agency (EPA)** and the **Ministry of Ecology, Sustainable Development and Development of the Northern Region** play important roles in environmental protection through administrative procedure. While EPA is responsible for implementation of environmental laws including licensing, compliance, EIA procedures, and initiation of procedures related to liability for environmental damage, the Ministry is the second instance body, acting upon an appeal filed against decisions of the first instance body (EPA or Environmental Inspectorate).

The Ministry of Justice has a pivotal role in overseeing a multitude of functions necessary for functioning of the courts, such as preparation and implementation of laws and policies related to the judiciary.

Protector of Human Rights and Freedoms of Montenegro (Ombudsman) is an independent and autonomous institution, tasked with protecting human rights and freedoms when they are violated by an act, action or inaction of state bodies, state administration bodies, local self-government bodies and local administration, public services and other holders of public authority. Included are measures to prevent torture and other forms of inhuman or degrading treatment and punishment and measures to protect against discrimination.

Center for Training in the Judiciary and State Prosecution was originally established as Judicial Training Centre in 2000, but transformed several times in accordance with the recommendations outlined in the Action Plan for Negotiation Chapter 23 – Judiciary and Fundamental Rights and the 2014-2018 Justice Reform Strategy. The Center provides induction and continuous training to members of judiciary and state prosecution.

International organizations play an important role in the development of mechanisms for access to justice and public participation in decision-making in environmental matters. Among various organizations that tackle these issues through specific projects, the Council of Europe and Organization for Security and Co-operation in Europe (OSCE) have especially important positions, due to their mandate to constantly support the rule of law and judicial reform, including in environmental matters. The OSCE Mission in Montenegro supports adopting new legislation on environmental protection and climate change, and to better combat crimes that harm the environment. The Mission supports police and prosecutors, as well as NGOs, in order to enhance inter-agency cooperation and good practice, to strengthen capacity and efficiency, and to encourage action against environmental crime. The Mission promotes the OSCE ministerial decisions and commitments on environmental protection, in line with the international standards and best practices in this field.

Public Participation

Ministry of Ecology, Sustainable Development and Development of the North holds significant responsibilities related to public participation in environmental decision-making. This includes preparing and monitoring regulations and strategic planning in the fields of environment and sustainable development. Public access to environmental information is a core function of the Ministry, achieved through platforms and resources that facilitate citizens' access to relevant environmental data. This empowers the public to engage meaningfully in decision-making

processes. A critical aspect of the Ministry's role involves organizing public consultations to invite stakeholders, including NGOs and the general public, to provide input on environmental policies, plans, and projects.

Environmental Protection Agency (EPA) plays a pivotal role in facilitating public participation within the environmental decision-making framework. Established to implement environmental protection laws, EPA's responsibilities encompass several key areas that directly engage the public. A primary function of EPA is to ensure transparency and accessibility of environmental information. This involves collecting, analyzing, and disseminating data on environmental conditions, thereby enabling the public to make informed contributions to policies and decisions. Thus, EPA is obliged to regularly publish information on the condition of the environment, reports and other updates on its official website. In the realm of EIAs, EPA is tasked with overseeing the preparation and review of EIA Studies for proposed projects. This process includes organizing public consultations, where stakeholders and citizens can express their views and concerns regarding potential environmental impacts. Furthermore, EPA is responsible for issuing environmental permits and licenses, a process that incorporates public participation elements. Before granting permits for activities that may significantly affect the environment, EPA conducts public hearings and solicits feedback from interested parties.

Local government units (LGUs) play a role in facilitating public participation within environmental decision-making processes at local level. Namely, the Law on Local Self-Government outlines the framework for LGUs, granting them authority over environmental protection and spatial planning within their jurisdictions. Under the Law on EIA, LGUs are tasked with organizing public consultations during the EIA process for projects that may significantly affect the environment. They are responsible for informing the public about proposed projects, facilitating access to relevant documentation and collecting public comments and concerns. This participatory approach ensures that community input is considered before final decisions are made. Additionally, the Law on Free Access to Information obligates LGUs to provide citizens with access to environmental information upon request, which should enable informed public participation.

The Administrative Court ensures the legality of public participation in environmental decision-making processes. The Court operates independently and is responsible for reviewing administrative decisions and safeguarding public participation rights. The role of the Administrative Court primarily involves the judicial review of decisions made by public authorities to ensure that they comply with procedural and substantive legal standards. This ensures adherence to public participation rights and compliance with international and national legal requirements. In the context of public participation in environmental decision-making, the Court provides a legal avenue for individuals, NGOs and other stakeholders to appeal decisions they perceive as unlawful or inconsistent with public participation rights.

Non-Governmental Organizations (NGOs) in Montenegro play a crucial role in ensuring public participation in environmental decision-making. This is firmly grounded in both ratified international commitments and national legal frameworks. One of the key international instruments in this domain is the Aarhus Convention. At national level, the Law on Environmental Protection ("Official Gazette of Montenegro," No. 52/16) provides the primary framework for public participation in environmental governance. This law recognizes the right of citizens and their associations to be informed and actively involved in processes that could impact the environment. Specifically, Article 12 emphasizes the obligation of public authorities to ensure public participation during the preparation of plans and programs related to the environment. Additionally, Law on Environmental Impact Assessment ("Official Gazette of Montenegro," No. 75/18) outlines detailed procedures for public consultations and stakeholder engagement, including NGOs, during the assessment of projects' environmental impacts. This law mandates

public hearings and consultations, ensuring that NGOs can actively contribute their expertise and opinions. NGOs in Montenegro leverage these legal mechanisms to advocate for transparency and accountability in environmental decision-making. They organize public debates, workshops and awareness campaigns to inform citizens about their rights and opportunities for engagement. Furthermore, NGOs collaborate with government institutions by providing expert opinions and recommendations to enhance environmental policies.

In order to best apply and access information, as well as to make decisions in the field of the environment, in Montenegro 5 (five) **Aarhus Centres** were established. With the support of the OSCE Mission, 3 (three) Aarhus Centres were opened (Aarhus Centre Podgorica (organizational unit of EPA) - April 15th 2011, Niksic Aarhus Centre (within the NGO "Environmental Movement Ozon") - November 11th 2011, Aarhus Centre in Berane (organizational unit of EPA) - September 21st 2012. In May 2014, NGO "Environmental Society Breznica" opened a regional Aarhus Centre in Pljevlja, which is used by citizens of Pljevlja, Mojkovac, Bijelo Polje, Prijepolje, Priboj, Čajniče and Goražde. Also, in 2015 the Aarhus Centre in Kolašin, founded by the NGO "Natura", was opened.

5.1.4 Enforcement and Judicial Practices

Regardless of who is authorized to submit a request, initiate a procedure, or prosecute, any individual can report a violation of regulations or an illegal activity they observe. However, a person or other entity that reports the violation or an illegal activity not participating in the further phases of the certain procedure, is not considered a party in the procedure, and is not informed of the outcome of the case. A citizen can report the issue to the inspection, file a misdemeanour or criminal complaint with the prosecutor or the police. The responsibility of state authorities in addressing and redirecting the report to the appropriate body if beyond their capacity was discussed with focus group participants. The general belief was this particular feature should be improved.

In general, defenders of environmental rights (citizens, NGOs) tend to begin multiple procedures, using all possible means, to prevent or stop environmental damage. This means that they address both environmental inspection and other administrative bodies, beginning with the administrative procedure, but also press criminal charges for the same case. These two procedures can exist in parallel, albeit substantially different, but at a certain point of time the prosecutor or judge will decide on the existence of the criminal act, or will redirect the plaintiff to misdemeanour procedure. Following the principle to use lenient regulation, many criminal acts are redefined as misdemeanour in instances where there is a thin line between formulation of the criminal act in the Criminal Code, and corresponding misdemeanour in the sectoral laws. It is especially the case with the so-called "blanket crimes" as explained further in text (see *Section 6.1*).

If the issue is reported to the relevant and correct inspectorate, the inspector will always proceed with a site visit and act in accordance with the law. On the other hand, if the report is filed with the prosecutor or the police, it can be rejected if the prosecutor finds that a certain violation is not a criminal act. The role of the police in this procedure is to provide professional assistance to citizens and other entities in exercising their rights, receive reports and inform the competent prosecutor. The number of rejections and cases begun by the prosecution in the period 2018-2022 is presented in Table 1. Among the environmental criminal acts recognized by EU legislation the most prominent is the killing and torture of animals and destruction of their habitat¹⁹ with 25 cases started, but also with 39 rejections. Among other environmental crimes defined in the Montenegrin criminal code, the majority of cases are related to illegal logging,

¹⁹ Revision of Directive 2008/99/EC, Protection of the environment through criminal law: any conduct which causes the significant deterioration of a habitat within a protected site

hunting and fishing. This suggests that both prosecution and judiciary, and also citizens and inspectors, are more familiar with 'traditional' criminal acts such as poaching, than with criminal acts which are formulated in recent decades, such as environmental pollution.

Reasons for rejection of cases by prosecution are cited as: the reported offense is not a criminal offense, the reported offense is not one that is prosecuted *ex officio*, obsolescence, the offense is covered by amnesty or pardon, it cannot be determined from the report whether the allegations are probable, data in the report do not provide sufficient grounds to initiate an investigation, there is no reasonable suspicion that the suspect committed a criminal offense which is prosecuted *ex officio* or there are other circumstances that exclude prosecution. A significant number of rejections point to the need for professional assistance to make a convincing case.

Once the case is with the relevant court, it can also be dismissed by the judge on similar grounds: if the prosecutor has withdrawn the charge, a final decision has already been made, the accused has received amnesty or pardon, or if prosecution is barred by statute of limitations or other permanent conditions. Additionally, the court may dismiss the indictment if it lacks jurisdiction, the indictment was unauthorized, or there are other barriers to prosecution. Statistics of cases rejected by prosecution, convictions and unsuccessful charges before basic courts in Montenegro in the period 2018 -2022²⁰ is presented in the *Annex IV - Environmental crimes in Montenegro and statistics on legal proceedings*.

Statistics demonstrate that the court epilogue ends with conviction in the majority of cases, especially with "traditional" criminal acts such as illegal logging, hunting and fishing. All three cases for environmental pollution were dismissed.

Court practice on environmental cases is limited. Between 2009 and 2013,²¹ the competent environmental authorities submitted 180 requests in total to initiate legal proceedings for misdemeanour violations. Most of these cases were for disposal and/or collection of waste without a licence, non-compliance with the decisions of the inspectors, and beginning projects without EIA and consent of the competent authority. Fines are a common response to misdemeanour cases concerning the environment. Decisions are often delayed. The share of terminated cases (dismissed, along with the defendant's acquittal) is significant (one third), pointing to possible capacity issues on collecting and interpreting evidence. In many cases, the judges face significant difficulty in establishing causal links between an offence and its environmental impact.

Penalties

In Montenegro, environmental protection is governed by a framework of laws aimed at preserving natural resources and ensuring sustainable development. The penalties for environmental violations can vary significantly based on the nature and severity of the offense. The legal basis for these penalties is rooted in the Law on Environmental Protection and several other related acts that collectively establish rules for preserving the environment.

The range of fines for environmental violations can differ markedly. Minor infractions might attract fines that are relatively low, while more serious offenses, especially those resulting in significant damage to ecosystems or public health, can incur substantial penalties. For instance, individuals or entities found guilty of illegal waste dumping may face fines that can reach several thousand euros, reflecting both the seriousness of the offense and the need to deter. Cases involving severe environmental harm, such as damage to protected areas or polluting water sources, could lead to fines exceeding tens of thousands of euros. Moreover, the penalties can

²⁰ Environmental crime in Montenegro, D. Cakovic, OSCE Mission to Montenegro 2023

²¹ Third Environmental Performance Review of Montenegro, UNECE 2014 https://unece.org/sites/default/files/2021-08/ECE_CEP_173.pdf

also extend beyond financial repercussions. Offenders may be required to undertake remedial actions aimed at restoring damaged environments, which can involve costly and time-consuming measures. Legal sanctions may also include the suspension of business operations for companies found in violation of environmental regulations. Additionally, repeated or egregious violations might lead to more severe consequences, including criminal charges against responsible parties.

However, judges tend to apply the minimum level of fines and use mitigating circumstances when the law provides for a fixed fine.

Montenegro's Criminal Code involves imprisonment, a fine and a community service as punishment types. While imprisonment and community service can be pronounced only as principal punishments, a fine can be imposed both as a principal and as an accessory punishment. A prison sentence should be no less than thirty days, and no longer than 20 years (except the long-term imprisonment of 30-40 years for the most severe crimes). A fine cannot be less than 200 EUR, and not more than 20,000 EUR (except for the criminal offences committed out of 'greed'). Fines range from:

- 1) up to € 2.000 for criminal offences punishable with imprisonment sentence of maximum 3 months;
- 2) from € 400 to € 4.000 for criminal offences punishable with imprisonment sentence of maximum 6 months;
- 3) from € 600 to € 8.000 for criminal offences punishable with imprisonment sentence of maximum one year;
- 4) from € 800 to € 16.000 for criminal offences punishable by imprisonment sentence of maximum 2 years;
- 5) at least € 1.200 for criminal offences punishable with imprisonment for a maximum of three years.
- 6) at least € 1.200 for criminal offences for which a fine is prescribed by law as the sole punishment.

In the period 2013-2018, the types of sanctions used by Montenegrin courts in environmental matters is as follows: in 64.10% of all convictions, a suspended sentence was imposed; in 21.63%, a fine; in 10.31%, a prison sentence, and in 59 cases (or 3.95%) a community service sentence.²² During 2023 and 2024, on the basis of the Chapter XXV of the Criminal Code, Montenegrin courts issued 157 convictions in 2023 and 51 in 2024. There was one acquittal and five refusals. Most convictions are based on suspended sentences (164): there were 21 prison sentences, 14 penalties related to work in public interest and 49 fines. Overall, Montenegro's approach to imposing penalties for environmental violations emphasizes both deterrence and restoration. By instituting a broad range of fines and penalties, the government seeks to maintain environmental integrity while ensuring public awareness of, and compliance with, environmental laws.

5.1.5 Enforcement of Public Participation Practices

In Montenegro, the right to public participation in environmental decision-making is mainly exercised by the *Law on EIA*. For all projects planned and implemented, and which may have a significant impact on the environment, the competent authority (EPA at national level, and local

²² Analysis of environment protection in Montenegro through administrative and criminal law, J. Ikovic, Center for Protection and Research of birds of Montenegro (CZIP) 2018 <https://czip.me/2024/01/26/analiza-krivicnopravne-i-preksajnopravne-zastite-zivotne-sredine-u-crnoj-gori/>

Secretariats at local level) invites the interested public to provide opinions in all relevant phases of the decision-making process, as follows:

- in decision making *on the need to prepare EIA Study* (Article 13, paragraph 1);
- in decision making *on the request for determining the scope and content of the EIA Study* (Article 16, Paragraphs 4 and 8);
- in decision making *on the request for giving consent to EIA Study* (Article 20, Paragraph 1 and Article 24, Paragraph 5).

Notification includes details about the project, such as its purpose, location, scale and potential environmental effects. Notifications must be made accessible through multiple channels (including EPA’s and/or municipality’s website, at least one local or daily newspaper published in the area that will be affected by the impact of the planned project, as well as through electronic media), ensuring that the information reaches a wide audience. This transparency is essential if the public is to be made aware of developments that could impact their communities.

Once an EIA Study is prepared, the competent authority organizes **public hearings** to gather input from citizens, local organizations, environmental NGOs and other stakeholders. Public hearings are typically held in accessible locations within the affected community. Law on EIA stipulates that there should be sufficient notice before the hearing. During public hearing, representatives of the public can voice concerns, question project proponents and suggest alternatives. This process ensures that the public’s voice is integrated into the environmental decision-making process at an early stage.

Competent authorities are obliged to consider public feedback in their final decision. This means that all comments, concerns and suggestions collected during the public hearing must be reviewed and taken into account. Authorities are required to document in the form of a report, how each public comment was addressed, including explanations on integration or dismissal of certain suggestions. Once a decision is made by EPA or LGU, the competent authority is mandated to make the decision publicly accessible, along with the rationale. This allows the public to understand the outcomes of their participation and promotes accountability among decision-makers.

In 2021, at national level (EPA’s responsibility) there were 37 EIA procedures carried out, followed by an increase in 2022, with 48 procedures. The upward trend continued in 2023, during which 68 procedures were conducted. In the period January 1st-July 31st 2024, a total of 34 EIA procedures were completed. Each of these EIA procedures included mandatory public consultations and stakeholders were kept informed at every stage. This also means that competent authorities are aware of the fact that the Law on EIA foresees the misdemeanour liability of state authorities (and local Government authorities) if they do not organize a public hearing.

Table 1. Number of public hearings on EIA Studies initiated by EPA in period 2021-2024

	2021	2022	2023	January 1 st - July 31 st 2024
Law on EIA	37	48	68	34

Law on EIA grants the public the right to appeal the EIA Decision if they believe that their concerns were inadequately addressed, or that the Decision process was flawed. This appeal process is crucial for enforcing public participation rights. The Law on Administrative Procedure (Article 119) stipulates that the party has the right to appeal against the decision made in the first instance, or when the decision has not been made within the time prescribed by law, unless the appeal is not permitted by Law. Second instance decisions reached on appeal are the

responsibility of the Ministry for Environmental Affairs at national level (EPA Decisions) and Chief Administrator at local level (LGU Decisions).

Occasionally, there is delayed public interest when the matter is already closed, and the deadlines for appeal have expired. One example is a case from 2014, when NGOs, Green Home and MANS used the Recognition of the Right of Party status in two cases related to the approval of the EIA Study for the submarine electricity interconnection between Italy and Montenegro²³. EPA recognized them according to the Law on General Administrative Procedure and the Aarhus Convention, despite one of the NGOs submitting its opinion on the EIA Study beyond deadline. These organizations claimed the investor deliberately chose the period of annual vacations to submit the request to the EPA, in order to inform the public and conduct the public hearings with as little public involvement as possible. The Commission for the Evaluation of the EIA Study accepted a part of this claim to be justified. Since then, the Commission has ordered the applicant to prepare an updated EIA Study and subsequently approved the new EIA Study.

In second-instance administrative procedure, during 2022, a total of 39 (thirty nine) appeals were submitted to the Ministry of Environmental affairs opposing the decisions of the EPA: 34 (thirty four) decisions were made, namely: 9 (nine) decisions of the EPA were cancelled and the cases returned for retrial and decision-making, 18 (eighteen) decisions rejected the appeal and confirmed the EPA's decisions, 6 (six) decisions cancelled the EPA's decisions, and 1 (one) decision suspended the procedure. Ruling on appeals filed against the decisions of the Inspection Administration (IA), 2 (two) decisions were made that rejected the appeal and confirmed the decision of the environmental inspector and 3 (three) decisions that annulled the decision of the environmental inspector, the case returned for retrial and decision-making.

In the second-instance administrative procedure during 2023, a total of 24 appeals were submitted to the Ministry of Environmental Affairs, against the decisions of the EPA, according to which 19 decisions were made, namely: 13 decisions by which the decisions of the EPA were cancelled and the cases were returned for re-procedure and decision-making and 2 decisions which annulled the decisions of the EPA and decided on the merits, 4 decisions rejecting the appeal and confirming the decisions of the EPA. One complaint was filed at the end of December, and ergo postponed to 2024. Ruling on the appeals filed against the decision of the IA, 3 decisions were made. Namely 2 decisions which annulled the decision of the environmental inspector and returned the case back for retrial, and 1 decision which rejected the appeal and confirmed the decision of the environmental inspector.

In the second - instance administrative procedure in the period January-September 2024, a total of 31 environmental complaints were submitted, of which 21 were against the decisions of the EPA and 10 were against the decisions of the Directorate for Inspection Affairs. In 16 cases (10 of EPA and 6 of IA) the decision was annulled and returned for re-decision. In 15 cases (EPA) the appeal was rejected as unfounded.

In conclusion, from the above statistics, many of the appeals filed to the second-instance were adopted and the decision-making processes returned to the first instance for re-decision. This means that legal recourse for citizens and NGOs challenging decisions is not in line with environmental protection standards. Significant public opposition is ignored.

If not satisfied with the decision made at the second instance, citizens and NGOs can initiate administrative disputes in front of the Administrative Court. The Law on Administrative Disputes (Article 16, Paragraph 1) says an administrative dispute can be triggered against an

²³ The project holder, the company "Terna Crna Gora" d.o.o. from Podgorica, submitted, on July 28th 2014, a request for consent to the EIA Study of the HVDC 500kV interconnection "Italy - Montenegro" and related works (only for the land and sea part of the cable in Montenegro), Municipality of Kotor.

administrative act passed in the second instance, and that an administrative dispute can be triggered by a lawsuit. In other words, and in terms of active identification, representatives of the interested public who participated in the decision-making procedures have the right to dispute the legality of the corresponding administrative act of the authority.

In 2022, 19 responses to the lawsuit were submitted to the Administrative Court of Montenegro, which were submitted against the decision of the Ministry in charge of environmental affairs. The proceedings before the court are ongoing. One judgment was passed by the Administrative Court of Montenegro, which accepted the lawsuit and annulled the decision of the Ministry of Environmental affairs. In 2023, 4 responses to the lawsuit were submitted to the Administrative Court of Montenegro, which were submitted against the decision of the Ministry in charge of environmental affairs. The proceedings before the Court are ongoing.

For projects that proceed, public participation can extend into this phase (“ongoing monitoring of environmental impacts”), where citizens and local organizations can report violations or unanticipated environmental impacts. This ongoing role reinforces the idea that public participation is not a one-time event, but a continuous process throughout the project lifecycle. In accordance with the Espoo Convention, the procedure of cross-border consultations is carried out for projects that may impact the environment of another country. In this case, or if that country requests it, the EPA, as soon as possible, and no later than for informing its public, sends a notification to another state.

The *Law on SEA* regulates the participation of the public in the decision-making phase when consenting to the SEA Report. The authority responsible for the preparation of the plan or program (also responsible for the implementation of the SEA) informs the public and the interested public about the method and deadlines for viewing the content of the SEA Report and submitting opinion, as well as the time and place of the public hearing (Article 19). The public hearing can be held no earlier than 30 days from the day of informing the public and the interested public. It is conducted by the authority responsible for preparing the plan or program. The authority within 30 days of the end of the public hearing prepares a report on the participation of interested bodies and organizations in the public hearing. This report contains the opinions submitted during the public review and public hearing on the SEA Report. Included are explanations of all accepted or rejected opinions (article 20). SEA Report is approved or rejected by the EPA. If the implementation of a plan or program has a potentially negative impact on the environment of another country, or if another country whose environment may be significantly threatened requests it, the EPA submits information about the plan or program to the other country for opinion. This information has to be submitted at the earliest convenience and no later than when the domestic public was informed.

Table 2 – Number of public hearings on SEA Reports initiated by EPA in period 2021-2024

	2021	2022	2023	January 1 st - July 31 st 2024
Law on SEA	7	1	1	3

Law on SEA foresees misdemeanour liability of state authorities and local administration authorities if they:

1. Make a decision on the need, or lack of need, for a SEA without considering the submitted opinions,
2. Does not publish the Decision in the Official Gazette of Montenegro, and
3. Does not notify the public and the interested public about the method and deadlines to view the SEA Report, submit opinions and the time and place of the public hearing.

Law on Industrial Emissions stipulates that the competent authority informs the public about the following:

1. Contents of the request for issuing an IPPC permit;
2. Draft of IPPC permit;
3. The possibility of inspecting the accompanying documentation; and
4. The decision on issuing an IPPC permit (or on rejecting the request for issuing an IPPC) (Articles 12, 13, 16).

If the operation of a plant can have a significant negative impact on the environment of another country, or if a country whose environment can be significantly endangered requests it, EPA shall submit information to the other country for its opinion. In 2021 and 2022, no IPPC permits were issued. In 2023 and 2004, 3 and 1 IPPC permits were issued, respectively.

In accordance with the *Law on Spatial Planning and Construction*, mandatory implementation of prior public participation is ensured, in the initial, earliest phase of planning document preparation, in order to familiarize the interested public with the goals and purpose of the planning document, as well as possible planning solutions. By organizing public hearings on the draft planning document, active participation of the public and interested users of the space is ensured. In addition, the process of drafting the planning document provides the opportunity to submit initiatives for the planning of certain contents in certain localities, in the form of a request to the Ministry, through a survey of users of the space, or during a public hearing. Public hearings for the state planning documents last 40 days and are advertised in print media.

In the process of adopting plans and programs, the competent authority for the preparation of the plan or program ensures the participation of the public by:

- publishing on the website a draft plan or program and a SEA Report, with an invitation to submit remarks, opinions and comments;
- informing the public, and the interested public, about the method and deadlines for viewing the content of the SEA Report and submission of opinions, as well as the time and place the public hearing will be held;
- taking into account submitted opinions when making decisions in the SEA procedure, with an explanation of all accepted or rejected opinions.

Based on the Law on Spatial Planning and Construction, the responsible authority is liable for misdemeanour if it does not allow interested parties to gain an insight to the report on the public hearing, nor the expert evaluation of the planning document. There are no sanctions if the opinion of the public is not taken into account in an 'appropriate' way. If concerned with public participation in decision-making related to the general legal act (spatial and urban plans, etc.), and that right is violated, citizens, interested bodies and organizations can begin procedures for evaluation of the constitutionality and legality of such an act before the Constitutional Court. In past practice, the Constitutional Court has made decisions on the unconstitutionality and illegality of decisions regarding the adoption of plans due to omissions in organizing and conducting public hearings. Ergo, the public is becoming aware that by active participation in public hearings, remarking and expressing opinions, they become active participants in the process of drafting planning documents, thereby contributing to the resolution of issues of personal and public interest.

*Decree on the selection of representatives of non-governmental organizations to the working bodies of state administration bodies and the holding of public hearings in the preparation of laws and strategies*²⁴ : ensures the consultation of bodies, organizations, associations and individuals (the interested public) in the initial phase of the preparation of laws and strategies. This Decree stipulates that the consultation of the interested public cannot be shorter than 15 days, while the

²⁴ Official Gazette of Montenegro, No. 41/18

public hearing on the text of the draft law, *i.e.*, the strategy, lasts from 20 to 40 days. The public invitation to participate in the public hearing procedure is published on the Ministry's, E-Government Portal,²⁵ and Aarhus Centres, with an invitation to submit objections, comments and suggestions. When conducting a public hearing, the Ministry ensures that the premises where the public hearing is organized are accessible to persons with disabilities.

After the end of a public hearing, the Ministry prepares a report outlining data on proposals and suggestions that were (not) accepted, with an explanation of the reasons for acceptance/rejection. This is made public. Also, this Decree regulates the manner and procedure of achieving cooperation between ministries and other state administration bodies and NGOs, as well as the criteria and procedure for selecting representatives of NGOs in Working Groups and other bodies formed by state administration bodies.

In order to ensure the participation of the NGOs in the process of preparing laws, strategies and other acts, the Ministry in Charge of Environmental Affairs is obliged to issue a public invitation to NGOs to nominate candidates for the composition of the Working Group for the drafting of laws or by-laws.

5.1.6 Alternative Dispute Resolution Mechanisms

Alternative dispute resolution mechanisms are arbitration, conciliation, early neutral evaluation, early expert evaluation, mini trial, mediation and Ombudsman activities.

Mediation differs from other alternative ways of resolving disputes by its voluntary, flexible, informal and confidential nature, and by the fact that the mediator does not have the authority to decide the dispute. For example, the Ombudsman has the authority to give an opinion with a recommendation after the procedure has been conducted, which is binding to a certain extent.²⁶ The Arbitrator makes a decision on the subject of the dispute, in procedures, *e.g.*, foreign trade arbitration or the peaceful resolution of a labor dispute.²⁷ The Mediator only makes proposals at the request of the party, does not take decisions, cannot impose anything to which all parties do not agree, and abides by rules commonly agreed among parties.²⁸

In Montenegro, the Mediation Center was established in 2012, on the basis of the Law on Mediation, adopted in 2005 and amended in 2012. The Center was founded as an independent organization, with the status of a legal entity, to perform professional and administrative tasks related to mediation. With the adoption of the Law on Alternative Dispute Resolution in 2020, the Mediation Center was transformed into the Center for Alternative Dispute Resolution. The Center performs professional and administrative tasks related to mediation, early neutral assessment of disputes and other alternative dispute resolution methods and informs professionals and the general public about the possibilities and advantages of alternative dispute resolution. It is supervised by the Ministry of Justice. The 2023 Annual Report shows that 22,488 cases were sent to mediation, out of which 4,148 were accepted for mediation; in 125 an agreement was reached. The majority of cases are labor related cases (2,428) and insurance related cases (2,076), followed by cases related to family law and commercial law with 438 and 425 cases respectively. In 2023, only 15 criminal cases were solved by mediation. In general, the majority of cases emerge in areas where specific laws (*e.g.*, Law on Peaceful Settlement of Labor Disputes) provide for mandatory mediation step before the trial. There are 234 licensed

²⁵ <http://www.euprava.me>

²⁶ Law on Ombudsman OG MNE No. 42/2011 i 32/2014, Art. 41 and 42

²⁷ Law on Peaceful Settlement of Labor Disputes, OG MNE No. 16/2007, 53/2011, 11/2015; Rulebook on foreign trade arbitration within the Chamber of Commerce of Montenegro OG MNE No. 03/06

²⁸ Mediation in Montenegro, Human Rights Action 2017

Mediators in Montenegro, but there is no data on environmental cases solved in an alternative manner.

There is a possibility to use mediation in disputes related to environmental justice, especially when there is a request related to compensation of damage, as presented in the Human Rights Action (HRA) publication on Mediation in Montenegro (2017):

"A group of citizens from Berane submitted a lawsuit against Elektroprivreda (EPCG) to the Basic Court in Berane because they suffered material damage due to a power outage. The judge, who is also a licensed Mediator, suggested the citizens settle the lawsuit in an alternative way. Several citizens expressed their satisfaction with the outcome because they received financial compensation from EPCG. They commented that that this was the first time they had heard about Mediation, but that they were not especially interested in this option because they were represented by a lawyer. They were only asked if they agreed to Mediation, after which the dispute was ended on the basis of an agreement made by their lawyer. They said that other citizens who chose to seek justice in court, still wait for the outcome of the proceedings."

Hence, Mediation shall be promoted in environmental justice issues, even though specific legal provisions.

5.2 Case Analysis

5.2.1 Access to Justice Key Case Studies

Case Study 1 – SHPP Kraljske Bare

Kraljske Bare, located near Kolasin, in Montenegro became a protected area within the Nature Park "Komovi" in 2019. In 2008, the Government of Montenegro concluded a concession agreement for three small hydropower plants, which was renewed in 2019 with the same company, on the basis of the Conclusion of the Government of Montenegro from 2018.

In 2020, with the beginning of construction, the local community began to protest and signed a petition to stop the work. The Petition and Request for Termination of the Concession Contract were submitted to the Ministry of Economy and the Government of Montenegro. In addition, a criminal complaint was submitted to the Basic State Prosecutor's Office in Kolašin. With no answers from the Ministry, Government and the Basic State Prosecutor's Office, the local community, supported by one local and one international NGO, approached the Ombudsman.

Although the Ombudsman in its Opinion²⁹ found that there was no violation of the constitutional right to receive timely and full information about the status of the environment, to influence the decision-making on issues of importance for the environment, and to legal protection of these rights, it found that the constitutional Right of Recourse³⁰ was violated.

The Ombudsman stated that it does not have the competence to decide on violation of the constitutional Right to Sound Environment and notes that the Basic State Prosecutor has taken adequate steps to make the final decision on the issue, including collecting documentation and

²⁹ Opinion of the Ombudsman No. 985/20 of 1st September 2021 Everyone may request another person to remove a source of danger, which might cause substantial damage to him or to other persons or to sustain from an activity which causes disturbance or might cause damage...https://www.ombudsman.co.me/docs/1631012699_01092021_preporuka_bk.pdf

³⁰ Article 57.1 of the Constitution of Montenegro: "Everyone shall have the right of recourse, individually or collectively with others, to the state authority or the organization exercising public powers and to receive a response."

engaging environmental court experts. In that context, assessing the contents of the complaints which refer to the impossibility of supplying water in the volume required, as well as the decline in property value, the Ombudsman directed plaintiffs to use other legal remedies, such as so-called 'ecological action' on the basis of Article 150 of the Civil Obligations Act³¹, which reads: *"Everyone may request another person to remove a source of danger, which might cause substantial damage to him or to other persons or to sustain from an activity which causes disturbance or might cause damage..."*, on the basis of the Decision of the European Court of Human Rights in the case of Cokaric and others vs. Croatia³². In addition, the Ombudsman advised plaintiffs to challenge the concession contract for nullity (based on the Civil Obligations Act) considering its negative effects on the environment.

The Ombudsman in its recommendations particularly addressed the lack of cooperation between competent ministries, emphasising that ignoring the need for common approaches to solving this issue, and misunderstanding and failure to consider all the circumstances of the specific case, such as those that existed in the process of awarding concessions, as well as those that appeared later (declaration of the Nature Park) and the absence of their joint action, which they are obliged to do by law, can have certain consequences not only in this case, but also in all future cases related to environmental protection policy and the rights of other persons involved in this procedure (e.g., concessionaire).

The Concession Contract for SHPP in Kraljske Bare was terminated in 2021, and SHPP was not built.

Case Study 2 – attempted crime trade in wild animals

This case study considers two very similar cases where basic courts in Cetinje and Bijelo Polje had different approaches in solving the issue regarding the definition of the committed crime. Both cases occurred in 2022, when different individuals came into possession of a protected bird (hawk) and attempted to sell the bird on social networks. Both individuals received warning phone calls (one from the police, the other from a bird protection NGO) before the proceeding. Both individuals claimed that they did not know that the bird was protected.

The basic court in Cetinje convicted the perpetrator of the crime of **killing and torturing animals and destroying their habitat** on the basis of the Article 309 of the Criminal Code of Montenegro, to the sentence of work in the public interest, for a duration of 180 hours, which sentence will be carried out for a period of 4 months, no longer than 60 hours in the course of 1 month. If he fails to perform the work in the public interest, this sentence will be replaced by a prison sentence, so that every 60 hours of work in the public interest will be replaced by a prison sentence of duration of 1 month.

On the other hand, the basic court in Bijelo Polje convicted the perpetrator for the crime of **taking out and bringing in protected natural goods and specially protected plants and animals and attempting to trade them**, (Article 312 of the Criminal Code of Montenegro) imposing a prison sentence for a duration of 30 days. Also, by the same verdict, the accused was acquitted of the criminal offense of **killing and torturing animals and destroying their natural habitat** under Article 309 of the Criminal Code of Montenegro, *"because the offense for which he was accused is not a criminal offense"*³³.

The best part of both cases is that the preventive action of the courts, prosecutors and police resulted in saving both specimens and the trade with protected birds. Although in both cases

³¹ Civil Obligations Act

³² Decision of the European Court of Human Rights (33212/02) Cokaric and others vs. Croatia
https://www.stradalex.eu/en/se_src_publ_jur_eur_cedh/document/echr_33212-02

³³ Higher Court in Bijelo Polje, Case No. 214/22 of 09.09.2022.

there was an attempt to trade in protected species, only one perpetrator was convicted of that crime. In parallel, although both cases have the elements of the crime of killing and torturing animals and destroying their habitat, only one perpetrator was convicted.

This indicates a lack of harmonization in judicial practice, the necessity of publishing case law, and better cooperation and exchange of information between judges and prosecutors.

Case Study 3 – Environmental Pollution

The Basic Prosecutor's Office in Pljevlja filed an indictment³⁴ for the criminal act of Environmental Pollution (Article 303 of the Criminal Code of Montenegro) against competent persons and legal entity (TPP Pljevlja) in relation to the following accident: in July 2019, a large quantity of waste water was intentionally released from Ash Pond, Maljevac, into the Vezišnica and Čehotina rivers, which caused severe environmental pollution, including killing fish. After initial denial, the company released information to the public to say that the situation occurred after the shift engineer at the Pljevlja TPP, without the permission of his superiors and without following procedure, authorized the valve operator to open the valve that controls the discharge of substances into the Vezišnica River. A few days after the incident, the EPCG Board of Directors issued an apology for the unfortunate event with *"deep regret for the environmental accident on the Vezišnica and Čehotina watercourses"*.³⁵

According to the report of the Commission for Determination and Compensation of Damage of the Ministry of Agriculture and Rural Development, the total amount of fish destroyed in this accident was 3,022 kilograms. Financially, this disaster cost 289,650 EUR, or 354,650 EUR including indirect damage.³⁶ Although the court noted that accused persons, workers of TPP Pljevlja, were aware of possible consequences of their deeds, and there was no doubt related to any other entity contributing to the pollution caused, the indictment was rejected because the state prosecutor ceased further criminal prosecution after the environmental court expert changed opinion.

Environmental NGOs commented on the case, praising the reaction of the police but noting that such judicial epilogue reflects badly on a State that declares itself ecological. Prosecution and the judiciary failed to protect the environment, again. In the aftermath of the case, EPCG (TPP Pljevlja) paid 341,000 EUR to the local fishing club as compensation for damage.

Many elements of this case suggest the misuse of environmental justice tools and mechanisms. This leads to allegations that high level corruption is still playing a significant role in hampering the protection of the environment through criminal law.

5.3.2 Available Legal Tools

In general, there are insufficient legal tools available in this area at national level. Environmental Inspectors use **checklists**³⁷ for more than 30 legal acts under their control. They are tailored to match precise, prescribed legal provisions. The checklists serve as a very practical tool and a reminder of the need to follow the law in prescribed order throughout an inspection.

³⁴ Indictment Kt.No.124/19

³⁵ Article in the daily Newspapers Vijesti January 19th 2021 <https://www.vijesti.me/vijesti/crna-hronika/504667/slucaj-pomora-ribe-tuzilac-odustao-od-krivcnog-gonjenja-epcg-i-rukovodilaca-u-te-pljevlja>

³⁶ <https://www.agroklub.ba/ribarstvo/steta-zbog-pomora-ribe-u-cehotini-i-vezisnici-oko-350-hilljada-evra/52912/>

³⁷ Environmental inspection check lists

CZIP recently published a document³⁸ which includes a presentation of existing legal regulations in the field of criminal protection of wild fauna in Montenegro, especially illegal hunting and related activities. As an indicator, existing practices are presented with statistical data for the period 2018-2022. The document aims to serve as a guideline to ease the work of involved prosecutors. This publication delivers a comprehensive overview of international associations, providing important legal tools and capacity building opportunities such as:

- The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) was founded with a mission to provide efficient application of environmental laws promoting professional cooperation, information and exchange of best practices. The core of IMPEL's activities concerns awareness raising, capacity building, peer review, exchange of information and experiences on implementation of European environmental legislation. The Environmental Protection Agency of Montenegro is a member of this organization.
- The European Network of Prosecutors for the Environment (ENPE) was created at the conference "The Fight Against Environmental Violations" in Belgium in 2011, organized by the European Commission and modelled on the European Forum of Judges for the Environment (EUFJE). It was created with the aim of promoting the implementation of related criminal law for the environment through the support of the operational work of the prosecutors working on cases related to the environment.
- The Trade in Wildlife Information Exchange (EU-TWIX) database has been developed to assist national law enforcement agencies, including CITES Management Authorities and prosecutors, in detecting, analyzing and monitoring illegal activities related to trade in fauna and flora covered by the EU Wildlife Trade Regulations and CITES. The database is intended to become a unique source of centralised data on seizures and offences reported by countries in Europe. Additionally, it has a section with information on technical, scientific, economic and other fields to help with the identification, valuation, disposal, etc. of seized or confiscated specimens. The purposes of EU-TWIX are to assist with strategic analyses and carrying out field investigations.
- The Global Judicial Institute on Environment (GJIE), led by IUCN in partnership with UNEP and other organizations, aims to support the role of judges, courts, and tribunals to respond to pressing environmental crises.

5.3.3 Access to Justice Challenges

In general, access to justice is granted to citizens and CSOs, however to build a strong case is more challenging due to limited knowledge of all environmental justice actors. Specific free legal aid for citizens and CSOs would represent significant empowerment, while capacity building among different authorities and judiciary would enable smooth and consistent resolutions. The Montenegrin Constitution grants free legal aid to citizens. However, specialized assistance for the preparation of a strong environmental case, leadership through different processes, involvement of national and international CSOs and media if required, and provision of legal advice from beginning to end of process are priorities. International practice shows that specialized CSOs (e.g., Greenpeace, Client Earth, etc.) have successfully promoted environmental concerns high on the global political agenda, assisting citizens and local NGOs in many cases to provide positive examples in international environmental case law.

In criminal cases, if the crime is not prosecuted *ex officio*, or if it is rejected by the prosecutor's office, a private criminal complaint has very limited chance of being successful. On the other hand, if a citizen or CSO is just the initiator of a case and not a party within it, there are obstacles to transparency and the possibility of missed deadlines for complaints (see section 5.1.4).

³⁸ Procedure guidelines for Prosecutor's offices in the cases of poaching in Montenegro, CZIP 2024

Corruption is an obvious barrier to access to justice. There are cases where an indictment was dropped (see *example No. 3*) due to an alleged illegal pressure on prosecution and other actors involved. Judges face obstacles defining guilt, *i.e.*, the essence of the crime in environmental cases. There are no specialized divisions or specifically trained judges or prosecutors for environmental cases, despite the highly technical character of these cases. In cases of “blanket crimes” there is a need for precise definitions in the referring legal acts.

Very similar cases are interpreted differently by different courts (see *example 2*) due to the absence of an accessible environmental case law database and cooperation/coordination between courts. There is an evident lack of guidance for judges and prosecutors regarding the management of criminal acts defined in the Criminal Code of Montenegro.

Considering the specific nature of environmental crimes, offenders are for the most part, without criminal history, and therefore suspended sentences are imposed in most cases. This practice is not a deterrent.

5.3.4 Analysis of Participation Mechanisms

The current tools for public consultations and public participation in environmental matters at national level are enabled through several key mechanisms, as follows:

Information: State institutions have an obligation to transparently publish information that is of public interest. Through government portals, press releases and websites, citizens are enabled to gain insight into legal proposals, strategies and other important decisions. This tool is effective. For example, the EPA regularly updates the website <http://www.epa.org.me>, which contains reports on the condition of the environment, data obtained from monitoring, issued permits, consents and other administrative acts, notifications on EIAs, decisions on SEAs and other information within the framework of their competences. In addition, the following applications are available on the Agency's website:

- Air quality monitoring: <http://www.epa.org.me/vazduh/>
- Pollen monitoring: <https://polenmontenegro.wixsite.com/polenepa/home>, where information on monitoring of allergenic pollen concentrations on the territory of Montenegro can be found.
- National protected areas: <https://cloud.gdi.net/smartPortal/zppCG>, display of national protected areas with geospatial functionality
- Help desk: <https://epa.org.me/help-desk/> information about chemicals and biocidal products.

Public hearing: Organizing public hearings when preparing laws and strategies should enable citizens to influence the content of laws in the early stages. Public hearings can be organized through round tables, tribunes or via the Internet. The process and procedures of a public hearing are given in Section 5.1 below, and its effectiveness is evaluated in Section 6.2.

Participation of NGOs in Working Bodies: NGOs in Montenegro participate in Working Groups and other bodies formed by the state administration to draft laws and strategies. NGOs represent the voice of citizens and professional communities in Working Groups, ensuring that different perspectives are taken into account. This tool is not especially effective as explained in Section 6.2.

Electronic petitions and e-participation: Through the e-Government portal, citizens can submit petitions that, with a sufficient number of supported votes, become formal initiatives for the Government to consider. Recently, however, this tool has been infrequently utilised. Available

mechanisms that enable public participation in environmental matters on local level are the following:

Initiative and Citizens' Initiative: Citizens can launch initiatives related to various issues of local importance. An Initiative can be initiated by an individual, while a Citizens' initiative requires the support of a certain number of citizens. After the Initiative has been launched, the local authority is obliged to declare and inform the applicant within 30 days. Most recent Citizens' initiatives at local level are the Case "Cypress Trees" in Bar (2019) and Case "Brskovo mine" in Mojkovac (2024).

Assembly of Citizens and Referendums: The local assembly of citizens enables residents of a certain area to gather, discuss issues of common interest, and make decisions that are forwarded to the competent authorities. Referendum is another form of direct decision-making by citizens. Local Government is obliged to organize a referendum if a sufficient number of signatures are collected, or if certain regulations require it.

Public hearing at local level: Local Self-Government ensures that citizens have the opportunity to participate in decision-making through public hearings, public forums, websites of municipalities and other available channels, enabling greater involvement of citizens in decision-making.

"Empty Chair" Institute: This institute enables representatives of NGOs to actively participate in sessions of Municipal Assemblies, and to present their views, proposals, and suggestions to local councillors.

This assessment also indicates that with regards policies/strategies or legal acts, public participation processes are usually represented by NGOs. Citizens are mostly uninterested, even though in addition to rights, laws also define their obligations. The procedure for the adoption of spatial planning documents entails a public review/hearing of at least 15 days and is characterized by the inclusion of a large number of individuals who express their personal interests, which are often contrary to the general ones. The SEA Report of the given plan is the subject of NGO attention on the whole. Participation of the public in EIA procedures for individual projects of a smaller scale is almost negligible. With larger projects (usually projects in energy), citizens become involved by supporting NGOs that are very active in such cases.

5.3.5 Public Participation Key Case Studies

Case Study 1: HPP "Buk Bijela" (2004)

The planned hydro-power plant (HPP) "Buk Bijela" was intended to be built on the Drina River in Republika Srpska (Bosnia and Herzegovina), with a part of the reservoir covering 10 km of the Piva River and 12 km of the Tara River in Montenegro. Since 1977, the Tara River has been on the UNESCO List of World Biosphere Reserves as part of the "Man and the Biosphere" Program (UNESCO "MAB" Program). At the same time, that part of the canyon of the Tara River that would represent the accumulation of HPP "Buk Bijela" is located near the borders of NP "Durmitor", which has been on the UNESCO World Natural Heritage List since 1980.

The NGO sector (led by NGO "Most") launched a civil initiative and campaign "*I don't want a pond, I want Tara*", which was developed in response to the decision of the governments of Montenegro and Republika Srpska on the construction and use of the joint hydro-energy system "Buk Bijela", as well as difficulties in accessing information about the planned project. The beginning of the campaign was launched May 5th 2004 with a press release by the NGO "Most." The public were "warned of the disastrous economic and ecological consequences of the implementation of such a project." Massive protests of environmental groups and individuals occurred in

Montenegro. The civil sector claimed that there was a lack of communication with the public from the very beginning, procedure had been neglected and/or ignored. It was concluded that the competent authorities had not defined an adequate plan of action in accordance with the Espoo Convention, and had not properly carried out an assessment of the negative impacts of the project on the given area according to due process. The Government considered that it was not late with the implementation of the procedure, since an EIA Study had not been provided. In this sense, the Government maintained the position that it was necessary to wait for EIA Study and its evaluation, with the participation of the public, UNESCO experts and other experts from international and domestic institutions. Only based on these conclusions and evaluations, and additional economic and energy analyses, the Government would take a final decision.

Along with the activities of the NGO sector, the then Ministry of Environmental Protection and Spatial Planning of Montenegro began activities, organizing round tables and forums on this issue. The entire event was subject to media attention. Via announcements and statements to the public, the Ministry reaffirmed its position and the need to carry out an expert assessment of the EIA Study, according to international standards. Accordingly, the responsible Ministry of the Republic of Srpska, requested an EIA Study be submitted. No response was received.

The NGO sector continued its activities and organized protests (on Bridge on Tara and Šćepan polje) against the construction of the HPP. The NGO "Most" launched an online petition on its website. The protest also gained international character through the written support of a large number of environmental NGOs from the region and all over Europe.

The campaign resulted in the Declaration on the Protection of the Tara River (NGO "Most"), submitted for adoption to the Parliament of Montenegro. The submission of this document was preceded by the collection of the required 6,000 signatures of citizens of Montenegro. The action "Montenegro for Tara" - held in September 2004, was supported by more than 20 NGOs. A sufficient number of signatures were collected to trigger a parliamentary debate on the Declaration in all towns of Montenegro. The Declaration was supported by more than 10,000 citizens. The action was covered by the international media. On December 14th, 2004, the Parliament of Montenegro, by a majority of votes, adopted the Declaration on the Protection of the Tara River. The Declaration prevents the construction that would threaten the canyon of the Tara River.

In January 2005, UNESCO/IUCN Mission visited Montenegro. The Government accepted the comments and suggestions on the Technical Report of the expert mission of UNESCO and IUCN and suspended all further activities on the implementation of the project. In July 2005, in Durban (South Africa) at the 29th session of the UNESCO World Heritage Committee, the Decision on NP "Durmitor" was adopted, from which, after the delivery of a Letter of the Government of Montenegro on ceasing further activities on the construction of HPP "Buk Bijela", the article that envisaged placing NP "Durmitor" on the UNESCO List of the world heritage in danger, was deleted.

Case Study 2: Vasove vode (2012)

The Spatial Urban Plan of the Berane Municipality of 1996 provided for a landfill at the "Vasove vode" location near Beranselo. At that time, citizens did not participate in public debates, so they did not dispute the said decision. After several years, the disposal of municipal waste began at this location. Citizens often protested, with banners, tied in chains, expressing their dissatisfaction with the existence of landfills that affect their daily lives. The protests reached their peak when the site of Vasove vode was chosen as a regional landfill for the north of Montenegro.

At the end of 2012, the expertise of the EIA Study of the regional landfill of municipal waste "Vasove vode" was carried out, and included consultation of the public. The findings of the

experts indicated significant problems (especially related to the distance of the landfill from the Lim Riverbed, loss of water potential, arable plots), but the final conclusion was that the specified location meets the professional and legal requirements for the construction of a regional landfill.

For more than half a year, locals blocked the road for trucks that wanted to reach the landfill. Several thousands of people claimed health problems due to the defective water that is a consequence of this landfill. Special attention was drawn to the oldest activist, a 95-year-old resident of Beranselo, who laid down on the road to prevent the devastation of his village, and who was then arrested. Several court proceedings were initiated by both parties. Protests continued in front of the Government and the Parliament of Montenegro, as well as in front of Local Self-Governments. After more than three years of active advocacy, a park was planned for the location, instead of the landfill. In 2018, the Vasove vode project was completely remediated.

The rebellion and the struggle of the locals had a positive outcome. Today, instead of a landfill, the ground is being prepared for a park, which will green the village and contribute to the protection of the environment and nature.

Case Study 3: No Cijevna into a Pipe (2018)

Another example of the fight against the construction of mini-hydro power plants (mHPs) in a trans-boundary context is the case of the Cijevna River, where the construction of the mHPs began in the upper part that flows through Albania. Although the mHPs were not being built in Montenegro, it was met with great opposition from the citizens of nearby towns in Montenegro, since it will affect the entire river, and therefore the part that flows through Montenegro. Thus, in October 2018, protest gatherings of citizens began, using bicycles, kayaks and walks to express their dissatisfaction with these mHPs, under the slogan “No River into a Pipe!”. Unfortunately, the construction of mHPs in Albania continued, despite the appeals filed by the responsible Ministry in the period 2018-2020 to the Espoo Secretariat and UNESCO Secretariat.

Case Study 4: No River into a Pipe (2019)

Over the last decade, the construction of mHPs has begun in Montenegro, despite the objections of numerous environmental protection organisations. When in May 2019, several excavators were delivered to the village of Bukovica between Šavnik and Žabljak in order to start the construction of a mHE on the river of the same name, the population of that village immediately joined the defence of the river.

Citizens, young activists, representatives of NGOs, guarded the river day and night in order to protect its importance, the surrounding nature, but also the endemic fish species that live in Bukovica. Although the investors attempted to continue the construction, the citizens' protests also continued for the next five months, when the minister of economy visited Bukovica with a notice that the Contract with the investor would be terminated. The population of Bukovica celebrated this victory over the defence of the river. This account demonstrates the sacrifice of the population to defend the source of water and life and thereby ensure the long-term benefit of this river.

Case Study 5: “Brskovo Mine” (2024)

In December 2010, the Government of Montenegro as Concessionaire and LLC “Brskovo Mine” as Concessionaire concluded a Concession Contract for detailed geological research and exploitation of sulphide polymetallic ore in the exploitation area of the former mine “Brskovo” near Mojkovac for a period of 30 year.

After the first public discussion on the Draft Detailed Spatial Plan-DPP for the area of the concession area for the exploitation of mineral raw materials - Brskovo and the Draft SEA Report in 2023, there was a sharp reaction from some of the citizens of Mojkovac, as well as

environmental and civic activists, primarily due to the fact that the concessionaire avoided mentioning the dangers to human health and the environment due to the proven presence of mercury and other heavy metals in the soil.

The Citizens' Initiative was formed with the aim of expressing the public opinion and attitude of citizens. In a large number of press releases, they pointed out the consequences of this project and the negative impact on people's health and the environment, should it come to implementation. Research indicated that the soil of the wider area was still polluted with heavy metals, which are a consequence of the former activity of the Brskovo mine, which was active as long as 30 years ago.

The Citizens' Initiative also addressed UNESCO regarding this case, which resulted in UNESCO's reaction at the last session in Riyadh in 2023, where it was requested that the state of Montenegro submits, among other things, an EIA Study to National Park "Durmitor", by December 2024.

Representatives of the Citizens' Initiatives were members of the State Commission formed by the Government with the aim of establishing the facts and proposing whether it is necessary to terminate the Contract with the concessionaire. The Commission proposed the Government terminate the Concession Contract. After this, the Government hired an international law firm, which performed a detailed analysis of the available documentation and suggested that the concessionaire be given a 60-day deadline to correct these irregularities. As the concessionaire did not submit a response to the Government within the stipulated period, the Contract was officially automatically terminated on May 30th, 2024.

The above cases underline the effectiveness of public participation in regulating environmental impacts in Montenegro and in influencing project outcomes. However, almost all positive examples of citizen activism are related to protests, not court proceedings.

5.3 Existing Assessments

The most recent publication on **Environmental Crime in Montenegro**³⁹ was supported by the OSCE Mission to Montenegro. This document focuses on several types of environmental crimes, such as illegal logging, illegal construction and illegal exploitation of gravel. There is also an overview of implementation of the Law on Liability for Environmental Damage. Findings and recommendations can be summarized as follows: the most significant environmental crimes are illegal forest cutting, illegal construction, and mishandling of hazardous waste. Intentional fires are also common. **Recommendations:** strengthen institutions, improve cooperation among stakeholders, stricter enforcement of laws, and establish a special police unit for environmental protection. **Key challenges include:** corruption, insufficient capacity of environmental inspection, and inadequate infrastructure for waste management. Environmental crimes tied to powerful interests, such as illegal construction and logging, are hardest to tackle. Issues with inconsistent law enforcement and public awareness were also highlighted. Finally, it is noted that citizens are often passive in addressing environmental crimes.

The **Global Organized Crime Index for Montenegro for 2023**⁴⁰ indicates that environmental crime in the country includes both flora and fauna crimes, which refers to illegal trade and possession of species covered by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and national legislation. Wildlife crimes mainly relate to poaching, and

³⁹ Environmental crime in Montenegro, D. Cakovic, 2023, OSCE Mission to Montenegro

⁴⁰ Global organized crime index 2023, Global initiative against transitional organized crime
<https://ocindex.net/country/montenegro>

illegal, unreported and unregulated fishing. Moderate success in tackling illicit fishing activities in the past few years is noted in the report. Illegal logging is a predominant crime in Montenegro. Small organized criminal groups are involved in illegal logging in areas along the border with Albania and Kosovo. This activity has become increasingly lucrative because of the moratorium on logging in Albania. According to the report, corruption among government officials and institutions is reported to facilitate these criminal activities.

Friends of the Earth Croatia / Zelena akcija in cooperation with the pool of NGOs from Serbia, Bosnia and Herzegovina and Montenegro published a comprehensive comparative analysis of the Legal Instruments for Protection of Environment⁴¹ for Croatia, Serbia, Bosnia and Herzegovina and Montenegro. Publication provides an insight into different legal instruments and protection of the environment through constitution, environmental law, criminal, administrative and civil law procedures.

KOD Organisation in partnership with the NGO Civic Initiative "Sacuvajmo Sinjajevinu" (Save Sinjajevina) with the support of the Ministry of Public Administration published an Analysis of the Degree of Application of the Law on Free Access to Information⁴². The analysis concludes that the current law proved to be ineffective and restrictive, and a different regulatory framework is required. In 2018, NGO Center for Protection and Research of birds of Montenegro (CZIP) published an Analysis of Environment Protection in Montenegro through Administrative and Criminal Law.⁴³

In December 2018, European Union Common Position on Negotiation Chapter 27 - Environment and Climate Change⁴⁴ underlined the need to further prepare for the effective implementation and enforcement of horizontal legislation, notably with respect to directives on environmental crime (Directive 2008/99/EC) and environmental liability (Directive 2004/35/EC), as well as establishing a track record of effective public participation and consultation in decision-making processes. The EU invited Montenegro to participate actively in existing EU environmental enforcement networks. Among closing benchmarks for the negotiation Chapter 27, EU expects Montenegro to continue to align with the horizontal EU Directives and demonstrate that it will be fully prepared to ensure their effective implementation and enforcement at the date of accession. In the subsequent Progress Reports⁴⁵ are the following remarks:

- (2019) further progress is required to implement the remaining horizontal EU Directives such as the Environmental Crime and the Environmental Liability Directives. Montenegro also needs to ensure the independent functioning of the Nature and Environmental Protection Agency.
- (2020 - 2021) on environmental liability, three procedures are ongoing. Monitoring on environmental crime has continued. The lack of sufficient administrative capacities at central and local level and inspection bodies, insufficient inter-institutional coordination and lack of a sustainable financial framework remain challenges to be urgently addressed.
- (2022) on environmental crime, in the reporting period, 101 new cases were registered, and 46 cases were legally resolved. The lack of sufficient administrative capacities at central and

⁴¹ Pravni instrumenti za zastitu zivotne sredine, Zelena akcija / Friends of the Earth Croatia

https://www.greenhome.co.me/wp-content/uploads/2022/08/Pravni_instrumenti_za_zastitu_zivotne_sredine.pdf

⁴² Analysis of the Degree of Application of the Law on Free Access to Information, KOD Organization, 2024

<https://kod.org.me/analysis-of-the-degree-of-application-of-the-law-on-free-access-to-information-with-specific-recommendations-for-improving-the-normative-framework/>

⁴³ Analysis of environment protection in Montenegro through administrative and criminal law, J. Ilovic, Center for Protection and Research of birds of Montenegro (CZIP) 2018 <https://czip.me/2024/01/26/analiza-krivicnopravne-i-preksajnopravne-zastite-zivotne-sredine-u-crnoj-gori/>

⁴⁴ EUROPEAN UNION COMMON POSITION Chapter 27: Environment and climate change, AD 17/18, 2018

<https://www.eu.me/en/biblioteka/#1838-1872-27-environment>

⁴⁵ https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/montenegro_en

local level, lack of inspection bodies, insufficient inter institutional coordination and lack of a sustainable financial framework remain challenges to be urgently addressed.

- (2023) in the area of environmental crime, in the reporting period, 97 new cases were registered, and 53 cases were legally resolved. Montenegro still needs to urgently address the lack of sufficient administrative capacity at central and local level and in inspection bodies, the insufficient inter institutional coordination, and the lack of a sustainable financial framework. (...) Public participation in the decision-making process is taking place, but requires further improvement.
- (2024) in the fields of environment and climate change, Montenegro needs to significantly strengthen administrative capacities at central and local level by urgently addressing staff shortages and hiring personnel, address the issue of insufficient inspection services at both levels, and address the insufficient inter institutional coordination and the lack of sustainable financial framework. The lack of administrative capacity significantly hinders the progress in Chapter 27 and fulfilling its closing benchmarks.

The general conclusion is that Montenegro's environmental performance is marked by lack of institutional capacity, especially in inspection bodies, and an evident lack of inter-institutional coordination.

Finally, the European Commission Report for Montenegro for 2024 (October 2024) in the area of public participation states the following: *"Montenegro completed one Strategic Environmental Assessment and 73 Environmental Impact Assessments. Montenegro is encouraged to increase synergies, coordination between Strategic Environment Assessments and Environmental Impact Assessments to make better use of such documents in its planning and implementation. Montenegro should also ensure that environmental monitoring meets EU standards and that all infrastructure investments comply with the EU environmental and climate Acquis and ensure public participation"*.

The Report on Environmental Crimes, prepared by the OSCE Mission, states that the existence of "dark number" of unrecorded environmental offenses underscores a critical training need within competent authorities responsible for combating environmental crime. The limited number of completed cases reflects a gap in detection and processing activities, highlighting the necessity for enhanced skills and knowledge among law enforcement agencies, regulatory bodies, and other relevant institutions. Training programs should address the identification, investigation, and prosecution of environmental offenses, equipping personnel with the tools and expertise needed to effectively combat these clandestine activities. By investing in training and capacity-building initiatives, authorities can strengthen their ability to detect, investigate, and prosecute environmental crimes, thereby mitigating the threat posed to environmental protection in Montenegro.

6. NEEDS ASSESSMENT

6.1 Legislative Needs

In general, both desk research and interaction with stakeholders indicates the legislative framework of Montenegro is well harmonized with EU and international law, while deficiencies remain in the implementation.

The latest report on implementation of the Aarhus convention in Montenegro highlights that, in this area, Montenegro shares the same problems as the countries in the region, while similar problems, admittedly to a lesser extent, occur in EU member states. The number of final

judgments in environmental matters is affected by the fact that certain norms related to environmental criminal offenses are not precise, such as:

- *"Pollution on a larger scale and in a wider area";*
- *"Danger to human life and health";*
- *"Destruction of flora and fauna on a larger scale".*

In this regard, the amendments to the Criminal Code of 2013 harmonized the provisions in this area with the Directive 2008/99/EC on the Protection of the Environment through Criminal Law. Criminal offenses on environmental pollution, with waste and damage to the ozone layer were introduced – Article 303a and 303b. It is particularly significant that the legal standard "to a greater extent or on a larger or wider area" has been retained only in definition of two criminal offenses (Articles 307 and 308), while the corresponding norms are now clearer and more precise (they use the legal standard "significant damage", and a number of norms have undergone significant changes).

Qualified forms of the most serious crimes are threatened with longer legal penalties. An illustrative example is the new Article 303, which now regulates the basic form of the criminal offense of environmental pollution in a different way, specifying that it will be punishable by imprisonment for up to three years: *"whoever, in violation of the regulations on the protection, preservation and improvement of the environment, releases, introduces or disposes of a certain amount of substance or ionizing radiation into the air, water or soil that causes a danger to life, human body or health or the risk of the occurrence of a significant damage in relation to the quality of air, water or soil, or to flora and fauna"*. Qualified forms of criminal offense are also envisaged if there has been a serious injury, or a serious damage to the health of one or more persons, as well as if the death of one or more persons has occurred, which are punishable by imprisonment for a period of two to ten or three to twelve years.

There is an evident lack of clear implementation and enforcement guidelines, as well as harmonised court practice. In that context, the recommendation is to develop manuals with comparative case law and create a database of criminal proceedings in environmental cases.

Blanket crimes

In criminal law, there is a unique concept known as "blanket norms" or "norms in blank." These norms are distinct in that they don't provide a detailed, comprehensive definition of the specific conduct that constitutes a crime. Instead, they refer to external documents or regulations to determine what actions or circumstances are deemed criminal. A 'blanket norm' is a legal provision that, rather than spelling out the complete elements of an offense, points to another document, often of an administrative or technical nature, for a complete understanding of what constitutes a crime.

In this context, some environmental crimes in the Criminal Code of Montenegro are defined "in blank" and referred to by courts as "blanket crimes". For example, "environmental pollution by waste" (Article 303a of the Criminal Code) is considered a "blanket crime" in the Judgement Kž.No. 115/18 of the High Court Bijelo Polje, with an explanation that the essence of the crime defined as "environmental pollution by waste" comprehends violation of environment protection legislation, which must be cited in the indictment. Hence, unless the "blanket norm" in the Criminal Code is not supplemented by citing or violating environmental law, it is not considered a criminal act. The cited judgement insists on the fundamental principle of legality (*nullum crimen, nulla poena sine lege stricta*) – there is no crime, no punishment without a precise law. This causes difficulties in proving the essence of the crime when the accused is performing a licensed activity which can have, as a consequence, the pollution of the environment. The example provided is a judgement of the High Court which acted upon a complaint of the Basic Prosecutor Office, on the judgement of the Basic Court. It shows that both judges and

prosecutors require more training in defining, proving and presenting strong environmental cases.

6.2 Public Participation Needs

6.2.1 Public Engagement

Montenegro has made significant strides in aligning its governance with the Aarhus Convention, ensuring public rights to participate in environmental decision-making. The country has integrated the principles of the Aarhus Convention into its Constitution and environmental laws, creating a comprehensive legal framework. The public is granted significant rights considering the Aarhus Convention enables citizens to have an influence on all activities that affect the quality of the environment. This commitment is further demonstrated through the establishment of Aarhus Centres across Montenegro, which provides the public with environmental information, legal support and platforms for engagement in decision-making processes. The positive development is that redesign of the website of Aarhus centres has begun, as well as the creation of the website⁴⁶, which will contain information about the activities of all Aarhus centres in Montenegro, as well as improved anonymous connection (upon request) with interested parties with the reporting of the problems they encounter in the environment. Additionally, Laws such as the Law on Free Access to Information, the Law on Environment, Law on EIA, Law on SEA, etc. underscore Montenegro's dedication to transparency and public involvement. Also, civic activism has proven to be an effective tool for drawing attention to specific environmental problems, such as protests against HPP Buk Bijela, Vasove vode, HPP Bukovica, Brskovo mine, etc.

Some level of support for NGOs to advocate for environmental issues, conduct educational initiatives and implement projects, is strength. However, while NGOs play a vital role in environmental advocacy, many lack resources to sustain impactful initiatives and advocacy. NGOs receive state funding for environmental projects through public calls, supporting initiatives such as waste management awareness and campaigns against plastic pollution. However, only a limited amount of funds are provided to NGOs, and effective post monitoring of the long-term impact of the conducted activities is missing.

In the Annual Report for 2023, the Protector of Human Rights and Freedoms (Ombudsman) states that:

"Public participation in the decision-making process is taking place, but requires further improvement. Although progress has been observed in respect of the three procedural principles of environmental law, the principle of public participation in decision-making, access to information about the environment and the principle of access to justice, the institutions still have work to do on the implementation of environmental protection standards. It is necessary to have as many public discussions as possible about the environment and ecological problems. Progress towards ecological democracy represents the activation of civil society. Promotion, education and integration of environmental rights into curricula is an issue that should be covered separately".

This means that despite a robust legal framework, public awareness of environmental rights and participation opportunities remains low, limiting effective civic engagement. This means that Montenegro faces several challenges in the effective implementation of public participation in environmental decision making. Montenegro's state and local authorities also face administrative and financial constraints to public participation in environmental decision-

⁴⁶ www.arhuscentri.me

making. The competent authorities require strengthening if a satisfactory implementation of the public's right to participate in environmental decision-making is to be acquired.

Public consultations and calls for NGOs involvement often elicit minimal response, reflecting difficulties in fostering active participation. Although the results of public hearings must be taken into account when making decisions in the EIA and other relevant procedures, interviews with representatives of NGOs showed their clear dissatisfaction with those whose comments were abandoned (insufficient explanations for rejection, etc.). Empirical evidence suggests that although the public is informed about all phases in EIA procedure, it is not sufficiently interested in participating in the procedure. On the other hand, competent authorities in all cases fulfil their obligation to inform the public of each phase leaving no space for making the appeals to the second-instance authority.

Outdated communication channels. Inadequate announcement of public hearings (only on website and print media) is evident. The public is informed of the possibility to participate in environmental decision making via local media, web site and on a bulletin board. Although this is the legal minimum, a part of the public does not read newspapers or pass by the bulletin boards, and therefore could miss information about the process. This approach currently known by the regulations in Montenegro is rather outdated (e.g., mandatory use of social networks and other modern channels of communication with the public). Competent authorities must go beyond the legal minimum (to establish this kind of good informal practice) or alternatively, regulations should be modified to correspond to today's practices.

Absence of conditions to allow meaningful participation. Public hearings are often organized in August during annual vacations: this means the competent authorities formally fulfil the obligation to organize a public hearing, but essentially it is not carried out because there is no reaction from the public. At the same time, this also prevents the right to file an Appeal, because there is no evidence in the administrative procedure that it was not carried out in accordance with regulations on the organization of public hearings. This demotivates the public who are disinclined to use this legal remedy. Moreover, public hearings are conducted exclusively during working hours, limits participation, especially employees in the private sector.

Particularly worrisome in Montenegro is the absence of public hearings in the past few years for some of the key regulations in the field of the environment (e.g., the Law on Waste Management), while some were conducted exclusively by inviting the public to submit objections, suggestions and comments in writing, which is a less effective way of involving the public compared to in person, oral discussion through round tables, public forums etc.⁴⁷

The details and summaries of public hearings are, among others, updated at the website of the Ministry in Charge of Environmental Affairs (<https://www.gov.me/mert/ekologija>). Similarly, the EPA updates its website, which contains EIA notices, SEA Decisions and other information within its jurisdiction (<http://www.epa.org.me/index.php/me/dozvole>).

Moreover, inconsistencies in how laws are applied (across different regions and municipalities) further exacerbate challenges, leading to uneven enforcement of public participation rights in environmental decision making. Gaps in compliance with established policies erode public trust in the Government's and Local Governments commitments to environmental stewardship and transparency.

⁴⁷ Some of the participants of the Focus group conducted on October 29th 2024 mentioned the examples of public hearings where developers did not talk about the impact on the environment, but were "buying" the local community (e.g the promise of building a local road).

Table 5 – SWOT analysis

STRENGTHS	WEAKNESSES
Comprehensive legal framework, 100% aligned with the EU <i>Acquis</i>	Limited public awareness
Five (5) Aarhus Centres established across Montenegro	Administrative and financial constraints
Government formal commitment to transparency	Low engagement in decision-making processes
Some level of support to the NGOs	Decentralized implementation issues
Public hearings for EIA and SEA are conducted	Legal minimum fulfilled
Track record of the impact of civic activism	Outdated system of informing the public about public hearings
OPPORTUNITIES	THREATS
Enhanced public education programs	Political and economic instability
Digital access initiatives	Limited NGO resources
Capacity-building for local and state authorities	Environmental challenges and compliance gaps
Using the traditional knowledge of the local population (potential way to make informed decisions)	Lack of public trust in institutions
Modernization of regulations governing public hearings (e.g., mandatory use of social networks)	Public apathy

Despite these weaknesses, there are considerable opportunities for Montenegro to strengthen its implementation of the public's rights to participate in environmental decision-making. In order to improve public involvement in EIAs and other procedures, the following is suggested:

- Enhanced public **education programs**, both at local and national levels, could improve awareness and encourage broader engagement in environmental issues.
- **Digital initiatives**, such as E-government platforms, offer a promising avenue for increasing access to information and facilitating virtual participation in decision-making.
- **Training and resource allocation** of local and national authorities could improve the administration of public participation processes, ensuring more consistent application of environmental laws.
- Information must be easily obtained, so the competent authorities have to select **appropriate methods for each case**, with the goal of making it available to as many people as possible (social media and TV, and with capital infrastructure or/and sensitive projects, sponsored advertisements on digital channels (e.g., You Tube) is encouraged.
 - Competent authorities have to use the **best form of communication with the target groups** - leaflets, posters, websites, capital letters (e.g., if the target group is the elderly), audio content, etc. Although not mandatory in law, a suitable way of informing is written material such as brochures, flyers, billboards and posters in busy places. Although television is considered the most influential medium, all available media (radio, newspapers, internet) as well as other forms of communication (bulletin boards in public places, meetings, and e-mails, distribution of leaflets, etc.) should be utilised.

- Competent authorities must **provide the public with sufficient information** to form an educated opinion on all issues, since technical language inhibits lay understanding of the issues and prevents an informed opinion. Information (even technical), must be in a format suitable for the public.
- Depending on the assessment and availability of funds for the given purposes, a **media campaign** can be implemented via electronic and written forms by broadcasting information about the planned activity in prime time, the place where additional information can be obtained, as well as about future steps in the public participation procedure.
- Organizing **workshops and lectures** in locations close to the affected public (when it comes to a smaller area of activity).
- The representative of the competent authority on public hearings **must possess communication skills and the necessary knowledge** so the interested public can request information or guide them on how to obtain further details. In particular, the obligations arising from legal provisions must be made clear.
- Competent authorities can organize **forums and small-scale workshops** to precede the public hearings. These forums should be made up of individuals whose opinion is valued within the local communities, and who will motivate the remaining members of the local population to participate.
- **Focus groups** with 6–10 people can be particularly useful to discover the views of target groups not normally involved in decision-making. Under certain conditions, a focus group can be used to discuss sensitive issues. Before deciding to apply this technique, Government officials should consider whether it is the best method to achieve the goal of public participation. Focus groups are a very effective participation technique, especially when combined with in-depth interviews, public hearings or workshops, as part of a wider consultation process. A focus group is an effective way to obtain information since participants feel freer to speak in a focus group than in more formal situations.
- The **time frame must be carefully planned** with enough time to receive relevant comments from the public (the legal minimum is often insufficient). Therefore, the authorities are recommended to allocate more time in specific cases.
- **Separate notice** to inform the public about where the documentation can be downloaded, what communication channels are available and what are the deadlines for submitting comments, has to be published. Multiple channels for distribution of materials to target groups: delivery by post, distribution in mailboxes, bulletin boards, distribution in public places (such as the municipal building), online publishing, should be considered.
- In order to achieve a partnership relationship between competent authorities/ decision-makers and the public and strengthen the role of the public in the decision-making procedure, it is necessary to **keep the topic of the environment in constant focus**.
- Nevertheless, several threats could undermine the above. Political and economic instability in Montenegro over the last four years has the potential to shift focus and funding away from environmental priorities. Also, public apathy towards environmental issues remains a significant barrier to achieving higher levels of participation, threatening the overall effectiveness of Montenegro's implementation of public's rights to participate in environmental decision-making.

6.2.2 Tools for Participation

The degree of public participation in environmental decision-making in Montenegro is not at a satisfactory level. As possible reasons, the following should be analysed:

- a) *Method of informing the public about their rights and possibilities of action (including the method of participation)*

Public review of relevant documents, in printed and electronic form, with public consultations on those documents, is a standard technique of public participation in environmental matters in Montenegro. This is a widespread and understandable form of communication. Although it is relatively easy to organize and is a low-budget way of consulting the public, it is not always easy for many citizens to write opinions and comments (which may be the cause of low level of public review of relevant documents). Simplifying the process of giving suggestions and remarks on EIA Studies, SEA Reports, planning documents, draft laws or strategies, etc. should be considered.

b) Degree of trust of public in the quality of public hearings

Participation in public hearings does not have an adequate dimension. Namely, public hearings in environmental matters have become merely a procedural issue. Organizing a successful public hearing requires good planning and effort (somewhat lacking in Montenegro). For example, citizens may have unrealistic expectations about how much they can influence the final decision. To avoid the public hearing becoming a mere formality, moderators have to prepare for the sessions, and keep updated about key representatives, interest group leaders and other key activists expected at the event. Pre-registration is a good way to plan the event and estimate the number of participants (although it should be taken into account that many participants show up without pre-registration). In this way, key stakeholders are identified in advance. In this regard, it is important to highlight that during the Focus Group organized on October 29th 2024, representatives of the Office of the Ombudsman informed the group that at one stage, the European Commission criticized the quality of public hearings and proposed a quality control mechanism for holding public hearings. The degree of public trust in competent authorities, in the sense that their requests, suggestions and objections will be considered in an appropriate way, is limited.

c) Awareness of decision-makers that public participation broadens the range of activities when it comes to environmental protection

In Montenegro, the administration must modernise, expand, and use other instruments not strictly specified in certain legal provisions, such as a campaign in the media about the need for public participation. This can be supported by a visit to the community by employees of the competent authority, consultations, and dialogue sensitive to the cultural and socio-economic structure of the community, etc. In other words, make an effort to engage the public to help bring about sustainable solutions.

Creative ways of engaging the public must be found. Therefore, the following tools are recommended:

- Social media should be increasingly used for communication with target groups, especially with young people and people who do not use traditional forms of communication and want to receive direct and quick feedback. Users can join discussions in a simple and direct way. These techniques are very time and cost-effective.
- Since social media cannot convey information to people who do not have basic ICT skills or who do not have access to the Internet. This tool has to be combined with other techniques to engage target groups. In doing so, issues of privacy, confidential communication and data protection must be taken into consideration.
- It is particularly important to simplify procedures and support groups without the necessary capacity, especially in areas where there is no practice of public participation or where local culture could be a barrier to this process.
- A very good technique for achieving interaction is the formation of an education-info office and the establishment of a free telephone line/mobile connection within the competent authority.

6.3 Institutional Needs

The latest report on the implementation of the Aarhus Convention⁴⁸ lists capacity building activities in the period 2021-2024, as follows:

- May 2021, Podgorica: the Center for Training in the Judiciary and Prosecution organized an online training as part of the 2021 Continuous Training Program for judges and state prosecutors, on the topic of “Criminal Offenses in the Field of Environmental Protection”.
- February – April 2022: in collaboration with the HELP Program of the Council of Europe for the Western Balkans and Turkey, the Center organized an online course on “Environmental Protection and Human Rights” as part of the regional project “Horizontal Mechanism for the Western Balkans and Turkey 2019-2022”.
- November 2022, Podgorica: as part of Luxembourg’s Technical Support Program for Montenegro, the Center, in collaboration with the Judicial Academy of Serbia and the European Institute of Public Administration (EIPA), organized a regional conference on the topic “Implementation of the Environmental Protection Law in the Area of Pollution”.
- October 2023, Podgorica: the Center for Training in the Judiciary and Prosecution organized training on “Criminal offenses in the area of environmental protection” as part of the 2023 Continuous Training Program. Topics included the protection of the environment under the Criminal Code of Montenegro in the context of EU law, criminal aspects of environmental protection, and case law examples on deforestation and illegal logging. Thirteen participants attended, including 2 judges, 5 state prosecutors, 4 court advisors, and 2 state prosecutor advisors.
- January – February 2024, Dubrovnik, Croatia: the U.S. Department of Justice’s Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), in partnership with the U.S. State Department’s Bureau of International Narcotics and Law Enforcement Affairs (INL), organized a regional workshop on “Transnational Organized Crime and Corruption in the Context of Environmental Crime”. The workshop aimed to improve legal practitioners’ knowledge on combating environmental crime, corruption, organized crime, and money laundering. A special prosecutor from Montenegro participated in the workshop.
- April 2024, Opatija, Croatia: the International Criminal Investigative Training Assistance Program (ICITAP) organized a regional workshop on ‘organized crime in environmental protection and corruption’. The program covered criminal offenses related to environmental protection, the impact of corruption on these crimes, and investigative techniques related to oil spills and wastewater treatment facilities. A special prosecutor from Montenegro attended the workshop.
- Montenegro participates in the regional project “Fighting Environmental Crime in Montenegro and the Balkan Region”. As part of this project, the OSCE organized a roundtable in Montenegro on June 5, 2024. The EPA in cooperation with the OSCE Mission and the French Embassy in Montenegro, organized a national workshop in October 2024 on “Environmental Crime in Montenegro and the Balkan Region”, with around 40 participants, including police, inspectors, prosecutors, judges, NGOs, and representatives from the Agency. A regional workshop was also held in Montenegro as a part of this project.

This short overview suggests activity is insufficient, generally *ad-hoc* and/or project based, with a limited number of participants, and lacks systematic approach in resolving actual problems. International best practice focusing on specific types of crimes (e.g., illegal logging) for a certain period, involving all actors in all phases of the case, is to be recommended. This type of capacity building would be hands-on, with intensive exchange of information and inter-agency cooperation. This provides guidance by relevant example.

⁴⁸ <https://www.gov.me/clanak/javna-rasprava-o-predlogu-v-nacionalnog-izvjestaja-o-sprovođenju-arhuske-konvencije>

Currently, exchange of information between different actors is limited to official correspondence and exchange of procedural acts, hampering real cooperation.

7. COMPARATIVE ANALYSIS

7.1 Environmental Justice and Participatory Mechanisms on the EU Accession Path

7.1.1 Environmental Justice

Firstly, access to justice depends on access to information and certain procedural guarantees that protect the claimant. Secondly, access to justice depends on the admissibility of claimants and the technical nature of the case before the courts, especially regarding climate litigation where the “preventive” dimension is increasing.

Before the case goes to court: access to information and procedural framework

Access to justice is the result of numerous interconnected factors, including procedural components, information and awareness of the populations, existing supporting mechanisms such as human rights institutions, etc. To fully comprehend access to justice in environmental and climate matters, it is essential to observe context and respect for different rights. This creates a climate of trust and builds a pathway to the court in environmental and climate disputes.

- (a) To have access to justice, both individuals and legal entities must be able to show the judicial authorities their request has sufficient grounds. This implies being able to access the necessary pieces of information. This means, on the one hand, that the information can be requested and then provided by the competent authorities and/or stakeholders (e.g., project owner). On the other hand, the information is accessible to individuals and CSOs (complete information, in a known and understandable language, available for people with disability, etc.). In addition to the elements of the Aarhus Convention, European Court of Human Rights (ECtHR) case law clearly identifies access to information regarding environmental matters as a component of the right to protection of private and family life.⁴⁹ The definition of what constitutes environmental information is particularly important, as a restrictive definition can deprive the general and concerned public of essential knowledge. In France, access to information is a broad concept.⁵⁰ It covers all information (whatever the medium - written, visual, audio, electronic) on the condition of the environment and its various elements (atmosphere, water, soil, landscapes, natural sites, etc.), decisions, activities and factors likely to affect the status of the environment, human health, safety and living conditions, buildings and cultural heritage (insofar as they are or may be altered by environmental factors) or reports drawn up by or on behalf of public authorities on the application of legislative and regulatory provisions relating to the environment, including on financial aspects of a project. The effectiveness of such provisions is important and must be ensured in a timely manner.

In France, any person who has been refused access to an administrative document or information, or who has not received a reply within one month, or has received a negative answer to its demands regarding re-use of public information, may refer the matter to the Commission d'Accès aux Documents Administratifs, the French Commission for Access to

⁴⁹ Article 8 of the Convention requires the establishment of an effective and accessible procedure enabling such persons to request all relevant and appropriate information relevant and appropriate information – See for instance ECtHR, *Roche v. United Kingdom*, 19 October 2005; ECtHR, *Vilnes and others v. Norway*, 5 December 2013.

⁵⁰ Article L. 124-2 du Code de l'Environnement ; Article 7 of the Charte de l'Environnement.

Administrative Documents (CADA).⁵¹ CADA's opinions interpret the law to ensure a good equilibrium. For instance, CADA has constantly highlighted the fact that the administration is required to provide documents and pieces of information for projects that are still in the preparatory phase, even if elements of the project itself cannot be disclosed yet.⁵²

- (b) Meeting individuals' and CSOs' needs regarding information, not only on the environment itself and on decisions/projects impacting the environment, but also on legal procedures, remedies, etc. remains integral. Clarity of legislation and of available remedies is important for access to justice in environmental matters: development of procedures that derogate from ordinary law, referrals to other multiple pieces of legislation, and so on, may obscure relevant remedies and proceedings. In Albania, academics maintain that several laws can cover the same issues,⁵³ while other laws introduce exemptions (see above - Section 5).
- (c) Facing the technicality of environmental law and proceedings, individuals can lack expertise to access justice by themselves. Nevertheless, the Aarhus Convention and the European directives on public participation and access to environmental justice emphasize that the "public concerned" in this context are "the public affected or likely to be affected by environmental decision-making procedures [...] or having an interest in such procedures", which includes NGOs.⁵⁴ The possibility to act collectively is essential to environmental justice, since it is a field of strong mutual interests and NGOs can concentrate on expertise. At the root of this, is freedom of association as protected by the European Convention on Human Rights (ECHR)⁵⁵ and the Charter for Fundamental Rights of the European Union⁵⁶. For this reason, the legal procedures and formalities for registering associations must be reasonable and not hinder this freedom.⁵⁷ In its 2024 report on Albania, the European Commission underlines that the electronic registration of NGOs is not yet fully functional.⁵⁸ If the NGOs are not registered, they have no legal status and cannot go to court.
- (d) Another element creating a context favorable to access to environmental, is the possibility of disseminating information and thus freedom of expression⁵⁹ which is imperative in the case of climate and environmental issues for individuals⁶⁰ as well as for NGOs which are seen as acting watchdogs⁶¹, and journalists whose profession is closely linked to the dissemination of objective and sourced information. The European Agency for Fundamental Rights underlines various difficulties in this regard, with Strategic Lawsuits Against Public Participation (SLAPPs) which is an increasing matter in Albania⁶². If France has not yet

⁵¹ To help the public to access information, the Commission d'Accès aux Documents Administratifs - an independent administrative authority - was created in 1978. It issues opinions but can also sanction an infringement.

⁵² See for instance CADA, Avis (favorable) n° 20072918-PN du 26 Juillet 2007; CADA, Avis (favorable) n°20103735-AR du 23/09/2010 Alsace Nature.

⁵³ MISHO Erinda, "The Development of Environmental Law in Albania: Historical Overview of Efforts toward Full Approximation with the Acquis Communautaire", in *Balkan and Near Eastern Journal of Social Sciences*, 2019:5 (3)

⁵⁴ See art. 11 Directive 2011/92/EU on Environmental Impact Assessment.

⁵⁵ Article 11 of the ECHR.

⁵⁶ Article 12 of the CFREU.

⁵⁷ See for instance ECtHR, Costel Popa v. Romania, 26 April 2016.

⁵⁸ Commission Staff Working Document Albania 2024 Report, 30 October 2024, p.24: https://neighbourhood-enlargement.ec.europa.eu/document/download/9f9ac397-ca8a-4bde-8204-998e27ab4f51_en?filename=SWD_2024_242_2_EN_autre_document_travail_service_part1_v3.pdf

⁵⁹ Art. 10 ECHR and Art. 11 of the CFREU.

⁶⁰ See for instance ECtHR, Steele and Morris v. United Kingdom, 15 February 2005; ECtHR, Bumbes v. Romania, 3 May 2022.

⁶¹ See ECtHR, Vides Aizsardzības Klubs v. Latvia, 27 May 2004.

⁶² COMMISSION STAFF WORKING DOCUMENT Albania 2024 Report, 30 October 2024, p.36,37.

transposed the 2024 EU directive regarding SLAPPs⁶³, other legislation⁶⁴ protects activists and whistle blowers enabling the emergence of legal environmental and climate cases, and goes beyond the scope of the Directive (EU) No 2019/1937⁶⁵.

- (e) Access to court can be limited by financial issues. Judicial fees and legal costs contribute to the proper administration of justice. They can also be a genuine obstacle to accessing justice when excessive (i.e., leading to 'prohibitive expenses' objectively and subjectively for the plaintiffs)⁶⁶ or not compensated by free legal aid mechanisms offered by the State - an essential tool for equality of arms⁶⁷. Free Legal Aid is particularly important for environmental justice, since on the one hand environmental law is a technical subject with complex proceedings generally requiring the assistance of a lawyer,⁶⁸ and on the other hand, costs regarding expertise, lab analysis, and so on, can be very high and unaffordable for the majority of citizens on low incomes. Since 2008, Albania has developed a strong Legal Aid, with the law no 111/2017 stating Legal Aid is guaranteed by the State. However, adoption of important bylaws has been delayed⁶⁹ and the amount of aid seems insufficient compared to the costs supported by plaintiffs in environmental cases (see above - Section 5).
- (f) All the elements presented above are particularly important for minorities, marginalized communities and vulnerable individuals who may be disproportionately affected by environmental and climate issues.⁷⁰ Among the individuals and communities particularly concerned with environmental matters within the EU are the Albanian Roma⁷¹, who additionally experience extreme poverty, discriminations and/or deprivation which can prove a barrier to accessing justice.⁷² For instance, the European Commission against Racism and Intolerance (ECRI), mentions that *"the absence of a functioning legal aid system disproportionately often affects members of the Roma and Egyptian communities [...] due to their social marginalization and extremely low incomes"*.⁷³ EU Member States are obliged to fight discrimination, and are particularly encouraged to take appropriate measures to ensure that these populations have access to environmental justice on an equal footing with others.⁷⁴

⁶³ Directive (EU) No 2024/1069 11 avril 2024.

⁶⁴ Loi organique n° 2022-400 du 21 mars 2022 visant à renforcer le rôle du Défenseur des droits en matière de signalement d'alerte ; Loi n° 2022-401 du même jour visant à améliorer la protection des lanceurs d'alerte

⁶⁵ The protection of whistleblowers in France, Biennial report 2022-2023, Défenseur des Droits, https://www.defenseurdesdroits.fr/sites/default/files/2024-09/ddd-rapport-LA_2022-23_EN_20240716.pdf

⁶⁶ Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment - See also CJEU, C-530/11, European Commission v. United Kingdom of Great Britain and North Ireland, 13 February 2014 ; CJEU, C-260/11, The Queen, on demand of David Edwards and Lilian Pallikaropoulos c. Environment Agency and others, 11 April 2013.

⁶⁷ See for instance ECtHR Steele and Morris v. United Kingdom, 15 February 2005.

⁶⁸ See ECtHR, P., C. and S. v. United Kingdom, n° 56547/00, 16 October 2002, paras. 88-91

⁶⁹ ECRI, 6th report on Albania, June 2020, p.25.

⁷⁰ See for instance IPCC, sixth assessment report, Working group II contribution Climate Change 2022: Impacts, Adaptation and Vulnerability 28 February 2022: Sixth Assessment Report – IPCC.

⁷¹ European Environmental Bureau, Push to the wastelands: Environmental racism against Roma communities in Central and Eastern Europe, April 2020: Pushed to the wastelands: Environmental racism against Roma communities in Central and Eastern Europe - EEB - The European Environmental Bureau; European Environmental Bureau, Bearing the brunt: Roma and Travelers experiences of environmental racism in Western Europe, January 2024.

⁷² See for instance ECRI, 6th report on Albania, June 2020.

⁷³ ECRI, 6th report on Albania, June 2020, p.25.

⁷⁴ The guidelines of the EU Strategic Framework for Roma Equality, Inclusion, and Participation published in 2020 include indicators and measures linked with environmental issues, such as prioritizing access to social housing for Roma living in environmentally hazardous areas, ensuring active participation of Roma communities, etc. See: European Commission, A Union of Equality: EU Roma strategic framework for equality, inclusion and participation, 7 October 2020 - see in particular: Portfolio of indicators, Objective 7-a: Fighting environmental deprivation, promoting environmental justice

- (a) The Court of Justice of the European Union (CJEU), pursuant to Article 47 of the Charter of Fundamental Rights and the indirect effect of Article 9(3) of the Aarhus Convention, recognises the rights of individuals to bring an action in environmental disputes in light of their “sufficient interest” in the environmental damage at the center of the complaint.⁷⁵ This framework is more protective than that of the Strasbourg Court, where the concept of victim is only granted where the victim is directly affected⁷⁶ by the alleged breach of the Convention.⁷⁷ However, in the *Klima* judgment, under Article 6(1) of the Convention, collective entities such as associations were granted standing to defend the rights and interests of their members or individuals affected or concerned, in cases of climate inaction attributable to the Defendant State. This interpretation appears to be in line with the case-law of the CJEU and the Aarhus Convention.⁷⁸ In Albania, Montenegro and Northern Macedonia, the admissibility of associations, groups and individuals, as in many Member States, may constitute the first barrier in which this European framework should nevertheless encourage an extensive approach to the interest to act.

In France, approved environmental protection associations by the authorities are presumed to have the right to take legal action. This facilitates their admissibility, but also restricts this access by requiring them to obtain administrative approval, the granting and withdrawal rests in the hands of the authorities, under the control of the administrative judge. Some Member States, such as Germany (sanctioned by the CJEU)⁷⁹ restrict the right of associations to act, by limiting to certain categories of action against certain decisions or acts. In addition, although class actions are recognized in French law, particularly in environmental matters, they were not as successful as expected due to their procedural complexity, with citizens and associations preferring collective and/or individual legal actions, which are quicker and simpler. This tendency to seek to provide a legal framework for access to the courts⁸⁰ should be weighed against the effectiveness of a flexible case-by-case approach (as appears to be the case in the studied countries), as long as major national decisions provide sufficient legal certainty and foreseeability for claimants in such disputes.

Furthermore, the difficulty of proving the environmental and/or material damage alleged by the environmental association is significant in all three countries. In France, there is a legal peculiarity due to the existence of case law, in certain disputes,⁸¹ relating to the ‘moral prejudice’ suffered by associations. In other words, a judge may consider that an association has been harmed if the facts, even if they do not involve any environmental damage - for example, failure to comply with environmental regulations - undermine an association’s

⁷⁵ C-243/15, §44: considering that « It would be incompatible with the binding effect attributed to a directive by Article 288 TFEU to exclude, in principle, the possibility that the obligations which it imposes may be relied on by those concerned. ». See also: C-664/15 *Protect*, para. 45. This interest in bringing proceedings also depends on the applicable directives concerning acts or omissions that have an impact on the environment. For example, in relation to the following directives: ELD (Article 12(1)(a) -(c)), air quality plans (C-404/13 *Client Earth* and C-237/07 *Janecek*), nitrate (C-197/18/ *Burgenland*), habitats (C-240/09 *Slovak Bears*), water framework (C-664/15 *Protect*) and see also article 15a of directive 2003/35/C.

⁷⁶ Article 34 of the ECHR. In the *Klima* and *Carême* cases, the applicant individuals’ exposure to the effects of climate change and the urgent need to guarantee their protection were not demonstrated.

⁷⁷ Articles 6 and 8 of the ECHR

⁷⁸ C-664/15 *Protect*, §67: “if national law establishes such a link between the status of party to administrative proceedings and the right to judicial review, that status cannot be denied unless the right to review is deprived of any useful effect, or even of its very substance”.

⁷⁹ See for example, in the *Dieselgate* case: Judgment of 8 November 2022, *Deutsche Umwelthilfe* (Type-approval of motor vehicles) (C-873/19, EU: C: 2022: 857).

⁸⁰ In Albania, for example, a law is currently being drafted to allow collective proceedings to be initiated.

⁸¹ Certain disputes are subject to specific rules of admissibility, such as town planning disputes.

statutory purpose of protecting the environment. This indirect damage, assessed in abstracto, is either complementary to the material and ecological damage suffered, or the only damage claimed by the association, which facilitates access to the courts. European case law, without explicitly mentioning non-material damage, encourages such an approach, where the mere mobilization of environmental provisions in a dispute should be sufficient to justify this interest.⁸² Associations' moral prejudice, understood as non-material damage, does not seem to be recognized by the legal systems in Albania, Northern Macedonia and Montenegro.

- (b) In addition, given the technical dimension of environmental law, adversarial debate on the evidence is essential. In the three countries studied, the difficulties of demonstrating the risks or damage to the environment were noted. The administrative or judicial judge (civil or criminal) should forge conviction based on the evidence brought by the parties. The quality of environmental inspections and any EIAs depends on the independence, ergo the resources of the authorities, which carry them out. The absence of an independent environmental authority⁸³ in Albania and Northern Macedonia necessarily taints the risk of bias in the technical findings and therefore in the evidential debate before the courts. The independence of the judicial function - in the sense required by the ECtHR under Article 6 of the ECHR, i.e., the "appearance" of independence required, or the "objective" impartiality sought - is the only "bulwark" against this risk.

In France, the principle of freedom of evidence remains before the criminal court. This may order any useful measure to lead to truth. Civil and administrative judges, for their part, have the possibility of ordering expert environmental reports, including as part of the investigative measures prior to any debate on the merits of the case. These additional expert reports are sometimes essential to quantify the damage. The issue of compensation appears to be little or non-existent in local case law, apart from one case of compensation before the Albanian civil court (Gorishovë).

- (c) Finally, the "preventive" dimension of environmental litigation is essential and influences the progressive tendency of jurisdictions to protect the environment, where the principles of precaution⁸⁴ and prevention⁸⁵ call for a global approach. Environmental offences, which are sometimes concealed and have a gradual impact, are difficult to apprehend and are comparable to corruption offences, where anticipatory punishment plays an important role. Legal protection of the environment can only be achieved if States also incorporate obligations on private companies, particularly in terms of environmental risk management. Like the 'Case of Corruption'⁸⁶, the courts will penalize the absence of preventive measures from damaging environment. In this respect, the European Green Deal includes, for example,

⁸² Ibid §67 Protect. Although Directive 2003/35/EC on public access to justice in environmental matters, amended by Directives 2008/99/EC and 2011/92/EU, recognizes the right to take legal action, it does not mention non-material damage.

⁸³ Jurisprudence of the European Court of Justice says: "the public authorities responsible for environmental assessment must be independent and objective in their analysis, so as to guarantee environmental protection. The Court stressed that Member States must guarantee an independent assessment of projects, without pressure from project promoters." (CJUE, 2004, C-41/00), the Court also explains that "national environmental assessment authorities must be independent of any influence, including political or economic, in order to ensure the quality and reliability of assessments. The Court specified that the competent authorities must exercise their function without interference from those with an interest in the approval of a project." (CJUE, 2011, C-263/08).

⁸⁴ Article 191 of the TFEU.

⁸⁵ See in particular: the Lugano Convention of 193 on civil liability for damage resulting from activities dangerous to the environment and the Directive of 21 April 2004 on environmental liability regarding the prevention and remedying of environmental damage.

⁸⁶ Article 17 of the Sapin II Act.

the deforestation regulation,⁸⁷ the CS3D directive⁸⁸ and the environmental crime directive⁸⁹. None of the countries studied - even though they are exposed to the problem of deforestation - appear to have introduced obligations to monitor the management of illegal timber risks within forestry companies.⁹⁰ Furthermore, the application of the so-called deforestation regulation requires the existence of a company control authority with “functional” independence, which the countries studied do not have, with the exception, a priori, of Montenegro (EPA authority).

Public Participation

The legal guarantees of public participation are essentially procedural. The State Parties must implement the provisions of international law and define the way in which the public participates in the preparation of decisions.⁹¹ Derived from two major sources of international law, the principle of participation was translated into normative obligations by the Aarhus Convention. In EU law, however, these requirements are asymmetrical. This is the requirement relating to the duty to know and make known environmental impacts. The most formalized in EU legislation, it is embodied in two mechanisms - SEA for certain plans and programs, and EIA for certain public and private activities with a significant impact on the environment.⁹² Moreover, the legal requirement for public participation does not imply that public authorities share decision-making power with the public. The mechanisms must simply enable the public to influence the direction of the forthcoming decision⁹³ and the private petitioner or public authority must take the results of the participation into account.

In Albania, the EU as already identified discrepancies in the implementation of SEA and EIA under domestic law. The national assessment similarly highlights the difficulties inherent in ensuring effective participatory processes, particularly regarding the public's influence on decision-making and the inclusion of concerned groups, including vulnerable groups.

To address these challenges, institutional arrangements were introduced in French Law:

Early and Structured Public Involvement

Under French legislation, public participation in decision-making –whether for plans and programs or for specific decisions relating to projects with environmental implications– is allowed or required, depending on the case, at a very early stage in the process.

When a plan or program relating to environmental or regional development, or for certain projects that may have a significant impact on the environment, is envisaged, two forms of participation may be organized:

- The first is the dialogue process: this concerns the preliminary project and enables the public to question the appropriateness of the project. There are three alternative procedures: public debate, spontaneous consultation (concertation) with a guarantor.

⁸⁷ Regulation 2023/1115 against deforestation and forest degradation (RDUE), which will replace the regulation on illegal timber.

⁸⁸ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on companies' duty of care regarding sustainability

⁸⁹ Directive n°2008/99/CE

⁹⁰ Regulation EUTR n°995/2010 which will be replaced by the Regulation n°2023/1115.

⁹¹ World Charter for Nature, October 28, 1982, point 23: “Everyone shall have the opportunity () to participate () in the making of decisions which directly affect his environment”.

Rio Declaration on Environment and Development, August 12, 1992, principle 10: “Environmental issues are best addressed through the participation of all concerned citizens, at the appropriate level”.

⁹² In France, for the SEA, see L. 122-4 to L. 122-11 and R. 122-17 to R. 122-24 of the Code of the Environment and Articles L. 104-1 to L. 104-8 of the Code of Urban Planning.

⁹³ Public participation takes place before the authorization decision has been adopted, and when the project may still be modified.

- The second is the consultation process: this precedes the decision that enables the public authority to set conditions and limit governing the activity. Implemented through two procedures: public inquiry and public participation online (“participation du public par voie électronique”).⁹⁴

Participation at a very early stage encourages the public to influence the definition of the project’s content. Although no power is formally attributed to the public, the participatory arena of consultation regularly exerts an influence on the content of the decision taken by the public authority or the developer.⁹⁵

Adaptation of Participation Procedure to the Seriousness of the Impact

Under French legislation, the type of procedure organized for consultation or debate processes depends on the seriousness of the environmental impact of the project, plan, or program. This is measured objectively, in light of natural, technical characteristics, or cost of the project and/or whether it is subject to an EIA, systematically or after a case-by-case examination. In short, the greater the impact on the environment, the stronger the guarantees for participation procedure will be for the public. Among these strong guarantees, the presence of a neutral, independent and impartial moderator appears to be of prime importance in organizing public participation. This guarantee is not required by international or European law.⁹⁶ However, it does appear in the academic literature a guarantee of the effectiveness of the procedure.⁹⁷ At the debate process stage, two procedures - public debate and consultation with a guarantor - and one procedure during the consultation - the public inquiry - involve a moderator. The moderator is independent of both the developer and the public authorities and is responsible for facilitating public discussion and reporting their opinions and recommendations. These moderators are the Commission Nationale du Débat Public (CNDP) –the French National Public Debate Commission– for the public debate and the *Commissaire Enquêteur* – the French investigating commissioner- for the public inquiry.

Simplification and Innovation in Participatory Procedures

Finally, in France, the question of the design of participatory procedures is also being examined, in terms of the ability to promote public inclusion or influence, to delay decision-making, or to weaken its legitimacy due to procedural defects. A process of simplifying participatory procedures has been underway for several years. This has taken two forms:

- Forms of public participation are developing that are less regulated by law and more open. For example, the oldest and most codified form of public participation - the public inquiry - is increasingly being replaced or complemented by online participation. Similarly, consultation procedures involving collegiate bodies have shifted toward open consultations, offering fewer legal guarantees but allowing greater accessibility.

In the same vein, public debate, the most sophisticated dialogue process, is loosely regulated by law. The independent administrative authority responsible for organizing public debates - the CNDP - has developed a doctrine based on six guiding principles: independence, neutrality, transparency, equal treatment, argumentation and inclusion. The CNDP implements these principles in different ways depending on the debate, and develops different forms of participation during the same debate to reach out to all audiences: online

⁹⁴ - vie-publique.fr -

⁹⁵ Revel, M., Blatrix, C., Blondiaux, L., Fourniau, J.-M., Dubreuil, B. H., & Lefebvre, R., (2007), *Le débat public: Une expérience française de démocratie participative*, 2007, Paris, La Découverte.

⁹⁶ The requirement for independence under EU law only applies to the environmental authority.

⁹⁷ Bobbio, L. (2003). Building social capital through democratic deliberation: The rise of deliberative arenas. *Social Epistemology*, 17(4), 343-357.

participation stands in supermarkets, events in cultural venues, partnerships with associations for vulnerable people, mini publics, etc.

The administrative authorities are developing *ad hoc* forms of citizen participation alongside the procedures codified in law. For example, at national level, the government opted for “five-party governance” to undertake a major reform of environmental law known as the Grenelle Environment Forum. In this process, the government engaged representatives of local authorities, trade unions, professional leaders and environmental protection organizations to build consensus that would be validated and shared by all, with a view to drafting new laws to protect the environment. More recently, the *Convention citoyenne pour le climat* – the Citizens’s Convention for Climate – assembled randomly selected residents to propose desirable measures to achieve the French government’s GHG emission reduction targets.

7.2 Comparative analyses between targeted countries

Prior to referral to the courts, the three countries do not appear to be complying with their obligations regarding the dissemination of environmental information, which ultimately also contributes to limiting access to the courts and tainting the quality of justice due to the lack of public information available in sufficient quantity and quality. In addition, although all three countries have laws on access to information, they do not appear to have any special regime that is more favourable to the right of access to environmental information⁹⁸ and the paucity of litigation on the subject does not appear to make it possible to assess the position of local courts on this point.

All three countries face similar challenges in removing obstacles to access to the judge, in particular three aspects:

- financial obstacles (persistent limitations regarding accessing free legal aid by the State - in particular for marginalized communities - lack of funding for NGOs, etc.),
- psychological obstacles (lack of trust in the institutions, perceived lack of equality of arms linked with marginalization of some victim-communities, SLAPPs, low protection of whistle blowers and criminalization of activists, threats against environment defenders and journalists),
- procedural obstacles (NGOs registration - in particular for North Macedonia and Albania -, poor readability of legislation and regulations on environment and available remedies, overlapping of legislations, difficulties to have sufficient elements to start a case, locus standi, etc.).

Before the courts, the question of the admissibility of individuals and associations has been the subject of significant developments in case law in Albania, even though this issue is still being debated, which raises questions about the “binding nature” of case law in this country. In Montenegro, citizens’ complaints in environmental matters which do not lead to prosecution constitute a major obstacle to access to the courts⁹⁹. With regard to adversarial debates, particularly on evidence and causality, apart from the need for the judicial sector to be trained on environmental matters, the use of external expertise does not appear to be developed before the criminal, civil and administrative courts in these countries. On the contrary, particularly in Albania and Northern Macedonia, the mobilisation of a ministry’s in-house expertise and its

⁹⁸ For example, Directive 2003/4/EC prohibits the State or the company from invoking business secrecy when the request for information concerns emissions into the environment.

⁹⁹ Depending on the circumstances of the case, these dismissals could be sanctioned on the grounds of lack of effective recourse to a court. In France, if a complaint to the public prosecutor is dismissed, the plaintiff has the option, in both misdemeanour and criminal cases, of lodging a complaint before an investigating judge and then appealing to the investigating court of appeal if the judge refuses to open investigations.

environmental assessment taint the quality of the evidentiary debate with bias. Finally, in all three countries, at the project environmental assessment stage, the failure to analyse the cumulative impact of several industrial projects and the failure to take into account the climatic impact and vulnerability of these facilities do not appear to be sanctioned by the authorities or the courts.

Public Participation

All three countries have constitutional provisions relating to the environment. However, these provisions do not necessarily state the public's right to participate in the preparation of decisions that have an impact on the environment. This is the case in Albania with Article 56 of the Constitution, which recognises the right of citizens to take part in the environmental decision-making process in addition to the right to receive information, and in Montenegro with Article 23 of the Constitution. On the other hand, the three countries have ratified the Aarhus Convention and the Espoo Convention, both of which set out the conditions for public participation in national decisions with an impact on the environment and in decisions with a trans boundary impact. These treaty provisions have a higher authority than the law and constitute, in each of these three areas, a standard for monitoring the implementation of national provisions. All three countries have adopted laws designed to transpose the European rules on the SEA and EIA.

In all three countries, public participation faces the same challenges. Firstly, effective participation does not always seem to be guaranteed. This difficulty may be linked to the conditions under which the procedures are organised (dates, places and times of public meetings not adapted), but also to the lack of public awareness of environmental issues. Secondly, the independence of environmental authority assessment from the public authority making the decision and from the project owner does not seem to be a given. However, this point is essential to ensure that the environmental and health impacts of projects are fully and objectively assessed and that the public is fully informed.

Finally, the public's influence often appears to be weak. The difficulty of developing projects, plans or programmes within the framework of consultative procedures being a contributory factor. This requires a rethink about the timing of participation procedures - do they come too late in the decision-making process? Methods, or the way in which the authorities perceive these mechanisms: instruments of legitimation, Information tools? Instruments for improving decision-making processes? All would benefit from reconsideration.

7.3 French Best Practices

In Albania, shared French legal cases are related to climate inaction, independence of environmental assessment authority, soil and water contamination by agrochemical products. In Northern Macedonia, legal cases are related to air pollution and mega basin. In Montenegro, they are related to illegal logging, biomass/ biofuel plants and water contamination. An example of an emergency proceeding is also mentioned in the three countries.

7.3.1 Illegal Logging, Deforestation and Independent Administrative Authority of Controls

Criminal courts of appeal of Rennes (3/11/2024) and Bourges (27/6/2024) confirmed the criminal liability of French timber companies for failing to assess, reduce and mitigate their risks of importing illegal timber on the EU market. The supply chains of the companies were screened by the judge who also took into consideration the high corruption rate in the producer country which "colours" the case with illegality¹⁰⁰. These cases also show the importance of punishing

¹⁰⁰ Transparency International Index is used as a reference.

the absence of preventive measures, especially concerning concealed offences, and of independent administration and inspection. In these cases, the two companies were controlled by the Administration (local and Agriculture Ministry, which creates questions of independence and conflicts of interest). They were found to be compliant with EU regulation. However, despite these reservations, the criminal court convicted them (judicial jurisdictions are not linked by the legality advice of the Administration).

7.3.2 Biomass/Biofuel Plants

IEA must include all substantial impacts, even far from the plant. An environmental NGO asked for two industrial permits to be cancelled: the two cases involved a biomass plant which imported timber from another region in France to make energy (Gardanne, case n°450135), and a biofuel plant which imported palm oil from Indonesia (TE La Mède, case n° 1805238.). In both cases, EIA only focused on the direct geographical perimeter around the plants while their operations needed imports with damages in producers' areas. The Administrative Courts asked companies to provide a new EIA, taking into account all environmental impacts including impacts far from the plants, if such impacts are needed by the plants' operations and have substantial impacts on natural resources. These decisions are compliant with the EU Directive on EIA which requires taking into account direct and indirect impact of the plant on the environment.

7.3.3 Water Pollution by a Food Processing Industry

French company "LACTALIS" has several ongoing criminal proceedings concerning pollution of waters due to chemical discharges into watercourses. There have been several convictions for water pollution - notably due to the discharge of the chemical substance sodium hypochlorite 47/50 - resulting in fines of €100,000. These convictions are sometimes handed down under a new alternative procedure to prosecution, a public interest judicial agreement (CJIP environment) inspired by the deferred prosecution agreement from the USA criminal proceedings, which, in addition to the €100,000 fine, includes repair obligations such as cleaning up watercourses and bringing installations into compliance¹⁰¹. However, these low fines and the recurrence of pollution highlight the lack of a dissuasive administrative legal framework for combating water pollution. Above all, these regular criminal sentences and penalties demonstrate the ineffectiveness of the action taken by environmental inspectors, whose resources remain inadequate.

7.3.4 Emergency Procedure for the Right to a Safe and Healthy Environment: The "Référé Liberté"

The French legislator has created a specific form of appeal when there is an urgent need to obtain the suspension of an action in order to avoid the aggravation/continuation of the situation: the "référé". Several "référés" are available, including one specific when a fundamental right is at stake, "référé liberté"¹⁰². This legal remedy has been used for a couple of years to protect the right to a healthy environment, in particular biodiversity, when irreversible actions are imminent¹⁰³. The administrative judge checks the existence of the necessary conditions¹⁰⁴ and has 48 hours to give an answer. They can dismiss the case, or order all measures necessary to

¹⁰¹ See Vincent Delbos *La CJIP environnementale: émergence de nouveaux processus judiciaires pour prévenir, réprimer et réparer les atteintes à l'environnement* (in French: *Environmental DPA emergence of new judicial processes to prevent, punish and remedy environmental damage*)

:<https://www.ordre-avocats-cassation.fr/publications-scientifiques/2024/revue-justice-cassation-2024>

¹⁰² Art. L521-2 Code de la Justice Administrative

¹⁰³ For instance launch of work: TA Pau, 10 november 2022, n° 2202449; TA de Montpellier, 7 march 2024, n° 2401295.

¹⁰⁴ Conditions are: emergency and a manifestly illegal infringement on a fundamental right.

safeguard the fundamental freedom, in the waiting of the decision on the merits of the case by a full jurisdiction. In one successful case, an NGO (Comité écologique ariégeois) asked the judge to suspend the execution of an order by which the Prefect of Ariège introduced a maximum authorized harvest and set quotas (10) for protected birds (*Lagopedus muta*) for the hunting season 2024-2025. The Conseil d'Etat suspended this order on the grounds that, even if the quota is low, it cannot *“prevent a significant reduction in numbers, since such a reduction is likely to lead, in the long term, to the disappearance of the species concerned”* so that the order *“constitutes a serious and manifestly illegal infringement of the right to live in a balanced environment that respects health, in view of the interests that the Comité Ariège écologie association justifies defending”*¹⁰⁵.

- Public participation good practices: 3-5 important legal cases that demonstrate the effectiveness of the EU/ French environmental Public Participation system.

Public participation in environmental law in France can be more or less binding, according to the size and risks presented by the project or the public policy. It is regulated by “Environmental Code” and relies on **Article 7 of the Charter for the Environment** which has a constitutional value: *“Everyone has the right, in the conditions and to the extent provided for by law, to have access to information pertaining to the environment in the possession of public bodies, and to participate in the public decision-taking process likely to affect the environment”*.

The main authorities granting public participation in France are the Commissaire enquêteur – the French investigating Commissioner¹⁰⁶ – since 1810, the Conseil Economique, Social et Environmental (CESE) – the French Economy, Social and Environmental Council, a collegiate body set up under the French Constitution to represent civil society – since 2008, and the *Commission Nationale du débat Public* (CNDP) granting access to public information and participation in terms of environment since 1995. This collegial body implements the rights stated in the Aarhus Convention. The latter became an independent administrative authority in 2002¹⁰⁷ and is the guarantor of so-called environmental democracy. It is constituted by 25 permanent members representing public authorities and CSOs in the broader sense, and by a pool of 300 “guarantors” that can be activated to conduct or to monitor *specific and ad hoc* public participation processes on projects or plans impacting the environment. The most binding of those processes is the public debate, led by a specific commission, an ad hoc, *Commission Particulière du débat Public* (CPDP), whose members are nominated by the CNDP. The CNDP and the CPDPs must respect the request, the timing (before the decision is made and the public inquiry begins), but is quite free regarding the tools implemented for information and participation purposes. Any person involved in the CNDP and CPDP processes must sign a non-interest conflict statement and respect six values of the institution: independence, neutrality, transparency, argumentation, equality of treatment and inclusion.

The public participation legal process implemented by CNDP or the project owner, has three main temporalities and roles:

- public participation as an opportunity to challenge prior to the decision via *concertation*, the equivalent of public consultation, with or without a third independent party¹⁰⁸ or *public debate*: i.e. strengthened public consultation in which processes are decided by the independent authority (CNDP and CPDP, i.e. supra).

¹⁰⁵ Conseil d'Etat, 18 october 2024, n°498333

¹⁰⁶ ie 7.1.1

¹⁰⁷ Loi n° 2002-276 du 27 février 2002 relative à la démocratie de proximité

¹⁰⁸ If the cases apply, and it's voluntary or mandatory to have an independent scrutiny, the watchdog would be guarantors of the CNDP.

- public participation as follow-up of the decision, also via concertation, ensuring access to information and public hearings lead by the 'Project Owner' (PO), i.e. the moral person proposing a project or a public policy planning. This can be a company or a public authority, under the scrutiny of a third independent party¹⁰⁹.
- public participation as a permanent component of the project or public policy planning.

Non-compliance of public participation mechanisms can lead to legal complaints and trials, as described below. However, before this eventuality, the public participation mechanisms strengthen access to information and discussion of a project/plan, especially in public debate procedures that question viability. Thus, 60% of projects are modified after public debate, while some are abandoned completely (such as Rhornergia (hydro plant) or *Montagne d'Or* minerie in Guyana).

Focus on Two (2) Cases of Public Participation Procedures:

"La mer en débat" 2024 - Updating of façade strategic documents (DSF) and mapping of offshore wind farms (45GW)

A new strategic maritime planning and the high-level development of offshore wind farms proposed by the political authorities were subject to public participation process and scrutiny. The CNDP triggered a **"public debate"**. The CNDP entrusted its organization to a special committee made up of some of its members: *la Commission particulière du débat public – La mer en débat* (CPDP). The Commission particulière du débat public (CPDP), created ad hoc, was composed of 22 guarantors, due to the extensive geographical realm of coastal areas and the impact on the entire country's energy and environment, supported by 12 employees for technical support. CPDP were divided into 4 maritime areas, administratively defined, and had to grant:

- the project opportunity, objectives and characteristics;
- the socio-economic stakes involved, as well as their significant impact on the environment and regional planning;
- the alternative solutions, including those that cannot be implemented;
- the procedures for public information and participation after prior consultation. This procedure was initially planned for a little more than a month.

The procedure took place over almost five months. Difficulties arose at the beginning of the debate: two DSF were missing, the commission had to ask repeatedly for them, and they arrived almost one month after the start of the events. In addition, tensions between stakeholders emerged, especially with fishermen, cumulative effects difficult to identify, and a very large commission, with different visions of PP, to coordinate. However, this debate is one of the biggest ever held, with 21 043 participants to the 375 organized events, 20 088 written contributions and 195 506 visits of the specific tool developed for the debate «Faites l'expérience!». An experimental "inclusion group" of approximately 350 people was also created in partnership with the European Project Phoenix. This allowed vulnerable communities to participate fully by organising their own debates in their own local communities. All completed the online platform where stakeholders can produce a short dossier, and large public can access information and question/answers systems.

At a national level, the main topics raised and discussed by the public were:

- The challenge of providing information and useful knowledge (on the state of ecosystems impacts of activities and cumulative effects, etc.)
- Adapting to climate change and combating land-based pollution
- Offshore wind power: conditions for its development (energy planning, fishermen, ecology)

¹⁰⁹ This process is mandatory for the biggest projects/ state plans such as nuclear power plants, spatial planning etc. The 'watchdog' would be guarantors of the CNDP, specifically nominated.

- Concerning high-protection zones: what are their specific features? (Why is the European taxonomy not used? What is the difference between protection zones and high-protection zones?)
- The key issue of governance: towards shared governance? (Articulation with spatial planning, common governance for ZPF and participation of stakeholders and public *a posteriori* regarding offshore wind farms).

The CPDP issued 49 common recommendations and between 12 and 30 specific recommendations linked to the geographical area. The requests for responses from the project owner, i.e., the ministers making the referral and RTE, concern:

- the land-sea link ;
- the coastline;
- the place of offshore wind power and other marine renewable energies in the energy transition;
- location and connection of wind farms;
- strong protection zones and marine protected areas
- fishing.

In particular, the commission recommended in particular:

- supporting institutions working to improve scientific understanding of the marine environment;
- continuing to involve the public in the decision-making process through ongoing consultation.

The *concertation continues* to ensure information and PP *a posteriori* will take place from 2025 to the end of the wind farm projects, with a specific attention to mapping and inclusion of stakeholders.

Débat public Lithium - 2024

In the Allier region of France, mining company, Imerys, plans to open a lithium mine (EMILI project). The company has identified a lithium deposit on its industrial site currently dedicated to kaolin production. By law, regarding the financial cost and environmental dimension of the project, the company was forced to request CNDP, who then decided to implement an ad hoc "public debate" comprising of 9 people who had to grant:

- project opportunity, objectives and characteristics;
- socio-economic stakes involved, as well as their significant impact on the environment and regional planning;
- alternative solutions, including those that cannot be implemented;
- procedures for public information and participation after prior consultation

Once the project's file was publicized and 50 stakeholders interviewed, the procedure took place over a five month period, with 39 face-to-face events (public hearing, workshops, cooperation with students) and 3 webinars, with an online platform where stakeholders can produce a short dossier and the public at large can access information and question/answers systems. This involved approximately 4000 persons. The main topics raised by the public were:

- What path for mine planning in France?
- How to develop mines, while preserving the environment?
- What socio-economic impacts? What concrete impacts due to the lack of some incomplete studies?
- Which control, governance and local pillars for a relevant mining development model for local communities?

The CPDP issued 27 recommendations regarding the opportunity of the project, governance and control, technical issues, risk management and impact on the socio-economic impacts for local

communities, as well as the next steps of public participation (concertation). Based on the report of the debate, the letter of the president of the CNDP and other interests, the project owner decided to pursue the project, balancing questions of opportunities and environmental matters.

7.3.5 Environmental justice

With regard to inaction on climate change and air pollution, the existence of European standards with quantified targets has led to court rulings in France in these areas¹¹⁰. Given that general and sectoral directives on reducing CO2 emissions and air pollution are sufficiently precise with thresholds, failure to comply has led to the French State being held liable and / or convicted¹¹¹ with an injunction to take action for the future¹¹² and heavy fines¹¹³. These obligations to achieve results at European level, with the risk of infringement proceedings initiated by the European Commission, provide an incentive framework for public policies and a sufficient legal basis to enable the courts to impose sentences and injunctions for the future, via a form of anticipatory monitoring of public policies.

As far as environmental impact assessments are concerned, French law has been affected by a number of important developments thanks to EU law. Firstly, there is the need to separate the authority assessing environmental impacts from the authority issuing operating permits for industrial facilities. Secondly, the content of environmental assessments has had to be adapted to take account of climate issues. Finally, the geographical scope of the impact study, which must include direct and indirect effects without distinction, has made it possible to include environmental impacts that are geographically distant but essential and necessary to the operation of the facility.

Public Participation:

In France, four elements contribute to effective public participation:

- a) The CNDP mandatory referral¹¹⁴: independence of the third party ensuring access to information and public participation. That is to say, to swear a non-conflict of interest, to withdraw if any conflict of interest emerged, and respect the following values: independence, neutrality, transparency, argumentation, equality of treatment and inclusion. These obligations are listed in a Charter¹¹⁵ and it is not uncommon to see people step out from their third independent party mandate because of conflict-interest or neutrality issues.
- b) Accountability of project owner and decisions makers within the Public Debate Procedure (the most binding consultation): project owners have to consider and respond to questions and recommendations made by the different authorities involved in public participation or planning affecting the environment: IAE, CNDP, CPDP and the Commissaire enquêteur – the French Investigating Commissioner.

¹¹⁰ Concerning climate inaction: Conseil d'Etat, 2020, Commune de Grande-Synthe, Case 427301 ; Administrative Tribunal of Paris, 2021 (3 February), Association Oxfam et al, Cases 1904967, 1904972, 1904976/4-1. Concerning air pollution: Conseil d'Etat, 2017, Les Amis de la Terre, Case 394254 and Conseil d'Etat, 2021, Les Amis de la Terre, Case 428409.

¹¹¹ Administrative Tribunal of Paris, 2021 (3 February), Association Oxfam et al, Cases 1904967, 1904972, 1904976/4-1; 2021 (14 October), Association Oxfam et al, Cases 1904967, 1904968, 1904972, 1904976/4-1.

¹¹² Conseil d'Etat, 2020, Commune de Grande-Synthe, Case 427301, ECLI:FR:CECHR:2020:427301.20201119; 2021, Commune de Grande-Synthe, Case 427301, ECLI:FR:CECHR:2021:427301.20210701

¹¹³ Conseil d'Etat, 2017, Les Amis de la Terre, Case 394254 and Conseil d'Etat, 2021, Les Amis de la Terre, Case 428409.

¹¹⁴ https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074220/

¹¹⁵ [https://www.debatpublic.fr/sites/default/files/2024-](https://www.debatpublic.fr/sites/default/files/2024-02/DECISION_2024_28_CHARTE_MEMBRES_CNDP_1%20Sign%C3%A9%20MP.pdf)

[02/DECISION_2024_28_CHARTE_MEMBRES_CNDP_1%20Sign%C3%A9%20MP.pdf](https://www.debatpublic.fr/sites/default/files/2024-02/DECISION_2024_28_CHARTE_MEMBRES_CNDP_1%20Sign%C3%A9%20MP.pdf)

- c) Finance: for the biggest projects and plans affecting environment, the project owner - in the case of a private project- or the State/local authority - in the case of policy planning- must finance the public participation process in the case of a public debate
- d) Public participation mechanisms outside the legal scope (freedom of enforcement): the project owner - in the case of a private project- can call for an independent guarantor (coming from CNDP) or implementing its own process, generally with the support of a company specialized in assisting participatory processes.

Two more strengthen an effective information and participation only under the French case of a Public Debate:

1. Access to (balanced) information of a project or a public policy planning affecting the environment.
2. Implication of independent and contradictory expertise

In France, several innovative experiments in citizen participation highlight the challenges faced. The most recent, the Citizens' Climate Convention, was an assembly of 150 randomly selected citizens who met over eight weekends to discuss the legislative measures the French state should adopt if France is to achieve its European GHG reduction targets. This form of deliberative participation was a success. At the end of these discussions, citizens trained in climate issues adopted by consensus 150 measures or recommendations on subjects as diverse as motorways speed limits or the reform of environmental criminal law to introduce the concept of ecocide. Finally, the Government presented the citizens' work to Parliament. Parliament finally adopted a law, the Act of 22 August 2021, to combat climate change and strengthen resilience to its effects,¹¹⁶ known as the "Climate and Resilience" Act, which incorporated many of their proposals. The success of this participatory process has also led to an institutional reform of the Economic, Social and Environmental Council (CESE), a collegiate body set up under the French Constitution to represent civil society. From now on, this assembly, which only has consultative powers, will also be the chamber of citizens' participation, since it can convene, spontaneously or at the request of the government, conventions of citizens chosen by lot.¹¹⁷ In addition, since the adoption of these two laws, a large number of other citizens' or residents' conventions have been mobilized at local level to support environmental policies.

These so-called "mini-publics" reflect a renewed interest in organizing deliberations involve the public in resolving what are often highly charged controversies in environmental policy. The 'mini-public' formula has a number of advantages over traditional participatory processes. Firstly, in most cases the composition of the public drawn is weighted to be representative of the general population. In this way, the sample can have the same proportion of women, minorities and socio-professional categories as the general population. Next, the mini-public is put in a position to collectively construct a common opinion, after each person has been able to express his or her preferences and has heard those of others in a discussion. In other words, an aim is for people to change their initial preferences as part of a discussion process. However, these systems also raise a number of questions. The first concerns their relationship with other representatives of civil society: what place should be given to non-governmental organisations, associations and trade unions in the context of these systems? The second, concerns the link between these mini-publics and the general public: how can we ensure that these mechanisms involve all members of the public, not just those who have participated in the discussion? Initiatives in Iceland and the United States, for example, involve linking these systems to referendums.

¹¹⁶ Act no. 2021-1104 of 22 August 2021 to combat climate change and strengthen resilience to its effects

¹¹⁷ Organic Law 2021-27 of 15 January 2021 on the Economic, Social and Environmental Council

8. GENDER AND VULNERABLE GROUP INCLUSION

8.1 Barriers to Access

In Montenegro, the main vulnerable communities are the following :

- Roma and 'Egyptian' Communities: these groups endure discrimination and/or deprivation, and limited access to services and substandard living conditions.
- Women: persistent gender inequalities manifest in lower employment rates, wage disparities, and underrepresentation in decision-making positions.
- Youth: high unemployment rates and limited opportunities. This often leads to migration in search of work and better prospects.

Systemic cultural, economic, and institutional barriers hinder women's and marginalized groups' participation in environmental decision-making and access to justice in Montenegro, the main are listed below:

8.1.1 Gender-based violence and inequality

Domestic violence remains one of the most pervasive forms of gender inequality in Montenegro, despite the existence of a legal framework.¹¹⁸

In Montenegro, it is estimated every third woman has suffered physical violence or another form of abuse in the family.¹¹⁹ According to a 2019 OSCE survey, 42% of women in Montenegro have experienced some form of intimate-partner, or non-partner violence in their adult life.¹²⁰

A large number of Roma and Egyptian women face domestic violence and arranged marriages. Roma and Egyptian women experience violence (from father, brother, husband, father-in-law, and even the mother-in-law) within their ethnic community. The most common reasons for domestic violence according to respondents of the research are: tradition 32.4%, alcohol 18.4%, narcotics 2.2%, poverty 6.5%, and low educational level 1.6%.¹²¹

8.2. Legal and Institutional gaps

Legal frameworks promoting gender equality exist, but patriarchal attitudes and stereotypes continue to undermine their implementation. Women are discouraged from reporting the violence because of various factors, such as financial dependence on the abuser, fears of retribution and stigmatization, lack of confidence in systems actors, the absence of effective mechanisms to prevent repeat violence and lack of information about their rights.¹²²

Laws protecting victims of GBV are inconsistent, leading to gaps in enforcement and leaving survivors vulnerable. For example, shelters and services for victims, including human trafficking survivors, are underdeveloped and inadequately funded, limiting their effectiveness.

¹¹⁸ https://neighbourhood-enlargement.ec.europa.eu/commission-staff-working-document-montenegro_en

¹¹⁹ Ipsos Strategic Marketing, Percepcija predstavnika pravosuđa o nasilju nad ženama i porodičnom nasilju, Nov. 2015, at 18 [hereinafter, Ipsos Strategic Marketing]. This research was part of the project implemented by the NGO

¹²⁰ Organization for Security and Co-operation in Europe (OSCE), Well-being and safety of women – Montenegro Results Report (OSCE-led survey on violence against women in Montenegro), pp. 82-83.

¹²¹ https://neighbourhood-enlargement.ec.europa.eu/commission-staff-working-document-montenegro_en

¹²² Women's Rights Center and UNDP, funded by the Norwegian Embassy in Belgrade. 3 Id. at 19.

8.3 Economic and Employment barriers

Education:

- Men make up 53.9% of all the employed persons, compared to 46.1% of women, despite the fact that women are better-educated. In terms of gender balance, participation in education is relatively even between boys and girls up to and throughout secondary school level. Instead, at higher education level in 2023 38.2% of graduates were boys and 61.8% were girls.¹²³
- Only half of all children from Roma and of the Egyptian community attend school. Less than one-third completed primary school, while 7% completed secondary education.¹²⁴

Economic Dependence and Unemployment:

- According to the labour force survey (LFS), the average unemployment rate declined to 13.4% in 2023 from 15.1% in 2022.¹²⁵
- The gender gap narrowed, but the activity rate of women (66.3%) remained significantly below that of men (77%). Remaining major structural challenges are youth unemployment (those aged 15-24), which stood at 23.3% in 2023, and long-term unemployment: 72.1% of all the unemployed have been looking for a job for more than 12 months.¹²⁶

As concerns gender parity in public administration, 315 women were employed in 2023 which is 19.8% fewer than in 2022, while in the same year 424 men were employed, an increase of 73% compared to 2022.¹²⁷ The inclusion of women in political life remains low and is undermined by insufficient state and public efforts to overcome gender stereotypes and the failure of most political parties to promote women's participation.¹²⁸

The lack of education and educational opportunities, as well as discrimination and lack of acceptance by non-Roma and employers is one of the biggest obstacles to the employment of Roma and Egyptian population. More than 90% of registered Roma and Egyptians are persons with no professional qualifications, who, as a rule, are long-term unemployed.

As of December 31st 2020, there were 996 unemployed persons from the Roma and Egyptian communities (527 women or 52.91%) in the records of the Employment Service of Montenegro based on the number of persons declared.¹²⁹ Of approximately 1000 persons who identify themselves as members of the Roma and Egyptian minority, participation of women is about 40%.

8.4. Barriers to environmental justice

Limited access to resources and energy poverty:

- Approximately 40% of sampled Roma and Egyptians assessed their own health status as bad or very bad.
- 26% of Roma and Egyptian households live with serious health conditions or disabilities.¹³⁰ The lack of precise data on the level of poverty faced by this community is a real issue.

¹²³ https://neighbourhood-enlargement.ec.europa.eu/commission-staff-working-document-montenegro_en

¹²⁴ <https://www.rcc.int/romaintegration2020/files/admin/docs/516f4f38750495e5df7c9596503cf7e4.pdf>

¹²⁵ https://neighbourhood-enlargement.ec.europa.eu/commission-staff-working-document-montenegro_en

¹²⁶ https://neighbourhood-enlargement.ec.europa.eu/commission-staff-working-document-montenegro_en

¹²⁷ https://neighbourhood-enlargement.ec.europa.eu/commission-staff-working-document-montenegro_en

¹²⁸ https://neighbourhood-enlargement.ec.europa.eu/commission-staff-working-document-montenegro_en

¹²⁹

https://adsdatabase.ohchr.org/IssueLibrary/MONTENEGRO_Strategy%20for%20Social%20Inclusion%20of%20Roma%20and%20Egyptians%20in%20Montenegro%202021-2025.pdf

¹³⁰ <https://www.rcc.int/romaintegration2020/files/admin/docs/516f4f38750495e5df7c9596503cf7e4.pdf>

- The low level of gender equality in Montenegro is recognized as a central problem. It also encompasses an assessment of the impact and implementation of prevention measures to reduce the negative impacts of climate change and natural disasters on the health of women, men, people of different gender and gender identities, as well as marginalized and particularly vulnerable people and groups.¹³¹
- Gender disparities persist in access to sustainable agricultural resources and renewable energy technologies.
- Women's roles in agriculture and environmental management are often overlooked, despite their contributions to food security and rural livelihoods.¹³²

8.5 Inclusion Strategies

Steps are recommended to ensure the project's future activities address gender equality and the inclusion of vulnerable populations in both justice and participation mechanisms. This strategy outlines actions to ensure gender equality and the inclusion of vulnerable populations in environmental justice and decision-making mechanisms within Montenegro. The focus is to promote fair access to justice, increase public participation and enhance civic engagement, while addressing systemic barriers faced by marginalized groups.

8.5.1 Gender-Responsive Approaches and Inclusion in Environmental Justice

Outcome: Enhanced access to environmental justice through inclusive governance, capacity building and improved legal frameworks.

Key strategies

1. Identify vulnerabilities among women, youth, Roma communities and rural populations (assessments, workshops, reports).
2. Capacity building with gender-sensitivity training:
 - Provide mandatory gender-sensitive training for legal professionals, judges and law enforcement officers to handle environmental cases involving vulnerable groups.
 - Focus on addressing gender-based violence and discrimination.
3. Improve access to legal remedies for vulnerable groups:
 - Strengthen legal aid and advocacy services tailored to the needs of women, Roma and marginalized communities.
 - Develop simplified procedures for vulnerable groups to report environmental violations and access justice.
4. Promote inclusive reporting channels:
 - Ensure reporting systems are accessible to illiterate or digitally excluded populations.
 - Provide multilingual and culturally appropriate materials for Roma and rural communities.
5. Strengthen institutional coordination on gender equality:
 - Collaborate with national gender equality bodies to monitor cases involving vulnerable populations.
 - Ensure enforcement of gender-responsive laws and international frameworks.

¹³¹ See: <https://www.gov.me/en/documents/41e3ee6a-757a-4684-9763-9fee5e933afd>

¹³²

https://adsdatabase.ohchr.org/IssueLibrary/MONTENEGRO_Strategy%20for%20Social%20Inclusion%20of%20Roma%20and%20Egyptians%20in%20Montenegro%202021-2025.pdf

9. RECOMMENDATIONS

9.1 Environmental Justice Recommendations

Legal Precision: as discussed above, improved coherence between the Criminal Code and the sectoral laws is required to avoid ambiguities regarding certain criminal acts and misdemeanours. For example, Article 303 defining the crime of environmental pollution in line with Directive 2008/99/EC (Article 3.1.a) starts with a classic description of the “blanket crime”: “Whoever, *in violation of regulations governing protection, preservation and improvement of the environment...*”¹³³, which implies that regulations governing the environment are violated. Normally, violations of provisions of these regulations (laws) are complemented by punitive provisions in the originating legal act. Despite the attention given to formulation of misdemeanours, there are still cases where the ambiguity is possible and occurs often.

Strengthening People-Centred Institutions: to promote environmental justice, the capacity of key institutions in environmental and sustainable development matters, including climate change, biodiversity, and natural resources, must be strengthened. This is to enhance the ability of these institutions to discharge their functions and achieve better outcomes. Apart from traditional capacity building activities through workshops and training, the Government should promote participation of domestic institutions representatives in international environmental organizations and bodies contributing to enhancement of environmental justice.¹³⁴

A fourth Environmental Performance Review prepared by UNECE in 2024¹³⁵ notes that collaboration and alignment among key entities involved in the environmental compliance and enforcement process is limited. The lack of such cooperation is detrimental, since there by necessity is a high inter dependency between organizations such as inspectorates, police, prosecutors and judges. Currently, contacts exist on an *ad hoc* basis, with each case handled on an individual basis. Cooperation is not institutionalized as the country lacks a mechanism for cooperation amongst environmental enforcement organizations. Therefore, there is no agreement between relevant enforcement bodies on key priorities, procedures, coordination, the proportionality of enforcement resources, the quality of reports, knowledge building and training. Therefore, a national mechanism for environmental enforcement bodies is recommended. This means: to coordinate and align approaches and implementation plans, formalize the developed enforcement model and use it as a guide for supervisory and enforcement bodies when sanctioning environmental non-compliance, and facilitate the provision of a training curriculum for enforcement bodies to ensure connection to each other’s roles and responsibilities.

Creating coordination mechanisms between all relevant sectors is important to ensure environmental justice. Connections should be established between justice and human rights institutions with key line ministries, especially those responsible for overseeing agriculture and forestry, environment, water and natural resources, fisheries and marine resources, energy and health. Thus channels for consultation and regular exchanges between judiciary and environmental regulatory bodies will be developed.

¹³³ Criminal Code of Montenegro, Art. 303 “Whoever, in violation of regulations governing protection, preservation and improvement of the environment discharges, introduces or disposes of a specific quantity of a substance or ionising radiation into air, water, or soil, thus endangering human life, body or health, or causing risk of a substantial damage to air, water or soil quality, or to animals or plants shall be punished by prison sentence for a term not exceeding three years”.

¹³⁴ see section 5.3.2 Available legal tools

¹³⁵ EPR UNECE 2024

The assessment showed that specialized departments and experts (e.g., environmental police, green prosecutors & judges, etc.) would substantially help improve the condition of environmental justice in Montenegro. However, it should be noted that the already understaffed institutional *apparatus* is not able to respond to all emerging needs and already struggles with all obligations taken over through the EU accession process. For example, 17.6% of judicial positions and 39.7% of prosecutorial positions need to be filled.¹³⁶ In addition, specialization of judges in environmental matters contrasts to the current system of random allocation of cases.

Legal Empowerment: approaches focus on enabling people to “understand, use and shape the law” to realize their rights, resolve disputes, achieve redress for rights violations, and advance broader changes to laws and governance systems. Legal empowerment is about strengthening the capacity of all people to exercise their rights, either as individuals or as members of a community. Legal empowerment is a community-led, bottom-up approach. In contrast to conventional legal aid approaches, which often treat people as victims requiring a service, legal empowerment is about building the knowledge and power of people to solve injustices themselves. It is about promoting active environmental citizenship, as a concept of value and a social dimension that embodies the affiliation reinforced by individual and collective initiatives in supporting and protecting the environment. Supporting CSOs and activists by providing strategic guidance and legal aid is a key component of this approach. This includes supporting the work of legal professionals including community paralegals in environmental matters, whose primary role is to work directly with the communities they serve using mediation, organization, education and advocacy.

In the context of legal empowerment, the following should not be neglected:

- the role of the media to provide awareness of environmental and climate justice causes;
- the role of social media to build a movement for change;
- emerging trends of positive court judgments in favour of climate and environmental rights;
- the role of lawyers and people with legal training in supporting local communities;
- the role of non-lawyers in facilitating access to justice;
- the role of international organisations and foreign aid donors in supporting climate and environmental justice projects;
- the role of businesses in supporting climate and environmental justice initiatives.

Environmental Justice Tools: ‘Set of Guidance’ documents should be produced for each type of environmental crime. These documents would serve both citizens and institutions/judiciary. They would refer to national and international court practices, promoting coherent use of the case law. In addition, a user-friendly database of case law searchable by Article in the Criminal Code should be established to serve as guidance for both judiciary and the public.

9.2 Public Participation Recommendations

The following recommendations are proposed to enhance public participation in environmental decision-making:

- Responsible authorities must conduct adequate and efficient public participation.
- Allowing the public to use the rights given in the regulations is imperative.
- Training officials in public engagement and participatory methods, ensures an improvement in public participation in environmental decision-making processes (capacity building).
- The EPA and Local Governments should go above the legal minimum in applying specific legal provisions related to public participation in environmental decision-making processes (in relation to the deadlines, manner of notifications to the public, etc.).

¹³⁶ EU Progress Report for Montenegro 2024

- Since public authorities mostly rely upon websites, printed media and bulletin boards when informing the public about the public hearings, debates and similar events, public notification systems should be modernized by incorporating new informal practices and integrating social media and other digital platforms to reach diverse audiences (digital engagement enhancement).
- In order for participation to be effective, invitations to the public to provide opinions, comments and suggestions should not take place during vacations, public holidays and religious festivals.
- Greater financial resources (especially for local governments) to be allocated: for digital initiatives, improving the capacities of staff, events (e.g., workshops and lectures near local populations), etc.,
- All responsible authorities must be obliged to make public information transparent and easily accessible to empower the public.
- Since there is a very broad range of projects and programs that go through EIA and SEA processes, responsible authorities should approach each (including different target groups) based on their own characteristics (e.g., in some specific cases related to the high environmental concerns of the projects, socio-economic needs of the community, etc. to organize smaller workshops or focus groups prior to the official public hearing).
- Employment of the broader range of public participation mechanisms in relation to “sensitive” projects and/or capital infrastructure (e.g., organization of TV debates, involvement of YouTube advertisements, sending of SMS messages, etc.).
- Technical language in explaining projects to the general public has to be avoided. Effort should be made to make the information more accessible to the larger public.
- Control mechanism introduced to check the quality assessment of the decision made by the Environmental Impact Assessment Commission, *i.e.*, the competent authorities has to be created (Action Plan for Fulfilling Closing Benchmarks in Chapter 27, Measure 1.2, both due date deadlines (2021 and 2024) are not met).
- Media campaigns focusing on the rights of the public to participate in environmental decision making (referring especially to the Aarhus Convention) need to be accelerated.
- Timeframes should be carefully planned, allowing sufficient time to obtain relevant comments from the public (the legal minimum is very often not sufficient), especially in some specific and justified cases.
- Introduce pre-registration to the public hearing as a mandatory step in order to have an overview about the planning of the public event and the number of possible participants.
- Responsible authorities need to improve the way they communicate strategy and engage with the public in public hearings and debates. Staff require good communication and interpersonal skills, as well as knowledge.
- Promoting public participation with a focus on women and vulnerable communities, requires a multi-dimensional approach that emphasizes inclusivity, capacity-building, and institutional support.
- Encourage local governments to implement participatory budgeting where citizens, including vulnerable groups, can directly influence spending priorities.
- Establish safe spaces for dialogue, where women and vulnerable groups can discuss concerns and propose solutions.
- Develop online tools and mobile applications for public consultations to expand accessibility for those unable to attend physical meetings.
- Keep the topic of the environment constantly in focus in order to empower the public to participate in the decision-making process and make them aware about their rights and opportunities in relation to the citizens’ involvement.
- Improve the functioning and transparency of the Aarhus centers (those which are part of the EPA) in order to justify their existence and make them instrumental in providing citizens with timely and accurate environmental information, legal advice, etc.

9.3 CEJ Convergence Project Roadmap

9.3.1 Strategic Vision and Goals

The Climate and Environmental Justice Project seeks to enhance access to courts in a spirit of ‘prevent, punish and repair’. The development of effective public participation in environmental matters across the Western Balkans, with a focus on Albania, North Macedonia, and Montenegro is requested. By aligning legislative, institutional, and participatory frameworks with EU legal framework and international conventions such as the AC, the CEJ Convergence Project aims to support these countries in not only providing a high level of environmental protection, but in achieving transparent, inclusive, and effective environmental governance while facilitating their EU accession processes and aligning with EU standards under Chapter 27 of the Acquis Communautaire.

9.3.2 Priority Actions and Timeline

2.1 Strengthening capacities of legal professionals (2024-2026)

During the project’s 30-month duration, significant effort to create a common understanding and coordination in environmental justice, supported by strengthened capacities of legal professionals and improved reporting channels, is required. Additionally, accessible legal remedies will be established to address systemic gaps.

2.2 Public Participation Enhancement (2024-2026)

Public participation practices in environmental decision-making will be strengthened by analyzing existing mechanisms, defining and refining local engagement tools in two municipalities, one in Albania and one in North Macedonia. Local-level consultation tools to be updated based on community need, ensuring more effective and inclusive participatory processes that align with EU standards.

2.3 Civic Engagement and Community Empowerment (2025-2026)

Civic engagement will be enhanced by empowering civil society coalitions through grants. These grants will enable organizations to support local communities in accessing environmental justice and participating in decision-making processes. The grant schemes, implemented in Albania and North Macedonia, will also ensure that gender considerations are integrated into all activities. As a Cross-Cutting theme, CEJ Convergence Project will assist the project’s stakeholders integrating inclusive practices and promoting gender balance in environmental governance frameworks.

9.3.3 Main Project Components

Component 1: Access to Environmental Justice

The CEJ Convergence Project will enhance access to environmental justice by fostering a coordinated governance system across the three targeted countries. Legal professionals (judges, prosecutors, investigators, lawyers) will receive specialized training to navigate environmental cases, while improved reporting channels and accessible legal remedies will empower communities to seek justice effectively.

Component 2: Public Participation in Environmental Decision-Making

In Albania and North Macedonia, local authorities’ capacity to facilitate public participation will be strengthened. An analysis of local public participation mechanisms will guide the refinement

of engagement tools, ensuring they address the needs of communities and encourage meaningful consultation in policy-making processes.

Component 3: Civic Engagement in Environmental Justice

To promote active civic engagement, the CEJ Convergence Project will provide grants to civil society organizations in Albania and North Macedonia. These grants will enable CSOs to advocate for environmental justice, support local communities in addressing environmental challenges, and foster inclusive and gender-sensitive approaches to participation.

9.3.4 Implementation Framework

Budget and Funding: The CEJ Convergence Project is financed by the Agence Française de Développement with a total budget of 2 million EUR.

Duration: Running from June 2024 to December 2026, the project includes an inception phase (June – December 2024), during which an assessment of environmental justice in the three targeted countries will be conducted.

Project Office: Based in Tirana, Albania, the project office will coordinate implementation efforts and serve as a hub for collaboration among stakeholders in the region.

9.3.5 Key Outcomes and Success Metrics

Short-Term Outcomes (2024-2025):

- Comprehensive assessment of environmental justice systems in Albania, North Macedonia, and Montenegro.
- Enhanced understanding of governance structures and legal frameworks for environmental justice.

Mid-Term Outcomes (2025-2026):

- Improved access to justice on environmental and climate matters and better application of the law. Completion of training programs for legal professionals and use the legal tools.
- Strengthened capacity of local authorities to not only encourage public participation, but take into consideration citizen views on environmental issues in decision-making and investments in two targeted countries (Albania, North Macedonia). Implementation of refined public participation tools in targeted municipalities.
- Enhanced environmental participatory approach to be achieved by encouraging individuals to exercise their rights and actively participate in two of the targeted countries: Albania and North Macedonia. Functioning grant schemes to empower CSOs and communities to be established.

Long-Term Outcomes (Post-2026):

- Improved alignment of environmental governance systems with EU directives.
- Strengthened cross-border cooperation and convergence with European standards in environmental matters.

10. ANNEXES

Annex I. Environmental Justice Stakeholder Mapping

No.	Institution	Description
1	Judicial Training Center	Training Center for Judges and Prosecutors. Once a year organizes trainings related to environmental law.
2	Ministry of Justice	Decides on punitive provisions of environmental legislation and Criminal code; Cooperates with Judiciary and Prosecution.
3	Ministry of Ecology, Sustainable Development, and Development of the North	Proposes environmental legislation and follows its implementation; Facilitates public consultations and invites stakeholders (NGOs, public) to provide input on environmental policies, plans, and projects; Ensures public access to environmental information; Second instance in administrative proceedings.
4	Environmental Protection Agency (EPA)	Implements environmental legislation; Issues permits and other administrative acts; Organizes public hearings during the EIA process; Collects, analyzes, and disseminates environmental data; Oversees the EIA and SEA processes, ensuring stakeholder inputs are reviewed and addressed; First instance in administrative proceedings.
5	Environmental inspection	First instance in administrative proceedings. Initiates criminal proceedings when necessary, by forwarding them to the prosecution.
6	Local Government Units (LGUs)	Conduct EIA process for environmental projects conducted on local level; Issue permits and other administrative acts; Inform the public about proposed projects, facilitate access to relevant documentation, and collect public feedback; Ensure transparency and accessibility in local-level decision-making processes.
7	Communal police	Takes citizens' complaints.
8	Communal inspection	Takes citizens appeals, issues administrative acts, first instance in administrative proceedings
9	Municipal secretariats for environment	Implement environmental legislation Issues permits and other administrative acts (i.e. EIA consents)
10	Police	Initiates criminal proceedings at request, by forwarding them to the prosecution,
11	Basic courts	First instance in criminal proceedings. and proceedings related to compensation of damage.
12	Administrative Court	Provides a legal avenue for stakeholders to challenge decisions perceived as unlawful (e.g. in regards to the public participation rights).
13	Other courts	Second and third instance (High Court, Supreme Court). Other issues (Commercial Court).

No.	Institution	Description
14	Prosecutors' office	Starts criminal proceedings.
15	State protector of property rights	Protects state interests and property in cases where the state is respondent
16	Ombudsman	Protects human rights.
17	Environmental NGOs	Environment protection, can have the right of standing in environmental cases.
		Advocate for transparency and accountability in environmental decision-making.
		Organize public debates, workshops, and awareness campaigns to inform citizens about their participation rights.
		Provide expert opinions and collaborate with government institutions to enhance environmental policies.
18	Aarhus Centers (Podgorica, Nikšić, Berane, Pljevlja, Kolašin)	Serve as information hubs for public access to environmental data.
		Facilitate workshops and provide resources to empower citizens in public participation.
19	Lawyers	Provision of legal assistance, representing individuals, NGOs, communities.
20	Communities (formal or non-formal citizens associations)	Participate in public consultations, hearings, and workshops.
		Submit feedback and concerns during the EIA/SEA processes.
		Initiate petitions or legal actions to safeguard environmental interests.
21	Media	Promotion of environment protection.
		Rising of public awareness to encourage community involvement in decision-making processes.
		Disseminates information about environmental issues and public participation opportunities.
22	International organizations (e.g., OSCE, EU, etc.)	Provide technical support and capacity building for environmental crime and public participation mechanisms.
		Facilitate the adoption of best practices from international frameworks (e.g., Aarhus Convention).
23	Political parties	Political pressure, initiation of amendments to the environmental legislation.

Annex II. List of Analysed Legal Acts, Court Rulings, Policy Documents and Other Resources

Legal Acts

1. Constitution of Montenegro Official Gazette of Montenegro No. 01/07, 38/13
2. Law on Environment Official Gazette of Montenegro No. 52/2016, 73/2019
3. Law on Strategic Environmental Impact Assessment Official Gazette of Montenegro No. 80/2005, 40/2011, 59/2011, 52/2016
4. Law on environmental impact assessment, Official Gazette of Montenegro No. 75/2018
5. Law on Confirmation of the Convention on the Availability of Information, Public Participation in Decision-Making and the Right to Legal Protection in Environmental Matters, Official Gazette of Montenegro (International Agreements) No. 3/2009
6. Law on Liability for Environmental Damage Official Gazette of Montenegro No. 27/2014, 55/2016

7. Criminal Code, Official Gazette of Montenegro No. 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017, 49/2018, 3/2020, 26/2021, 144/2021, 145/2021
8. Law on free access to information, Official Gazette of Montenegro No. 44/2012 and 30/2017
9. Law on Genetically Modified Organisms Official Gazette of Montenegro No. 22/08),
10. Law on Chemicals, Official Gazette of Montenegro No. 51/17),
11. Law on Waste Management, Official Gazette of Montenegro No. 34/24),
12. Law on Air Quality, Official Gazette of Montenegro No. 25/10, 43/15, 73/19),
13. Law on Forests ("Official Gazette of Montenegro", No. 74/10, 47/15),
14. Law on Waters ("Official Gazette of Montenegro", No. 32/11...84/18),
15. Law on protection against ionizing radiation and radiation safety ("Official Gazette of Montenegro", no. 56/09, 58/09, 55/16, 84/24),
16. Law on protection against non-ionizing radiation ("Official Gazette of Montenegro", No. 35/13), Law on Protection and Rescue ("Official Gazette of Montenegro", No. 13/07, 05/08, 86/09, 32/11, 54/16, 146/21, 3/23),
17. Law on protection against noise in the environment ("Official Gazette of Montenegro", No. 28/11, 1/14), Law on Spatial Data Infrastructure ("Official Gazette of Montenegro", No. 37/17),
18. Law on Foreign and Invasive Foreign Species of Plants, Animals and Fungi ("Official Gazette of Montenegro", No. 18/19),
19. Law on Biocidal Products ("Official Gazette of Montenegro", No. 54/16, 34/24),
20. Law on the Protection from the Negative Effects of Climate Change ("Official Gazette of Montenegro", No. 73/19), Law on the Protection of the Marine Environment ("Official Gazette of Montenegro", No. 73/19) and Law on Game and Hunting ("Official Gazette of Montenegro", No. 52/08, 48/15).
21. Law on Electronic Administration ("Official Gazette of Montenegro", No. 72/19),
22. Law on Administrative Procedure ("Official Gazette of Montenegro", No. 56/14, 20/15, 40/16, 37/17),
23. Law on administrative disputes ("Official Gazette of Montenegro", No. 54/16),
24. Law on Spatial Planning and Construction ("Official Gazette of Montenegro", No. 64/17, 44/18, 63/18, 11/19, 18/20, 86/22, 4/23)
25. Law on civil servants and employees ("OG of the Republic of MNE", No. 2/18, 34/19, 8/21, 37/22),
26. Law on State Administration ("Official Gazette of Montenegro", No. 78/18, 70/21, 52/22)
27. Law on Local Self-Government ("Official Gazette of Montenegro", No. 2/18, 34/19, 38/20, 50/22, 84/22)
28. Law on NGOs ("Official Gazette of Montenegro", No. 39/11, 37/17)
29. Law on preschool education and training ("OG of the Republic of MNE, No. 64/02, 49/07, 80/10, 40/16),
30. Law on Basic Education and Upbringing ("OG of the Republic of MNE", No. 64/02, 49/07, "Official Gazette of Montenegro", No. 45/10, 39/13, 47/17, 59/21, 3/23),
31. Law on Adult Education ("Official Gazette of Montenegro", No. 20/11, 47/17),
32. Law on the Protector of Human Rights and Freedoms of Montenegro ("Official Gazette of Montenegro", No 42/11, 32/14, 21/17"),
33. Law on Prohibition of Discrimination ("Official Gazette of Montenegro", No. 46/10, 18/14, 42/17),
34. Law on prohibition of discrimination against persons with disabilities ("Official Gazette of Montenegro", No. 35/15, 44/15),
35. Law on Media ("Official Gazette of Montenegro", No. 54/24),
36. Law on Data Confidentiality ("Official Gazette of Montenegro", No. 14/08, 76/09... 48/15, 74/20),

37. Law on Misdemeanours ("Official Gazette of Montenegro", No. 01/11, 06/11, 39/11, 32/14, 43/17, 51/17),
38. Law on Inspection Supervision ("OG of the Republic of MNE", No. 39/03, "Official Gazette of Montenegro", No. 76/09, 57/11, 18/14, 11/15, 52/16) and
39. Law on Free Legal Aid ("Official Gazette of Montenegro", No. 20/11, 20/15).
40. Law on Peaceful Settlement of Labor Disputes, OG MNE No. 16/2007, 53/2011, 11/2015;
41. Rulebook on foreign trade arbitration within the Chamber of Commerce of Montenegro OG MNE No. 03/06
42. Law on Ratification of the Protocol on Pollutant Release and Transfer Registers (Official Gazette of Montenegro – International Treaties", No. 01/07, 38/13
43. Law on Confirmation of the Multilateral Agreement of the Countries of Southeast Europe on the Implementation of the Convention on Environmental Impact Assessment in a Trans boundary Context ("Official Gazette of Montenegro – International Treaties", No. 02/09))
44. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters - the Aarhus Convention (1998)
45. Civil Obligations Act OG MNE No. 47/2008, 4/2011 and 22/2017
46. Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention,
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Annex III. Summaries of Stakeholder Interviews and Focus Group Discussions

III.1 Summary of Semi-Structured Interviews on Environmental Justice and Public Participation in Environmental Matters in Montenegro

In the scope of the project on Climate and Environmental Justice in the Western Balkans, 11 representatives of state and local authorities and institutions as well as CSOs were interviewed in order to get a better picture on the state of environmental justice and public participation in environmental matters in Montenegro, with particular focus on institutional needs and expectations from this and similar activities.

Environmental Justice

Six representatives of various stakeholders (Ministry of Environment, Environment Protection Agency, Ombudsman office, CSOs, independent environment experts and civil activists) were interviewed in the process of preparation of this Assessment Report.

The interview consisted of 5 sections with several questions focusing on the following topics:

- Stakeholders of Environmental Justice system in Montenegro and their respective roles;
- State of Environmental Justice in Montenegro including legal and institutional framework;
- Obstacles to Environmental justice and recommendations to overcome identified issues;
- Experience of the respondent in Environmental justice cases including referral to particular case;
- Knowledge about capacity building activities in this area and suggestions on particular needs and expectations.

Summary of findings

All respondents showed a high level of knowledge on the subject of Environmental Justice. In general, they consider efficient environment protection and protection of human rights related to the environment through implementation of the legal framework as a basis of environmental justice in modern society.

Concerning actors and stakeholders in this area, the list is long and includes: public administration bodies, inspection, judiciary, prosecution, police, Ombudsman, NGOs, citizens, communities, water administration, forest administration, National parks, Public Health Institute, Customs, etc. Respondents described the roles of stakeholders' groups they belong to. During the interviews, the state of Environmental Justice in Montenegro is generally marked as unsatisfactory, although the legal framework is considered adequate and providing various legal remedies. Majority of respondents state that implementation of the legal framework needs to be improved. Lack of specialized departments in courts, prosecutor offices and police is considered a major deficiency of the institutional framework. Also, more precise delineation of competences is needed.

Respondents listed the following obstacles for achievement of environmental justice in Montenegro: Insufficient capacities of environmental inspection, corruption, insufficient motivation and knowledge of public servants, political decisions/political will, lack of coordination among institutions, lack of specialized departments in key institutions, difficulties related to determination of criminal responsibility and proving of environmental damage, lack of awareness and specific knowledge both among citizens and public servants.

All respondents were involved in some environmental justice cases during the last 2 years. They all presented cases with the positive outcome, and some of them were further elaborated in the assessment report. More than a half of respondents are not familiar with activities on capacity building in this area and all of them stated that such activities are necessary.

Among needed activities respondents mentioned networking of institutions and improvement of their communication channels, upgrading the number of staff and knowledge of environmental inspection, especially when it comes to preparation of convincing cases, digitalisation and development of information tools and systems, practical trainings of relevant institutions, trainings on practice of the European Court for Human Rights, awareness rising among citizens, provision of free legal aid in environmental matters and drafting of manual and guidance for better application of legal framework.

Finally, respondents provided the following recommendations for improvement of environmental justice in Montenegro:

- Capacity building for institutions
- Awareness rising for citizens and NGOs
- Promotion of stricter punitive policy
- Creation of database with environmental case law
- Creation of manuals and guidance's with comparative case law
- Regional workshops and other capacity building activities
- Promotion of human right to sound environment in educational programmes and social media
- More public discussions on environmental problems
- Intensified activities of civil society and media in promotion of Environmental Justice

Public Participation

A total of five stakeholders participated in semi-structured interviews, focusing on five core topics:

1. Roles and Responsibilities: Understanding the roles of various actors in the public participation process.
2. Legal and Institutional Adequacy: Assessing the effectiveness of existing laws, regulations, and institutions in facilitating public participation.
3. Barriers and Challenges: Identifying obstacles and proposing recommendations to enhance inclusivity and transparency.
4. Stakeholder Experiences: Collecting real-world experiences, including reference to specific cases.
5. Knowledge and Capacity Building: Evaluating current knowledge levels and suggesting initiatives for improving awareness and skills.

Key Findings

Roles and Responsibilities

Respondents highlighted a broad spectrum of actors involved in public participation, including:

- Public administration bodies (Ministry of Ecology, Sustainable Development and Development of the North, Environmental Protection Agency, local self-Governments),
- Judiciary,
- NGOs and citizen groups,
- Academia and independent experts.

While all stakeholders acknowledged their respective roles, coordination among these groups was deemed as insufficient.

Legal and Institutional Adequacy

- The legal framework, largely aligned with EU standards, includes mechanisms for public consultations and hearings particularly under the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) laws.
- However, the implementation of these mechanisms is inconsistent. Respondents reported instances where public hearings were inadequately promoted or held in inaccessible locations.
- Specific gaps were noted in ensuring timely access to information, a key requirement under the Aarhus Convention, enabling efficient public participation.

Barriers to Public Participation

Respondents identified several challenges:

- Limited public awareness about rights and processes for participation.
- Insufficient training for public officials to facilitate effective engagement.
- Perceived political influence and lack of accountability in decision-making processes.
- Weak enforcement of laws requiring public consultations.
- Limited access to digital tools and platforms for broader participation.

Experiences of Participation

- Positive examples included public consultations for EIA processes where community feedback influenced project modifications.
- Negative experiences included consultations scheduled during public holidays or periods of limited public attention, leading to minimal participation.
- Cases where NGOs successfully utilized legal mechanisms to challenge administrative decisions were highlighted as best practices.
- Knowledge and Capacity Building.
- Awareness campaigns and educational initiatives were identified as critical needs to empower citizens and NGOs.
- Respondents emphasized the need for practical training for public officials, focusing on participatory methods.
- Creation of centralized digital platforms for public consultations and feedback was recommended.

Recommendations

1. *Strengthen Institutional Capacities:*
 - Increase staffing and training for public authorities managing consultations.
 - Develop digital tools for real-time public feedback.
2. *Enhance Legal Frameworks:*
 - Introduce punitive measures for authorities failing to meet consultation requirements.
3. *Promote Awareness and Education:*
 - Launch campaigns to educate the public about participation rights under the Aarhus Convention.
 - Integrate environmental governance topics into school curricula.

III.2 Summary of focus group discussions on Environmental Justice and Public Participation in environmental matters in Montenegro

Two meetings of focus groups were held in Podgorica in the scope of CEJ Convergence Project. First took place on October 29, 2024, in the European House Podgorica and the second on December 19, 2024, in the NEST co-working place.

Representatives of civil society organizations (Green Home, Bankwatch, Breznica, Human Rights Action), state administration (Ministry of European Affairs, Environmental Protection Agency), the Office of the Ombudsman, Centre for Training in Judiciary and State Prosecution, the Basic

Prosecutor's Office Podgorica, the Court of Appeal, the Capital City (Secretariat for Sustainable Development), international organizations (OSCE, UNDP), etc. which were identified through the stakeholders mapping, participated to these meetings.

The initial meeting of the Focus Group was held through two participatory blocks in which local experts presented the initial findings of the assessment of the situation in the field of public participation in decision-making in environmental matters and access to justice in this area, thus encouraging a lively discussion among the project participants.

The first block was dedicated to the topic of **public participation in environmental decision-making**, with the aim of providing additional information to the attendees about the rights related to environmental protection and obtaining their views.



During the discussion, among other things, the following challenges were emphasized:

- It is evident that there is an inadequate announcement of public debates (website/print media), i.e., that this approach, which is currently known by regulations in Montenegro, is quite outdated and does not correspond to today's times (e.g., the mandatory use of social networks and other modern channels of communication with the public). In this regard, a proposal was made to change regulations in this direction and/or establish good informal practice in communication with the public.
- Public hearings are often organized in August during the collective holidays, whereby the competent authorities formally fulfil the obligation to organize a public hearing, but in essence it is not carried out, because there is no reaction from the public. At the same time, this prevents the effective right to file any complaints, because there is no evidence in the administrative procedure that it was not conducted in accordance with the Decree on the Organization of Public Hearings, which demotivates the public to use this legal remedy. In connection with the above, attention was drawn to the fact that Public Hearings are conducted exclusively during working hours, which is an inadequate time for a part of the public (especially employees in the private sector) to participate in it. What is particularly worrying in Montenegro is that in the past few years, Public Hearings have not been

conducted for some of the key regulations in the field of environment (e.g., the Law on Waste Management), and some have been conducted exclusively in a way that the public is invited to submit remarks, suggestions and comments in writing, which is a less effective way of involving the public compared to discussion and oral discussion through the organization of Round Tables, public forums and the like.

- The general conclusion is that the Public Hearings are not sufficiently attended, i.e., that there is little interest on the part of the public, so it often happens that the reaction occurs after the expiration of the deadlines for submitting remarks, suggestions and comments, and they are not taken into consideration by the competent authorities.
- Some of the participants of the Focus Group stated that there are examples that at some public hearings, civil servants support the investor, which is disputable in situations where this interest does not coincide with the public interest ("potential corruption").
- There are also known examples of Public Debates where processors do not talk about the impact on the environment, but "buy" the local community (e.g., the promise to build a local road). There are also examples of representatives of institutions that are supposed to implement the law not appearing at the Public Hearing on the law.
- A few years ago, the European Commission criticized the quality of public hearings and made a proposal for the establishment of a mechanism for controlling the quality of public hearings.
- In addition to the above examples of civic activism, the discussion also gave a recent example of a project that still has no epilogue and concerns the construction of transmission lines through the Tara canyon, as well as the constant actualization of the construction of HPP Buk Bijela in the Republic of Srpska.
- The need for more open communication between the authorities was discussed, as well as visits to communities by the competent authorities.
- It concluded that all positive examples of civic activism are related to protests and not to court proceedings. The need to strengthen transparency and stronger communication between the government and the community in order to meet legal and democratic standards ("participatory approach") was pointed out.
- It was also concluded that improving transparency, as well as simplifying procedures, can significantly improve the involvement of citizens.

Access to justice in environmental matters was the other discussed topic. In an open dialogue, participants highlighted a number of aspects of access to justice in the field of the environment, including:

- Lack of case law, which is at the level of statistical error in the reports on the work of the courts;
- The fact that in the second-instance administrative procedure the second-instance authorities rarely make decisions on the merits, they are mainly reduced to correcting the errors of the first-instance authority in the conduct of the administrative procedure;
- The existence of court experts in the field of the environment and an exceedingly small number of cases in which they participate (a negative example of the change of expertise in the case Vežišnica and the fact that the public prosecutor subsequently withdrew from the lawsuit and the case had no further epilogue);
- Inability to apply the Law on Liability for Environmental Damage due to lack of data on biodiversity;
- The burden of proof on the applicant and the lack of information on the state of the environment;
- The length of court proceedings and the fact that citizens do not decide to go to court because "they waste time, lose money (lawyer services) and end up losing the case. Positive court decisions would encourage new appeals;
- Recommendations for improving the situation – as many appeals as possible, "flooding" the system with appeals in order to encourage better functioning of the system;

Discussion is finalized with a SWOT analysis provided below:

Strengths

- There is a legal obligation to hold public hearings, which allows citizens to formally express their opinions and proposals.
- Civic activism has proven to be an effective tool for drawing attention to specific environmental problems, such as protests against HPP Buk Bijela, Vasove vode, SHPP Bukovica, Brskovo.
- Transparency initiatives and recommendations on quality control of public debates (e.g., criticism from the European Commission) provide a basis for improving the system.
- Individuals who represent bright spots in the system (e.g., environmental inspection Pljevlja)

Weaknesses

- An inadequate system of informing the public about public debates (reliance on outdated media such as websites and the press) reduces the effectiveness of reaching out to citizens.
- Organizing debates during collective holidays and working hours significantly reduces the attendance and interest of citizens, especially those employed in the private sector.
- Lack of active public involvement.
- Lack of capacity
- Underdeveloped capacities
- Lack of specialized services (e.g., environmental police)
- Lack of delimitation of competences
- Lack of free legal aid for citizens

Opportunities

- The revision and improvement of the regulations governing public debates enables the modernization of approaches, including the mandatory use of social networks and modern communication channels.
- Improving the participatory approach by strengthening transparency and simplifying procedures can increase the involvement of citizens.
- Establishing a mechanism to control the quality of public debates can further contribute to the legitimacy of the process and encourage feedback from citizens.
- Capacity building Projects
- Positive examples from the region (e.g., eco-police Serbia)
- OSCE – Coordinating Body, Support for the Training of Judges and Prosecutors

Threats

- A lack of public trust in institutions limits participation and interest in public debates.
- The status quo is not leading towards a declared ecological state.
- Missing the opportunity to transform into a sustainable society and further devastation of the environment
- Lack of case law

The second meeting of the focus group was held after the assessment progressed and was aimed at validating the findings and recommendations formulated in the assessment report, but also to shed light on important topics integrated into this report such as international practice (French experience) and gender dimension of environmental justice.

Conclusions related to the Pillar I – Public Participation can be summarized as follows:

- Ratification and implementation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters – Aarhus Convention brought significant rights to the citizens of Montenegro;

- There are total five Aarhus centres in the country and over 20 years of experience in civic activism in environmental matters;
- NGOs are playing an important role in the process;
- Montenegro faces challenges in effectively implementing public participation in environmental decision-making;
- There are notable human and financial capacity constraints, which makes capacity building an imperative;
- In a more detailed manner, when it comes to public consultation events there is insufficient response, inadequate informing of the public (newspapers/websites – legal minimum) and unsatisfactory explanations on rejected proposals.

In this context, the following recommendations were proposed as a tool for improvement of the processes of public participation in environmental decision-making:

- Increase education at all levels;
- Promote digital initiatives;
- Provide training and resources (especially to local Governments);
- Improve accessibility of public information and approach each target group adequately;
- Improve quality of EIA Studies - Create a control mechanism to check the quality assessment of the decision made by the Environmental Impact Assessment Commission, i.e., the competent authorities [Action Plan for Fulfilling Closing Benchmarks in Chapter 27, Measure 1.2, deadline 2021, postponed to November 2024];
- Provide the public with sufficient and necessary information through media campaigns, workshops and lectures for local population, organize forums and focus groups prior to the main public debate, ensure that the representative of the competent authority have good communication skills and necessary knowledge;
- Plan the timeframe carefully;
- Keep the topic of the environment constantly in focus;



In the second session dedicated to environmental justice, some findings of the structured interviews held between two sessions of the focus group were shared:

- General impression is that the legal framework is good, although there is a space for more precise definition of criminal acts, especially the “blanket” ones;
- Capacity building is necessary among all stakeholders;
- More efforts are needed to improve cooperation among stakeholders;

- It is necessary to continually produce guidance documents, databases, informative materials, etc. which could contribute to enhancement of environmental justice in Montenegro.

The offered set of **recommendations** for improvement of the state of the environmental justice in Montenegro comprehends the following:

- Better harmony between the Criminal Code and sectoral laws;
- More precise procedure of negative conflict of jurisdiction;
- More intensive use of domestic and European case law;
- In order to create a successful capacity building framework, it is necessary to intensify capacity building programmes for all stakeholders, to involve media, to insure specialized free legal aid to citizens and NGOs, to provide hands-on trainings on actual examples, to focus on specific type of eco-crimes in the certain period.

Further on, it is recommended to:

- Establish a Coordination body for environmental justice (as decided in the recent event organized by OSCE);
- Establish specialized services/departments;
- Organize roundtables, panels, and platforms for informal cooperation;
- Develop guidelines and informative materials and user-friendly case law database;
- Intensify participation in the EU working and coordination bodies (e.g., IMPEL).

Discussion on the preliminary findings and recommendations of the Assessment Report was followed by a short overview of successes and challenges in access to environmental justice and public participation in the EU and a role of women in environmental justice. It was also an opportunity to announce the National Forum in early 2025: A national forum is scheduled for early 2025, where the results from the CEJ Assessment Report will be presented and discussed to a greater extent. This forum will serve as an opportunity for all stakeholders to review the findings, contribute further recommendations, and align on actionable strategies to advance public participation and environmental justice initiatives in Montenegro.

Annex IV. Environmental Crimes in Montenegro and Statistics on Legal Proceedings

IV.1 Criminal Offenses in Eco-crime Directive and Montenegrin Criminal Code

Directive 2008/99/EC	Criminal code article	Offence	Prosecution activities in the period 2018-2022 ¹³⁷
Art. 3.1 a	303	Environmental pollution	4 cases (7 rejections)
Art. 3.1 b Art. 3.1 c	303a	Environmental pollution by waste	(3 rejections)
Art. 3.1 d	305	Illegal construction, commissioning and operation of facilities and plants that pollute the environment	(2 rejections)
Art. 3.1 e	313	Carrying out and bringing in hazardous materials	No cases
Art. 3.1 e	314	Unauthorized handling of hazardous materials	(2 rejections)
Art. 3.1 f Art. 3.1 g	312	Export and import of protected natural goods and specially	1 case (3 rejections)

¹³⁷ Environmental crime in Montenegro, D. Cakovic, OSCE Mission to Montenegro 2023

Directive 2008/99/ EC	Criminal code article	Offence	Prosecution activities in the period 2018-2022 ¹³⁷
		protected plants and animals and their trading	
Art. 3.1 h	309	Killing and torture of animals and destruction of their habitat	25 cases (39 rejections)
Art. 3.1 i	303b	Ozone layer depletion	No cases
	304	Failure to take measures to protect the environment	No cases
	306	Damage to facilities and devices for environmental protection	No cases
	307	Environmental damage	4 cases (7 rejections)
	307a	Abusing genetically modified organisms	No cases
	308	Plant destruction	No cases
	310	Destruction and damage to a protected natural asset	3 cases
	311	Theft of a protected natural asset	(3 rejections)
	315	Unauthorized construction of nuclear plants	No cases
	316	Failure to implement the decision on environmental protection measures	(1 rejection)
	317	Violation of the right to information about the environment	No cases
	318	Transmission of infectious diseases in animals and plants	No cases
	319	Malpractice in rendering veterinary care	No cases
	320	Unlicensed practice of veterinary	1 case
	321	Production of harmful means for animal treatment	No cases
	322	Contamination of food and water for animal nutrition	(1 rejection)
	323	Forest devastation	5 cases (3 rejections)
	324	Forest theft	345 cases (228 rejections)
	325	Illegal hunting	13 cases (35 rejections)
	326	Illegal fishing	55 cases (47 rejections)
	326a	Construction of an object without registration and construction documentation	
	326b	Construction of a complex engineering facility without a construction permit	
	326c	Illegal connection to the infrastructure	

IV.2 Environmental Crime Cases Rejected by Prosecution, Convictions and Unsuccessful Charges before Basic Courts in Montenegro in 2018-2022

Directive 2008/99/E C	Criminal Code article	Offence	Prosecution activities in the period 2018-2022 ¹³⁸	Unsuccessful charges	convictions
Art. 3.1 a	303	Environmental pollution	4 cases (7 rejections)	3	
Art. 3.1 b Art. 3.1 c	303a	Environmental pollution by waste	(3 rejections)		1
Art. 3.1 d	305	Illegal construction, commissioning and operation of facilities and plants that pollute the environment	(2 rejections)		
Art. 3.1 e	314	Unauthorized handling of hazardous materials	(2 rejections)		
Art. 3.1 f Art. 3.1 g	312	Export and import of protected natural goods and specially protected plants and animals and their trading	1 case (3 rejections)		2
Art. 3.1 h	309	Killing and torture of animals and destruction of their habitat	25 cases (39 rejections)	4	28
	307	Environmental damage	4 cases (7 rejections)		1
	310	Destruction and damage to a protected natural asset	3 cases		3
	311	Theft of a protected natural asset	(3 rejections)		
	316	Failure to implement the decision on environmental protection measures	(1 rejection)		1
	320	Unlicensed practice of veterinary	1 case		1
	322	Contamination of food and water for animal nutrition	(1 rejection)		
	323	Forest devastation	5 cases (3 rejections)		3
	324	Forest theft	345 cases (228 rejections)	35	248
	325	Illegal hunting	13 cases (35 rejections)	1	15
	326	Illegal fishing	55 cases (47 rejections)	1	48

¹³⁸ Environmental crime in Montenegro, D. Cakovic, OSCE Mission to Montenegro 2023

Note: The number of cases processed by prosecution and courts does not correspond due to slow pace of process, meaning that some judgements are recorded in the observed period and were prosecuted in the years before while some cases prosecuted during the observed period did not arrive to the final stage by the end of 2022.

Annex VII: Additional Resources

VII.1. Some Examples of Local Participation

Local Referendum: A Yet Rare but Promising Process

In environmental matters, the use of local referendums appears to be a fruitful idea. Indeed, it seems appropriate to involve citizens directly in the adoption of decisions that will directly affect their living environment, whether this involves a plan or program or authorizing an infrastructure or equipment project.

International or regional human rights instruments do not contain any explicit standards concerning referendums, whether national or local. However, referendums are indirectly protected by provisions guaranteeing the right to political participation¹³⁹. Similarly, provisions relating to human rights, and in particular the prohibition of discrimination and the protection of freedom of expression, govern the conditions under which referendums may be organized¹⁴⁰. The only text which expressly mentions the right of citizens to participate in local referendums is the European Charter of Local Self-Government, which the three countries have ratified¹⁴¹.

In fact, in the article 3 (2) and the article (5), we can read that:

“This right [to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population] shall be exercised by councils or assemblies (...). This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute”.

More specifically, the Article 5 determinates that:

“Change in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute”.

So, the European Charter of Local Self-Government states that local referendums as forms of direct participation may be used to exercise the right of citizens to participate in the management of local affairs, including environmental matters. This provision has been reinforced by the additional protocol to the European Charter for self-government which comes into force on June 2012¹⁴². The Article 2 (2) (ii) provides for a local referendum as a measure to implement the right for citizens to participate in the affairs of a local authority.

¹³⁹ For example, International International Covenant on Civil and Political Rights, article 25 (a), December 16, 1966.

¹⁴⁰ The liberty of expression and association guarantees that citizens must have the opportunity to influence public debate or to organise themselves with a view to influencing it.

¹⁴¹ Albania ratified it in April 4, 2000, and it entry into force on August 1, 2000; Montenegro ratified it on September 12th, 2008 and it came into force on January 1n 2009 ; for North Macedonia, the ratification was on June 6, 1997 and it came into force on October 1, 1997.

¹⁴² Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, Utrecht, 16.XI.2009. Albania has not ratified this Protocol whereas it entry into force in North Macedonia on January 1 2016 and Montenegro on June 1st, 2012.

Since then, several legal instruments have encouraged the setting up of local referendums or even suggested that they should be held when decisions of local interest or of interest to a particular community are to be taken¹⁴³.

To ensure genuine public participation, the rules governing referendums must be clear and like those governing elections (impartial body responsible for organizing the referendum, rules governing the funding of the referendum campaign, regulation of speaking time for supporters and opponents of the referendum, control of the question submitted to the referendum, control of electoral lists, informing and educating voters).

Recently, new proposals have emerged to limit the risks associated with referendums, particularly when they are initiated by citizens. The risks of manipulating public opinion, or of demagogic or plebiscitary practices, are well known. The development of digital techniques of influence is undoubtedly renewing and strengthening them. Similarly, the complexity of the issues is often perceived as a limit because complex questions rarely call for binary yes/no answers.

To overcome these risks, combining the referendum with an assembly of citizens drawn by lot appears to be a possible solution. This arrangement already exists in various countries. In those cases, the question submitted to a referendum is first examined by an assembly made up of citizens chosen by lot. The role of the citizens' assembly may be to examine the proposal to provide the electorate with an impartial opinion on this proposal¹⁴⁴. But, in other cases, the citizens' assembly does not issue an opinion. It examines the question submitted to the referendum and, after hearing all the points of view, summarizes all the arguments for and against the proposal and submits its work to the electorate¹⁴⁵.

A local referendum does not necessarily have a decision-making role. It may be a form of public consultation, more demanding than the average.

¹⁴³ CCPR, General Comment N° 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 Juillet 1996, CCPR/C/21/Rev.1/Add.7; European Council, Referendums: vers de bonnes pratiques en Europe, 2005, Recommandations de l'APCE ; Venezia Commission, Lignes directrices révisées sur la tenue des référendums, 8 October 2020, CDL-AD (2020)031.

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)031-f](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)031-f)

¹⁴⁴ For example, in 2012, the Irish parliament set up an independent constitutional convention with 100 members (66 citizens chosen by lot, 33 parliamentarians appointed in proportion to the groups in the lower house and a magistrate appointed by the government, who chaired the convention). It was asked to make recommendations on a series of constitutional reforms (such as the age of citizenship, the length of the presidential term, the voting system, same-sex marriage and the decriminalisation of blasphemy). The government was not bound by these recommendations but was obliged to respond to them within four months and to indicate whether it intended to put them to a referendum. The recommendations adopted by the convention led, from 2015 onwards, to a series of referendums. The most notable was on same-sex marriage, which was eventually approved. Following this experience, a Citizens' Assembly was set up in 2016, also with 100 members (99 representative citizens chosen by lot and, as chair, a magistrate appointed by the government). Its remit is to make proposals on several subjects, including voluntary termination of pregnancy, the challenges and opportunities of ageing, policies to tackle climate change and referendum procedures. V. D. Courant, « Des Mini publics pour sauver le climat ? Analyses empiriques de l'Assemblée citoyenne irlandaise et de la Convention citoyenne française », Archives de Philosophie du droit, 2020, n°1, t.62, p.485.

¹⁴⁵ It's the case in Oregon, in USA with the Citizen Initiative Review. This is a deliberative assembly of 25 people chosen by lot, whose purpose is to provide the information citizens need before they vote. It therefore takes place after a popular initiative has been drawn up and drafted, and before it is put to the vote. Such assemblies exist in several places, but in the case of Oregon, they are an integral part of the legislative process, and their recommendations appear in the voting material officially provided to voters. Cody Hoesly, « Reforming Direct Democracy: Lessons from Oregon », California Law Review, vol. 93, n° 4, juillet 2005, pp. 1191-1248.

In France, for example, local consultation on projects likely to have an impact on the environment has been created in 2016¹⁴⁶. It enables the State, when considering issuing the authorization required for a project that are likely to affect the living environment, to seek the opinion of the citizens most directly concerned. All municipalities whose environment is likely to be affected by the project are concerned. People registered on the electoral rolls of the municipalities concerned, who are French citizens or citizens of a member state of the European Union, may take part in the consultation. They make their opinion on the project known by answering “yes” or “no” to a question set out in a decree deciding on the consultation, indicating its purpose, date and scope, and convening the electors.

The National Commission for Public Debate (CNDP) prepares an information file on the project that is the subject of the consultation¹⁴⁷. This file includes a summary document that clearly and objectively presents the project, the reasons for it, its characteristics, and the state of progress of the procedures, its impact on the environment and the other effects it is expected to have. It mentions the main documents that may be of interest to voters and includes links to websites where these documents can be consulted. The dossier is available online on the CNDP website. Mayors provide voters with an Internet access point where they can consult the documents. A letter of information on the organization of the consultation, together with two ballot papers, is sent by the State to each voter. The consultation is organized by the mayors in accordance with the procedures set out in the Electoral Code. The cost is borne by the State.

This procedure has been used once, in connection with the construction of an airport at Notre Dame des Landes¹⁴⁸. The scope of the consultation was discussed insofar as it did not restrict participation to residents directly affected by the project. In the end, the government chose not to follow the results of the consultation, which were in favor of building the airport, because of the strong opposition to the project. A few lessons can be drawn from this experience: public consultation must not be used by the State to build social acceptance for a project that has been rejected by the residents most affected. Holding a referendum is not enough to resolve the crisis arising from the rejection of a project by residents¹⁴⁹.

Local Consultation on Projects Having an Environmental Impact

Local consultation under the CNDP

The CNDP, the independent authority granting information and public participation in matters of environment, must be “solicited”¹⁵⁰ for projects that fall into one of the ten categories defined in the table article R.121-2 of the French Environment Code, whose technical or cost characteristics fall between the low and high thresholds defined in the code. The project manager then has two options:

- Either “refer” the project to the CNDP. In this case, the CNDP decides on the terms and conditions of prior participation: *consultation or public debate*. In these processes, the freedom of third-party guarantors in terms of public information and participation regarding the project and environmental issues is important, and is only loosely regulated by law in terms of deadlines, neutrality and deliverables.
- Or “request the appointment of a guarantor”. In this case, the guarantee of the public’s right to information and participation is weaker, since the CNDP does not validate the terms and

¹⁴⁶ Ordonnance n° 2016-488 du 21 avril 2016 relative à la consultation locale sur les projets susceptibles d’avoir une incidence sur l’environnement

¹⁴⁷ Article L123-26 of the Environment Code.

¹⁴⁸ Le Monde, « Référendum pour Notre-Dame-des-Landes: le oui l’emporte à 55,17 % », 26 June 2016, https://www.lemonde.fr/planete/article/2016/06/26/notre-dame-des-landes-premiers-resultats-pour-le-referendum_4958521_3244.html.

¹⁴⁹ Marion Paoletti, « The creation of a new referendum to “solve the crisis” of Notre-Dame-des-Landes », 2017, *Revue française de droit constitutionnel*, N° 109(1), p. 173.

¹⁵⁰ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000048247378

conditions of participation. However, a right of referral for third parties is then opened up, enabling them to refer the matter to the CNDP instead of the project manager, in order to have a stronger guarantee of their rights. Third-party referrals to the CNDP give rise to a decision by the CNDP, as if the project had been referred to by the project manager.

Third parties that can refer to CNDP are:

- 10,000 adult EU nationals resident in France;
- 10 members of parliament (senators or deputies);
- local authorities (at all levels) with responsibility for spatial planning and with a territorial interest in the project, plan or program;
- an approved environmental protection association.

This leads project owners to be more careful and refer more often to the CNDP. Indeed, some projects try to avoid public engagement by decreasing their budget or scope, leading to local contestation from NGOs but also from local authorities. This can end in a full blockage of the project which might be discontinued or, very often, to legal cases and complaints to the administrative courts. Those can also rule against the project, making its implementation longer or forcing the project owner to abandon it.

Local Voluntary Consultation: A Growing Process

Even when projects' size and costs don't fall under the law, more and more industrial or energy project owners decide on their own to organize a local public consultation before the **Public Inquiry**, mainly to anticipate legal complaints, disturbances and even project blockage.

Indeed, the ZAD phenomenon - Notre Dame des Landes, Bure, A69, the massive demonstrations such as Sainte Soline, combined with the rise of direct-action environmental activists; raise greater concern for project managers, who are more cautious when arriving in local municipalities. To do so, they implement a public consultation with their own dedicated team or through specialized consulting firms. Most of these consultations are designed to involve local stakeholders and authorities, but also the local residents. That is to say any person or legal entity that could make a complaint.

The quality of those consultations can be rightfully questioned and undermined, as the information is mainly provided by the project owner and the EI studies often arrive too late within the process. That being said, one of these volunteer consultations can participate in substantive modification of projects or their cancellation when they're in a "hostile environment". In the latter case, the project owner usually publicizes its decision before the end of the public inquiry. Whatever impacts those consultation have, their positive impact is to broaden a participatory culture concerning the environment.

Local Authorities' Initiatives

Based on Citizens Conventions or permanent citizens' Assembly, such as the Brussels Citizens' assembly¹⁵¹, a great number of local authorities implement deliberative processes on climate

¹⁵¹ <https://en.agora.brussels/post/guide-to-citizens-assemblies>. Citizens' proposals were presented and advocated for by our spokesperson, who is elected to the Brussels Parliament, with the aim of influencing the legislative process and ensuring that the voices of the population are heard. This initiative sought to institutionalize the Brussels Citizens' Assembly, envisioning it as a body with legislative authority that can operate in parallel with the elected Parliament, fostering collaboration and complementarity between the two entities. Such an approach aims to deepen democratic engagement, bridge the gap between citizens and policymakers, and ensure that decisions better reflect the collective will and might have been perceived as too radical within representative democracy. Also it should be highlighted that none of the proposals that Agora submitted to the Brussels parliament were adopted. When push came to shove, Brussels politics did not warm to the proposals that the citizens' assemblies produced. cf. Sampol.

change and green transition with randomly drawn and demographically and socially diverse citizens.

The Metropolitan council of Grenoble in France was the first local authority to implement a local citizens' convention on climate¹⁵² with 100 hundred citizens working for a year (2022-2023), given expertise insights on two main questions: How to reduce GHG emissions? How to reach carbon neutrality by 2050?

The Citizens' convention outcome consisted in 219 propositions from which all of them under the scope of the Metropolis were submitted to the Metropolitan Council in April 2023. All the proposals presented were approved by a very large majority. Some of them should be included in the future Metropolitan Climate Air Energy Plan.

These types of citizens' deliberative process have a major political component: most of them in France, if not all, are by cities led by green or left-wing political parties. The case of Grenoble is interesting, not only as a pioneer, but because of the bad air quality. Still, in this top 10, air pollution is steadily decreasing. An example is the installation in one of the pylons on the Grenoble-Bastille cable, a light illuminated every evening in function of the air pollution levels. The color represents the quality of the air the inhabitants will be breathing the next day.

In Denmark, the city council of Copenhagen decided on establishing a three-year (semi-permanent) citizens' assembly¹⁵³ tasked with giving recommendations to the next climate plan for the municipality of Copenhagen. As in "mini-public" citizens' convention, randomly drawn participants are at the heart of the process. The citizens assembly started in 2023 and will complete its mandate by 2026 summed up by this question: *"What does a good Copenhagen life look like with far fewer greenhouse gas emissions from the consumption of food, housing and transportation, and how can we best get there together?"*. Similar to France, this initiative of local authorities followed the national citizens' assembly on climate issues¹⁵⁴.

We thus can make the hypothesis that successful national deliberative processes on climate and environment issues may be declined at a local level if authorities, political ones, are on board. It might be easier to implement citizen's recommendations at a local level too, but literature is not extensive on this matter. The main limit of processes is the difficult link to decision making within representative democracies. The main success is to legitimize citizens capabilities and credit to think the future and to give "user expertise", really important at the local level.

Finally, it should be noted that all the cases provided above have an online and offline participatory methodology. The online tool working best for information and vote, and the offline being applied to co-creation and deliberations. Similarly, most of the processes rely on an assembly or "mini-public" of randomly selected citizens who have access to scientific and technical expertise. These processes and methodology of selection are interesting but start to be contested in the field: each public participation and information process must be tailored to the aims and constraints of the project and planning, especially in matters of climate and environment.

VII.2 Bibliography of Environmental Law in the Western Balkans

¹⁵² <https://www.grenoblealpesmetropole.fr/251-la-convention-citoyenne-pour-le-climat.htm#par1148>

¹⁵³ <https://partizipation.at/methoden/buergerinnenrat-citizens-assembly/>

¹⁵⁴ https://www.kefm.dk/Media/637647201779892262/Borgertingets%20anbefalinger_ENG.pdf

Article

1. Climate change in the Western Balkans and EU Green Deal: status, mitigation and challenges Knez, Sandi; Štrbac, Snežana; Podbregar, Iztok

Energy, sustainability and society, 2022-01, Vol.12 (1), p.1-14, Article 1; Background The European Commission (EC), based on the European Green Deal (2019) and the Recovery plan for Europe (2021), envisages investing 30% of the budget in climate-related programs, projects, and initiatives, which clearly shows Europe's commitment to becoming the first climate-neutral region by 2050. Activities are also planned for countries that are not members of the European Union (EU), which require complex changes in the field of legislation, strategic planning, implementation, and monitoring. To successfully plan short-term and long-term activities on these grounds, it is necessary to have a realistic picture of the state of climate change in each country—as they spill over into the entire region of Europe. The main objective of this paper is to answer the following questions: (i) is climate change observed in Western Balkans? (ii) how are certain sectors vulnerable to climate change in Western Balkans? (iii) what are the climate change adaptation strategies in the six countries of the Western Balkans? The answers to these questions can help in planning activities and initial alignment of Western Balkan countries with the EU plan to achieve net zero greenhouse gas (GHG) emissions by 2050. Main body. The main results of the research show that in all countries of the region, the average annual temperature increased by 1.2 °C compared to 1970, with stabilization and the beginning of the decline which can be expected around 2040. The main reasons for climate change in the region are: industry, energy, and heating sector based on coal exploitation, low energy efficiency, etc. Conclusions: Croatia as a member of the EU has adopted, and other five Western Balkans countries are in the process of adopting the necessary regulations and strategies towards climate change mitigation, but the implementation of specific activities is at a low level. The reason for this most often lies in the insufficient commitment of decision-makers to make significant changes in the field of climate change transition (lower level of economic development, lack of investment, and preservation of social peace). Finally, this paper provides an overview of climate change by country, scenario analysis, and policy recommendations.

Article De Revue

Article 2. The Impact of ESG Risks on the Economic Growth in the Western Balkan Countries Delova-Jolevska, Evica; Ilievski, Andrej; Jolevski, Ljube; Csiszárík-Kocsir, Ágnes; Varga, János

Sustainability, 2024-10, Vol.16 (19), p.8487; the economy is significantly impacted by environmental, social, and governance (ESG) risks. The growth of the economy can be sped up by the effective management of ESG risks through sustainable business practices. To promote sustainable development and to secure the long-term welfare of employees, customers, and all other stakeholders in the economy, companies must adapt and reposition their business strategies and organizational cultures. The goal of this paper is to determine how a set of common ESG elements, chosen from the viewpoints of sustainability and well-being, influence economic growth in the Western Balkan countries. For each ESG component, we used different variables. The information pertains to the five Western Balkan countries of North Macedonia, Albania, Montenegro, Bosnia and Herzegovina, and Serbia. Because of a lack of data, Kosovo is excluded from the study. Then, we compared results from the analysis of the Western Balkan countries with a set of countries in Southeast Europe, which are members of the European Union and essentially coincide with the Western Europe countries. We performed multiple regression analysis with applied fixed effects to the data model. According to the study's findings, each of the independent variables had no significant impact on the GDP's annual growth of the Western Balkan countries, but two of the variables, life expectancy at birth and labor force participation, have certain impact on the GDP growth of Southeast Europe countries, which are members of the European Union. The green transition has gained significant importance in the Western Balkan countries as a crucial pathway toward sustainable economic growth, though it introduces

a range of new social and economic challenges. Economically, these nations are confronted with considerable funding requirements for development. To build sustainable societies, it would be beneficial for these countries to explore more creative financing strategies. It is advised to establish financing frameworks that not only increase the transparency in policymaking but also ensure greater accountability in their execution.

... Strategies and organizational cultures. The goal of this paper is to determine how a set of common ESG elements, chosen from the viewpoints of sustainability and well-being, influence economic growth in the Western Balkan countries...

Livre

3. OECD Development Pathways Multi-dimensional Review of the Western Balkans Assessing Opportunities and Constraints.

OECD. 2021

The Western Balkans region has come a long way over the last two decades in achieving economic and social progress. With a population of 17.6 million, the region today boasts a combined gross domestic product (GDP) of close to EUR 100 billion, an average GDP per capita of about EUR 5 400 and a comprehensive process of integration with the European Union.

Livre

4. Evolving practice in EU enlargement with case studies in agri-food and environment law

Inglis, Kirstyn. 2010

Following some ten years as a practicing lawyer and consultant, Kirstyn Inglis has been researching the evolving legal practice of EU enlargement for over ten years. This book, succinctly, introduces this evolving practice, covering 'transitional arrangements' in accession treaties, the Treaty of Lisbon, recent European Court case law, the specific governance challenge of incorporating Bulgaria and Romania and the strategy for future enlargements to bring in the Western Balkans and Turkey. In part two, the examples of the environment and the agri-food Acquis are explored, including the analysis of the transitional arrangements in practice. Overall, the diversity and complexity of the pre-accession and post-accession challenge of enlargement becomes apparent, as do key challenges for the evolution of the Acquis communautaire in an enlarging Union at a time when Croatia is waiting to sign its own accession treaty.

Article

5. Governmental investment in the environmental economy in the Western Balkan

Šogorov-Vučković, Jelena; Piksiades, Dušan; Trifunović, Ivan

European Journal of Applied Economics, 2022, Vol.19 (1), p.121-136; "A Green Economy" has been one of the key agendas that governments all over the world have set as a goal to achieve. The last few decades have been critical for the recognition of this major problem, and they played a critical part in reversing the effects brought on to our planet with the acts of people and other natural factors. Governments have devised multiple plans to enforce regulations that would protect the environment we live in, and most of these plans have been spearheaded by the United Nations (UN) and the European Union (EU). They have developed several plans that have a task to minimize, or escalate, the effects of global warming until 2050. Covered by these plans are almost all of the World's countries, and a majority of these actions are connected with the economy and sustainable development. The Western Balkan region has recently started implementing Eco laws and trying to make the environment more energy efficient. The WB countries have also undergone serious economic improvement in the environmental field. This paper analyses the progress of the Western Balkan countries, its onset and implementation, as well as plans for future economic investment. The countries that will be analyzed are Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia. The analyses in the paper include the presentation of legal regulations and the economic perspectives of the plans that

need to be implemented in these countries, as well as their investment potential concerning the green economy. Since all of these countries tend to become members of the EU in the future, these results would be compared with the average measures performed by the EU countries. The paper hypothesizes that Western Balkan countries have lower average rates than EU countries, and would have to focus not only on making a more stable legal perspective concerning Eco laws, but also a more environmentally stable economy.

Article

6. The new kids on the block - Building environmental governance in the Western Balkans

Fagan, Adam

Acta politica, 2010-04, Vol.45 (1-2), p.203-228; The influence of the EU over environmental policy frameworks, plus the availability of project funding for environmental NGOs in acceding and candidate states across post-socialist Europe has significantly shaped action repertoires, issue agendas and patterns of mobilization. It has also been claimed that EU intervention has determined the institutionalization of 'green' civil society networks by the introduction of, for example, EIA processes and policy-making norms that emphasize intersectoral partnership and multilevel governance. However, research on the impact of EU assistance for environmental mobilizations in Bosnia and Herzegovina and Serbia reveals the extent to which EU intervention and influence builds professionalism, but only partially institutionalizes recipient environmental NGOs; if they are accorded political access at all, it is ephemeral and within less contentious policy areas where they are encouraged to deliver expertise and assistance rather than to act as advocates for community interests or to express political opposition to contentious developments. This article concludes that the professionalization and increased managerial capacity of a handful of ENGOs cannot be equated with good governance and with the institutionalization of non-governmental actors. Indeed, increased professionalism is invariably confined to a very narrow spectrum of policy enactment and is insufficient to generate environmental governance in the absence of state or governmental capacity.

The influence of the EU over environmental policy frameworks, plus the availability of project funding for ENGOs in acceding and candidate states across post-socialist Europe has significantly shaped...

Article

7. Open Balkan Initiative: A Contested Issue in the EU Membership Perspective

Tota, Elton; Culaj, Gjon

Journal of Liberty and International Affairs (Bitola), 2023-03, Vol.9 (1), p.312-324; The Open Balkan is the latest regional initiative in the Western Balkans (WB), firstly named as Mini-Schengen and then changed to Open Balkan Initiative (OBI), which aims to increase the regional economic cooperation among the WBs by going beyond the mere objective of creating a Common Regional Market (CRM). This paper using an analytical approach, taking into account data and information, has identified and highlighted the openly declared objectives of the OBI while comparing it with the previous Berlin Process. Also, the paper has shown that the disputes among the WB countries most inherited from the unresolved issues of the past are still present and hinder the progress towards a common future and EU membership perspective. The reactions to the OBI proved that even the creation of mere economic cooperation is hardly achieved in the case of other existing unresolved issues of the past and continues to remain open. This paper has highlighted the existence of mistrust among the WBs, the importance of increasing regional cooperation, and the role that the EU should inevitably play. The paper has concluded that to achieve the targets defined in the OBI, the WBs should enhance regional cooperation and overcome the challenges they have been facing.

The Open Balkan is the latest regional initiative in the Western Balkans (WB), firstly named as Mini-Schengen and then changed to Open Balkan Initiative (OBI...

Article

8. The Ripple Effects of Compliance: Reconfiguring EU Policy Effectiveness in Trans boundary Environmental Governance

Lappe-Osthege, Teresa

Journal of common market studies, 2024-05, Vol.62 (3), p.653-670; Research on EU policy effectiveness focuses on implementation and compliance within the EU; however, there is a need for a greater understanding of how and why trans boundary socio-ecological issues challenge policy effectiveness beyond the EU's borders. This article introduces the innovative concept of 'ripple effects' of compliance, which are harms perpetuated by structural inequalities, and discusses their implications for EU environmental governance. Contributing to transnational compliance research by integrating political ecology and green criminology, the analysis builds on qualitative data on the illegal bird trade from the Western Balkans into the EU. It demonstrates that compliance with conservation policies within Member States undermines EU policy objectives through crime displacement and institutional misfit, which externalize environmental harm to the Western Balkans. Increased enforcement and monitoring of policy implementation alone cannot function as a panacea for policy ineffectiveness. Addressing these dynamics requires strengthened multilevel and cross-jurisdictional governance that encompasses entire ecosystems.

.... Contributing to transnational compliance research by integrating political ecology and green criminology, the analysis builds on qualitative data on the illegal bird trade from the Western Balkans into the EU...

Actes de colloque

9. Western Balkans' Environmental Performance Toward EU Integration and Sustainable Development: A Comparative Analysis

Dosti, Bernard; Doci, Silvana; Kule, Ditjona

Economic and Social Development: Book of Proceedings, 2024, p.47-56; this comparative analysis highlights the environmental performance of the Western Balkans region in its path of EU integration and sustainable development. In the framework of European integration, all WB countries have made progress in their policies designed in the direction of environmental protection and climate change. However, due to the complex regional dynamics and the transition process, the environmental performance is far from the average of the countries of the European Union. As a result, Western Balkan countries, which intend to integrate into the European Union, must increase their efforts to approximate their environmental legislation with European standards as soon as possible not only theoretically but also practically. This research paper highlights the achievements and challenges of the countries in improving environmental performance, ensuring their integration into the European Union and promoting sustainable development in the long term.

This comparative analysis highlights the environmental performance of the Western Balkans region in its path of EU integration and sustainable development...

Article

10. A Comparative Analysis of Key Public Service Areas in Western Balkans: Where Do We Stand?

Reianu, Diana-Gabriela

Research and science today, 2021-04, Vol.21 (1), p.15-26; the main aim of this paper is to provide an overview of the state of play and the main recent developments in the field of public administration in the six countries of the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia), highlighting the similarities and the differences between these countries. The study focuses on key indicators on how governments in this region work and perform, underlining the achievements and the shortcomings in the following three areas: policy making, public service, and service delivery. Although it is clear that the countries of the Western Balkans face challenges and shortcomings in implementing public administration reforms, the results emphasize the existence of formal rules and the steps made towards complying with these standards.

The main aim of this paper is to provide an overview of the state of play and the main recent developments in the field of public administration in the six countries of the Western Balkans...

Article

11. The Constraints on European Institutions' Conditionality in the Western Balkans

Pickering, Paula M.

Europe-Asia studies, 2011-12, Vol.63 (10), p.1939-1944; The essays in this collection bring together recent field research in the Western Balkans to increase the understanding of the conditions under which European and Euro-Atlantic institutions' conditionality contributes to or undermines democratic state building. A key strength of these essays is that they call attention to the often underdeveloped and misunderstood complexities of the domestic political situations which influence multinational corporations' conditionality and vice versa. While quite a few of the authors contend that selected EU strategies have had a negative impact on aspects of political development in the Western Balkans, none of the authors argue that the Western Balkans would be better off without the possibility of accession to the EU or involvement with other European institutions. Instead, they suggest that the details of EU conditionality deserve greater attention so that they can better cultivate democratic reform that is meaningful both to Western Balkan citizens and that meets European standards.

The essays in this collection bring together recent field research in the Western Balkans to increase the understanding of the conditions under which European and Euro-Atlantic institutions...

Article

12. Western Balkans Regional Common Market. What Lesson Can Be Taught from EEA? - A Case Study of Public Procurement

Kováčiková, Hana

Strani pravni život, 2020, Vol.64 (4), p.133-145; The European Union pursues on the international scene to safeguard its values, support the rule of law, foster the sustainable economic, social and environmental development and support the integration of all countries into the world economy including through the progressive abolition of barriers on international trade.¹ Trade agreements are used as an effective tool to this end. Within its present external action, European Union tries to cover its trade relations regionally homogeneously. Through regionally homogeneous trade agreements, Union can export its values, principles, and rules easier, which is also a way of strengthening its position geopolitically. This paper analyses trade agreements concluded between the European Union and candidate countries from Western Balkans. All these agreements recognize the accession to the European Union as their final goal. To achieve it, candidate countries need to fulfil various conditions, including the approximation and harmonization of their legal orders with the EU Acquis. Just recently (in November 2020), Western Balkans countries' leaders announced the creation of Regional Common Market which

shall serve as a tool for approximation with European Union's Internal Market Rules. To this regard, the author analyzed the European Economic Area, where the export of European Union's Internal Market Rules was successfully realized, and which might therefore serve as an example for pre-accession cooperation between Western Balkans countries and European Union. Author chose the area of public procurement as a model case study.

The European Union pursues on the international scene to safeguards its values, support the rule of law, foster the sustainable economic, social and environmental development and support...

Article

13. The Impact of Sustainable Development on Risk Management in the NPL Portfolio in the Western Balkan Countries

Đalić, Tamara; Barjaktarović, Miljana; Cogoljević, Vladan

Oditor, 2023-12, Vol.9 (3), p.177-214; The concept of sustainable banking is based on the principle of achieving growth and profits for the bank and shareholders, but only by also achieving social goals and caring for environmental preservation. Providing new banking services and creating new (green) banking businesses that not only generate profits but also broader social and environmental objectives present opportunities for creating a competitive advantage, both in the Western Balkan countries observed in this study and in all countries worldwide. In this study, we will focus on analyzing macroeconomic parameters in the Western Balkan countries to examine the impact of selected indicators on the performance of the banking system, with a particular emphasis on the social and environmental protection components. The results indicate that the unemployment rate is the most significant indicator of potentially risky events for bankers, and banks are not recognized in the current environmental preservation strategies in the Western Balkan countries. Therefore, it is necessary to educate the population first and simultaneously promote green loans as sustainable as and more favorable in the long term than traditional loans, while updating the existing regulatory framework in the field of environmental protection. ... opportunities for creating a competitive advantage, both in the Western Balkan countries observed in this study and in all countries worldwide...

Actes de colloque

14. A Systematic Review for Financial Crimes In Western Balkan Countries

Vardari, Luan; Vardari, Dena Arapi

Economic and Social Development: Book of Proceedings, 2023, p.140-148; Financial crimes are a major concern for law enforcement agencies and policymakers in Western Balkan countries due to their potential to cause significant harm to individuals, businesses, and economies. This systematic review aims to provide a comprehensive analysis of the existing literature on financial crimes in Western Balkan countries, including the nature, scope, and impact of these crimes, as well as the measures taken to address them. The review finds that financial crimes, including money laundering, tax evasion, fraud, corruption, and bribery, are prevalent in the region, with varying degrees of severity across different countries. The weak regulatory environment in some Western Balkan countries is identified as a contributing factor to the prevalence of financial crimes. The impact of these crimes on the region's economies can be significant, leading to reduced foreign investment, decreased economic growth, and increased poverty. The findings have significant implications for policymakers and other stakeholders involved in addressing financial crimes in the region. Measures to address financial crimes, including anti-money laundering laws, financial intelligence units, and the strengthening of law enforcement agencies, have been implemented, but their effectiveness varies. Further research is needed to understand the nature and extent of financial crimes in the region, as well as the effectiveness of measures taken to address them, to inform policy and law enforcement efforts in the fight against financial crimes in Western Balkan countries.

Financial crimes are a major concern for law enforcement agencies and policymakers in Western Balkan countries due to their potential to cause significant harm to individuals, businesses, and economies...

Livre

15. Energy in the Western Balkans: The Path to Reform and Reconstruction

Publishing, OECD; Agency, International Energy 2008

The Western Balkans – composed of Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo – is a complex region facing significant energy challenges. This is the first comprehensive review of energy policies and strategies in the Western Balkan region, and also covers important cross-cutting topics such as co-operation and energy trade, oil and gas transportation, and the links between energy and poverty. It identifies and assesses the reforms that are still needed to deliver efficient, modernized energy systems that can assist economic development, address energy poverty and reduce the environmental impacts of energy use.

The Western Balkans – composed of Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo...

Article

16. Alignment of National Forest Policy Frameworks with the EU Timber Regulation Requirements: Insights from Montenegro and the Republic of Srpska (Bosnia and Herzegovina)

Radosavljevic, Maja; Masiero, Mauro; Rogelja, Todora; Comic, Dragan

Forests, 2023-06, Vol.14 (6), p.1157; The Western Balkans represent a priority area for improving forest legality monitoring systems in line with the European Union Timber Regulation (EUTR). However, research on EUTR implementation in Western Balkan countries is still sporadic with a limited geographical scope; therefore, the preparedness of forestry sector actors for the EUTR in the region is largely unknown. The main objective of this study is to determine to what extent the forest policy frameworks of Montenegro and the Republic of Srpska (Bosnia and Herzegovina) are aligned with the EUTR requirements. To achieve this aim, we applied a qualitative content analysis of policy documents identified via an expert-based approach. Our results show that both countries have well-developed policy frameworks addressing illegal logging and preventing illegal activities in forestry, especially through dedicated action plans. Key actors in both countries are public, including the ministries responsible for forestry, public forest enterprises, and forestry inspectorates. The forestry sector in Montenegro is facing significant changes due to the termination of forest concessions and the reorganization of the management of state forests, including forest certification. The Republic of Srpska has relatively well-established institutional bodies for EUTR implementation but, in some cases, insufficient exchange of information and cooperation among them. Our findings indicate that the forestry sectors in Montenegro and the Republic of Srpska (as well as in Serbia, Croatia, and Slovenia, as per previous research) are dynamic, undergoing various changes, so there is room for improvement in terms of capacities (e.g., human, technological, infrastructural), legal responsibilities, and information access and availability. With an increasing focus on “deforestation-free” commodities within the EU and global policy arena, a new, more demanding, and broader regulation is expected at the EU level, replacing the EUTR. The incoming regulation will expand existing EUTR requirements, likely posing severe challenges to many EU member countries. This could be even more challenging for countries with less developed or advanced systems to enforce legality requirements, including Western Balkan countries.

The Western Balkans represents a priority area for improving forest legality monitoring systems in line with the European Union Timber Regulation (EUTR...

Chapitre de livre

17. Environmental Governance in the Western Balkans

Kujundzic, Olivera; Alberton, Mariachiara; Palermo, Francesco

Environmental Protection in Multi-Layered Systems, 2012, Vol.1, p.235-261

Article

18. Environmental Protection Through The Prism Of Enlargement: Time For Reflection

Bogojevic, Sanja; Drenovak-Ivanovic, Mirjana

Common market law review, 2019-08, Vol.56 (4), p.949-977; in the wake of crises and “enlargement fatigue”, EU politics deprioritized enlargement. Recently, however, the Commission motioned a reinvigorated enlargement prospect for the Western Balkans, identifying Serbia and Montenegro as the front runners. This paper advises that in going forward, the EU should also look back at its five decades of enlargement. The article focuses on environmental protection - a key EU public policy - and the way in which it features in the ever-evolving accession conditions and accession acts. It emerges that environmental protection has been marginalized throughout EU’s enlargement history. Taking Serbia as a case study, it is shown that this is highly problematic, since environmental protection is linked to safeguarding the rule of law - an essential criterion for EU membership. The role of environmental protection in the EU’s enlargement policies should thus be reprioritized.

.... Recently, however, the Commission motioned a reinvigorated enlargement prospect for the Western Balkans, identifying Serbia and Montenegro as the front runners...

Livre

19. Environmental Protection in Multi-Layered Systems: Comparative Lessons from the Water Sector

Alberton, Mariachiara; Palermo, Francesco; Alberton, Mariachiara; Palermo, Francesco 2012

The book aims at understanding the current distribution and use of powers over the environment among various layers of government and their consequences on environmental protection, comparing federal, regional and unitary State models and drawing theoretical and practical consequences.

Article

20. Gender Equality as a Goal of the Sustainable Development

Tahiri, Alberta; Kovaçi, Idriz

Calitatea, 2024-09, Vol.25 (202), p.231-241; the purpose of this paper is to shed light on the gender equality in Kosovo. The data shows that there is a very high gender inequality in Kosovo in all aspects of the life. The main reasons for gender inequality in Kosovo are linked to gender stereotypes and patriarchal culture in society and the economy, unequal distribution of family responsibilities, lack of available and affordable childcare responsibilities and also low education levels among women. Although many measures have been taken to reduce gender inequality and empower women in Kosovo, however women empowerment in Kosovo is by far the lowest among the Western Balkan 6 and EU economies with a score of 25.4 out of 100, placing it last in the Women Empowerment Index (ranking in the last 33). The study also contains proposed measures to reduce gender inequality in Kosovo and promote economic empowerment of women.

.... Although many measures have been taken to reduce gender inequality and empower women in Kosovo, however women empowerment in Kosovo is by far the lowest among the Western Balkan 6 and EU economies with a score...

Article

21. Circular economy and its barriers to implementation in the construction sector

Milović, Tiana; Laban, Mirjana; Starčev-Ćurčin, Anka; Bulatović, Vesna

Journal of Applied Engineering Science, 2024, Vol.22 (2), p.279-284; The concept of circular economy has become an important topic during the last decade, because it offers a systems solution framework that creates a closed-loop system to minimize waste and maximize resource efficiency in order to achieve a better balance and harmony between economy, environment and society. The construction industry has significant potential to apply a circular economy model since this industry is responsible for considerable global natural resource extraction and solid waste production. Worldwide, more than 10 billion tons of construction and demolition waste are produced annually, while the demolition alone is responsible for 50% of all waste produced by the building sector. In Serbia, the sectors of agriculture, forestry and fishing, mining, manufacturing, electricity, gas and steam supply, water supply and wastewater management, construction and service activities generated 56.3 million tons of waste just during 2020. Although 80% of construction waste can be recycled according to the Agency for Environmental Protection reports the waste recycling has not yet been established in Serbia. On the other hand, Serbia adopted the Roadmap for Circular Economy in Serbia, the Law of Waste Management, the Regulation on the Manner and Procedure of Waste Management from Construction and Demolition, and accepted the conditions of the European Union for linking the European Green Deal with the strategic development of the region by signing the Green Agenda for the Western Balkans.

This paper provides a brief literature review that introduces the circular economy by presenting its origin, definition and principles as well as the barriers (five categories: technological, economic, socio-cultural, institutional and regulatory) to its wider adoption in the construction sector.

Chapitre de livre

22. Sustainable Waste Management Practices: Challenges in the Republic of Macedonia

Toshevska-Trpchevska, Katerina; Kikerkova, Irena; Makrevska Disoska, Elena; Renko, Sanda; Pestek, Almir; Renko, Sanda; Pestek, Almir

Green Economy in the Western Balkans, 2017, p.109-140; Abstract Over the last 15 years, all the legislation on waste management in the Republic of Macedonia has been brought in compliance with the European legislation. The major challenge in the economy, however, still happens to be the (non) implementation of the enforced laws on green economy. Major constraints in waste management practices remain to be organization of institutions and human resources; financing of services and investments; stakeholder (non) awareness; and lack of technical management in all phases from collection to final disposal of waste. It is not only that the present situation has negative impact on the public health and the environment, but it also has serious negative economic effects which consequently affects issues related to the total economic growth of the country. The paper has a special focus on managing packaging and packaging waste and analyzes the results of the implementation of the Law of Management of Packaging and Packaging Waste which was enforced in 2009. Positive initiatives in waste management practices were undertaken by PAKOMAK, the first Macedonian company that has been holding the license for selecting and processing of packaging waste since January 2011. The company has a proactive role in promoting the importance of packaging waste and its management, with a special emphasis on projects that increase the awareness of the whole society, especially that

of the young population. Some of the projects that increase the eco-awareness of young population will be presented in the paper.

The major challenge in the economy, however, still happens to be the (non) implementation of the enforced laws on green economy...

- the latest work edited by Christel Cournil, "Expertises and legal arguments: contribution to the study of climate trials" published last December (and available completely free online: Expertises and legal arguments - DICE Éditions). Some articles go beyond Europe, but there are quite a few things centered on Europe, and very interesting around evidence, the role of expertise, the role of NGOs in particular as Amicus curiae but also in the construction of legal arguments, etc.

In English:

- Some chapters from Sindico F., Mbengue Makane M. (eds.), Comparative climate change litigation: beyond the usual suspects, Springer International Publishing, 2021:
 - Lieselot Marien and Leonie Reins "Local Liability for Global Consequences? Climate Change Litigation in Belgium" p. 427
 - Vojtěch Vornáčka and Ilona Jančářová "Climate Change Disputes in the Czech Republic" p. 455
 - Barbara Pozzo "The Italian Path to Climate Change: Nothing New Under the Sun" p. 471
 - Erkki J. Hollo "Climate Change and the Individual in the Finnish Legal System" p. 509
 - Rosa M^a. Fernández Egea, Sofia Simou, and Albert Ruda "Climate Change Litigation in Spain" p. 557
 - Vasilka Sancin and Maša Kovič Dine "Emerging Awareness of Climate Change Litigation in Slovenia" p. 575
- Setzer J., Higham C., Global Trends in Climate Change Litigation: 2023 Snapshot, London, Grantham Research Institute on Climate Change and the Environment, LSE, juin 2023 (Global_trends_in_climate_change_litigation_2023_snapshot.pdf)

VII.3 Directive 2024/2013 on the Protection of the Environment Through Criminal Law

The aim of Directive 2008/99 was to ensure environmental protection through criminal law by establishing a common EU framework for certain environmental offences, mainly by reference to sectoral directives. It already noted that compliance with environmental legislation "*must be reinforced by the existence of criminal sanctions, which reflect a disapproval of society that is qualitatively different from that expressed through administrative sanctions or civil compensation*"¹⁵⁵.

Directive 2024/1203 extends and clarifies this directive, in particular by defining autonomous offences under European criminal law and setting minimum criminal penalties, going beyond the usual formula of "*effective, proportionate and dissuasive*" penalties.

Article 3(2) of the directive lists 22 types of behavior that must be made criminal offences (compared with 9 in the 2008 directive). The 2024 directive, which now has the annexes that limited the scope of the 2008 directive removed, paves the way for genuinely general and autonomous offences that criminalize "unlawful" conduct. Under the terms of the directive, conduct is unlawful if it violates:

¹⁵⁵ Recital (3) of Directive 2008/99

- Union law which contributes to preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilization of natural resources and promoting measures at international level to deal with regional or worldwide environmental problems, in particular combating climate change, whatever the legal basis of that Union law; or
- laws, regulations or administrative provisions of a Member State or decisions taken by a competent authority of a Member State which give effect to such Union law.

In addition, such conduct is unlawful even where it is carried out under an authorization issued by a competent authority of a Member State *“if such authorization has been obtained fraudulently or by corruption, extortion or coercion”* or *“if such authorization is a manifest breach of relevant substantive legal requirements”* (Article 3 (1), last paragraph). The concept of fraud may be more or less extensive depending on whether it covers administrative and/or criminal practices.

Most of the offences listed in article 3 (2) are defined by reference to failure to comply with sectoral legislation, but there are also autonomous offences.

This is the case with article 3(2)(a) of the directive, which criminalizes any unlawful discharge into air, soil or water of materials, substances, energy or radiation causing or likely to cause substantial damage to an ecosystem, fauna or flora or to the quality of air, soil or water. This provision thus creates a general offence of pollution.

Similarly, article 3(2)(b) of the Directive covers the placing on the market, in breach of a prohibition or other requirement designed to protect the environment, of a product the use of which on a larger scale result in the discharge, emission or introduction of substances into the air, soil or water and causes or *“is likely”* to cause such damage (which could be likened to an offence of endangering the environment).

Member States have until 21 May 2026 to transpose the directive, and some of them will have to create new offences in order to achieve compliant transposition.

For example, there is no general offence of soil pollution in French law, contrary to article 3 (2) (a) of the 2024 directive. Furthermore, offences relating to greenhouse gas emissions and more generally to air pollution are probably not adequately criminalized under French law. Finally, the directive classifies at the top of the seriousness threshold the so-called “qualified” offences (referred to in article 3 (2)) when they cause

- *“the destruction of an ecosystem of considerable size or environmental value or of a habitat within a protected site, or extensive or substantial damage that is either irreversible or lasting to such an ecosystem or habitat”;*
- *“extensive and substantial damage that is either irreversible or lasting to the quality of the air, soil or water*

The penalties provided for in the directive range from **3 years**¹⁵⁶ (offences of illegal water capture; destruction, trade, etc. of protected species; placing on the market of products that do not comply with deforestation regulation; deterioration of habitats on protected sites, etc.) to 5 years¹⁵⁷ (emissions; soil pollution; waste trafficking, etc.) of minimum imprisonment for certain offences. Qualified criminal offences must be punishable by a maximum term of imprisonment of at least 8 years¹⁵⁸. In fact, environmental damage often results in the kind of damage required by Article 3(3), but this presupposes that administrative and/or criminal investigations actually

¹⁵⁶ Offences referred to in Article 3.2 points m), n), o), q) and r).

¹⁵⁷ Offences referred to in Article 3.2 points a) to l) and points p), s) and t) (Article 3.2.d))

¹⁵⁸ These penalties are increased when the offences result in the death of a person (article 5.2.a) and 5.2.c)).

establish the damage, in particular through expert reports. In some cases, nature protection NGOs also have the scientific capacity to document such damage.

In concrete terms, this new directive on the protection of the environment through criminal law aims to provide for criminal law enforcement that is independent of the administrative authorities, entrusted to a judicial judge and whose approach should no longer be purely “regulatory”. The Member States have a certain amount of leeway - in particular to go beyond the penalties provided for in the directive - with regard to the general definitions and terminology used in both sectoral offences and autonomous offences.

VII.4 Gender issues and the environment

A girl born today will have to wait until her 97th birthday, beyond her expected lifespan to celebrate an equal society.¹⁵⁹

Women continue to face gender-based violence, remain underrepresented in decision-making positions, have lower salaries and limited opportunities for professional, economic and social advancement.

Gender determines what is expected, allowed and valued in a particular context at a given time, recognizing that this is changeable. In most societies, there are differences and inequalities between women and men in the responsibilities that they are expected to take up, the activities that are considered normal or acceptable, access to and control over resources and participation in decision-making. It encompasses the roles, behaviours and activities that are deemed acceptable for people of different genders and influences the relationships between the people who fall within these groups. These attributes and relationships are socially constructed¹⁶⁰.

The promotion of equality between women and men is a core value of the European Union (EU), a fundamental right¹⁶¹ and key principle of the European Pillar of Social Rights¹⁶². Furthermore, gender mainstreaming is clearly reflected in the EU Gender Action Plan III (2021-2025)¹⁶³, and it's integral part of the regulations of the EU Instrument for Pre-Accession Assistance (IPA III)¹⁶⁴: when accessing the EU, candidate countries are required to comply with the “Acquis” on gender equality and non-discrimination.

Gender disparities are often amplified by environmental challenges, making it crucial to adopt a gender-sensitive approach in environmental policies and governance. The following section explores the intersection of environmental justice and gender equality at the global level (A), then we'll look at specific examples at the local level in Albania (B), in North Macedonia (C) and in Montenegro (D) and we will finish by examining key recommendations to achieve gender equality in environmental justice (E).

A) The Intersection of environmental justice and gender equality at the global level:

We will first explore the main international agreements on environmental justice and gender equality (1), then we will review measures which can drive both social equity and sustainable development by analyzing the main key issues existing on this specific topic (2)

¹⁵⁹ <https://equalmeasures2030.org/2024-sdg-gender-index/>

¹⁶⁰ https://www.who.int/health-topics/gender#tab=tab_1

¹⁶¹ See Articles 2 and 3(3) TEU, Articles 8, 10, 19 and 157 TFEU and Articles 21 and 23 of the EU Charter of Fundamental Rights.

¹⁶² https://commission.europa.eu/system/files/2017-11/social-summit-european-pillar-social-rights-booklet_en.pdf

¹⁶³ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2184

¹⁶⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0947&from=EN>

1) Step by step towards the recognition of environmental justice with a gender perspective:

We can mention as example, the main followed agreements (*non-exhaustive list*):

- **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁶⁵:** This convention obliges states parties to take all appropriate measures to eliminate all discrimination against women including the violence that can emanate from climatic disasters, which we will examine in the following sections. It was adopted and opened for signature, ratification and accession by the General Assembly in its resolution 34/180 of December 18, 1979, and entered into force on September 3, 1981. We will see in the followed sections that all the three countries, Albania, North Macedonia and Montenegro have adopted it.
- **The United Nations International Conference on Population and Development (Cairo, 1994)¹⁶⁶:** This conference marked a milestone in recognizing that achieving women's and girls' rights is central to development. It brought together views on Human rights, population, sexual and reproductive health, gender equality, environment and sustainable development, forming a global consensus that placed individual dignity including the right to family planning, at the heart of development.
- **The Fourth World Conference on Women (Beijing, 1995)¹⁶⁷:** Organized by the United Nations, this conference emphasized the importance of addressing gender issues within the context of sustainable development and environmental management. It highlighted that women are often excluded from policymaking and decision-making processes in areas such as natural resource management, preservation and environmental protection. It also stressed the need for training women in environmental management and decision-making.
- **Marrakech 2001 (COP7)¹⁶⁸:** The first step towards gender equality in climate negotiations was taken when parties adopted two decisions related to gender equality and women's participation.
- **Women and Gender Constituency-2009¹⁶⁹:** This group was established as an observer within the climate convention, advocating for gender-responsive climate action.
- **2011/92/UE Environmental Impact Assessment Directive¹⁷⁰:** This EU directive requires EIAs for certain public and private projects to ensure the respect of gender and of all Human rights.
- **7th EU Framework Programme for Research, September 2017¹⁷¹:** This program focused on promoting research related to gender and the environment. It supported studies on the interaction between gender and environmental dimensions in EU-funded projects.

¹⁶⁵ <https://www.ohchr.org/fr/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

¹⁶⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/231/27/PDF/N9523127.pdf?OpenElement>

¹⁶⁷ <https://perspective.usherbrooke.ca/bilan/servlet/BMDictionnaire?idictionnaire=1773>

¹⁶⁸ <https://unfccc.int/event/cop-7>

¹⁶⁹ <https://womensgenderclimate.org/about-us/>

¹⁷⁰ <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex%3A32011L0092>

¹⁷¹ [https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/608697/EPRS_IDA\(2017\)608697_FR.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/608697/EPRS_IDA(2017)608697_FR.pdf)

- **European Parliament Resolution on Climate Justice and Gender (2018)**¹⁷²: This resolution recognized the importance of gender equality in combating climate change. It called for integrating a gender perspective into all environmental policies and actions.
- **EU Biodiversity Strategy for 2030**¹⁷³: Adopted in 2020, this strategy includes commitments to incorporate gender considerations into biodiversity and environmental protection policies.
- **European Gender Equality Strategy (2020–2025)**¹⁷⁴: This strategy underscores the need for gender equality across all EU policies, including environmental policies. It ensures that gender equality considerations are integrated into EU actions and promotes women's empowerment through external actions and financial instruments.
- **The Eighth Environment Action (EEA) Programme (2022)**¹⁷⁵ recognizes the gender-specific impact of environmental changes.

The effects of climate change exacerbate existing stressors and inequalities with respect to agricultural land and other land management, food security, water security and more.

Governments and institutions have during long time ignored the problem of **women's access to natural resources** and their roles in managing and preserving the environment.

@ <https://www.un.org/en/>

Having access to resources is key to building climate resilience. However, in many countries, significant socio-economic inequalities between men and women still limit or prevent women's access to education, property, financial assets, technology, political decision-making, ownership of land and natural resources and other valuable resources. These **gender discriminations put women and girls at a high risk of suffering loss and damage from climate change.**



Some recent analyses demonstrate that:

- **Extreme weather events (EWs)** cause **higher mortality rates for women and girls**¹⁷⁶;
- **Women's and girls' health** are projected to be **disproportionally affected** by the **impacts of climate change**¹⁷⁷;
- **Women and girls face a higher risk of experiencing gender-based violence**, human trafficking and sexual exploitation¹⁷⁸;
- **Women and girls face higher loads of care work**, resulting in various long-term effects on their education and income generation¹⁷⁹.

¹⁷² https://www.europarl.europa.eu/doceo/document/TA-8-2018-0005_FR.html

¹⁷³ https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_en

¹⁷⁴ <https://ec.europa.eu/newsroom/just/items/682425/en>

¹⁷⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0591&from=EN>

¹⁷⁶ <https://www.giz.de/en/downloads/GIZ-GP->

[%282021%29_Diving%20into%20the%20gap_Genderdimensions%20of%20Climate%20RiskManagement.pdf](#)

¹⁷⁷ <https://www.un.org/fr/chronicle/article/le-femmes-dans-le-contexte-des-changements-climatiques>

¹⁷⁸ <https://www.undp.org/sites/g/files/zskgke326/files/migration/latinamerica/Reduction-des-Risques-de-Catastrophe-et-Relevement—Genre.pdf>

¹⁷⁹

We can see from these explanations that **environmental issues can impact women more severely** than men, for example, pregnant women face greater threats from the pollution of air and water. The impacts of environmental crises are interlinked in terms of Human rights violations and placing people already in vulnerable situations in even greater precariousness, as can be seen below:

@: <https://cloresocialleadership.org.uk>



Having explored the link between gender and environmental justice, it's now essential to delve deeper into the key issues surrounding this topic.

2) Key issues organized around four priority areas regarding gender and the environmental justice:

a) Right to land, natural resources and biodiversity:

- **Land and resource rights:** It's estimated that, although women play a key role in global food production (50-80%), **less than 20% of the world's landowners are women**.¹⁸⁰ This is because they

continue to work mainly on farmland, not as owners. On average, women make up 40 per cent of the agricultural labour force in developing countries, ranging from 20 per cent in Latin America to 50 per cent or more in parts of Africa and Asia. **On average, 30% of farms across the EU are managed by a woman**¹⁸¹. Women generally work as subsistence farmers mainly on family farms¹⁸².

- **Access to essential resources:** Despite their vital role in global food production, women often lack ownership of the land they work on, limiting their access to essential resources such as credit, agricultural inputs and trainings. **This structural inequality perpetuates economic dependence and restricts women's ability to improve productivity or achieve financial independence.**

There are also other gender-based discriminations at the level of the access to food and to sustainable production, as we will see in the next paragraph.

b) Access to food and to sustainable production:

¹⁸⁰ <https://www.unwomen.org/fr/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures#:~:text=Moins%20de%2020%25%20des%20propri%C3%A9taires,comptent%20pour%2015%25%20en%20moyenne.>

¹⁸¹ https://eu-cap-network.ec.europa.eu/news/women-new-cap_en

¹⁸² <https://www.fao.org/rural-employment/work-areas/data-and-knowledge/en/>

- **Gendered roles in resource management:** Women are responsible for 60-80% of food production in low and middle-income countries and half of the world's food production.¹⁸³ More than 60%¹⁸⁴ of the world's hungriest people are women and girls. This inequality often exists in a context of **discrimination** and **unequal power relationships**. Thus, it's been reported¹⁸⁵ that many women will reduce the amount of food they eat or skip meals entirely to make sure that their partners and children don't go hungry.
 - **Unpaid Labor: Most work done by women** (domestic, care and on the farm...) is **unpaid** or underpaid, causing economic pressures and time poverty.¹⁸⁶
- c) **Health and well-being:**
- **Health vulnerabilities:** Beyond immediate crises, **women's health** is affected by rising temperatures: air pollution and heat exposure are associated with preterm birth, low birth weight and poorer maternal health and complications during pregnancy, such as gestational diabetes.¹⁸⁷ The use of **some chemicals and pollutants**, such as persistent organic pollutants (POPs), has resulted in **environmental degradation** and water and air pollution, all of which have gendered impacts on health and well-being. Pregnant and lactating women are, once again, particularly vulnerable when it comes to chemical pollution.¹⁸⁸
- d) **Women in environmental decision making at all levels:**
- **Gender gaps in decision-making:** Despite international commitments, **women remain underrepresented in environmental leadership**, with **less than one-third of decision-makers being women**.¹⁸⁹ **Just 26.8 % of government ministers responsible for policies on environment and climate change are women in EU member states**, while 73.2 % are men.¹⁹⁰
 - **Gender-based violence in disasters:** Following a disaster, women and children face a **higher risk of gender-based violence (GBV), human trafficking and sexual exploitation**¹⁹¹. Although domestic violence remains the highest risk, increasing assaults by strangers are reported after disasters, particularly when women and girls are separated from their family, friends and other networks.¹⁹²

¹⁸³ <https://www.wfpusa.org/articles/women-in-crisis-top-ways-women-are-hungrier/>

¹⁸⁴ <https://www.wfpusa.org/articles/10-facts-child-hunger/>

¹⁸⁵ <https://www.care.org/media-and-press/care-analysis-150-million-more-women-than-men-were-hungry-in-2021/>

¹⁸⁶ <https://ilostat.ilo.org/topics/unpaid-work/measuring-unpaid-domestic-and-care-work/>

¹⁸⁷ <https://www.ifc.org/en/home>

¹⁸⁸ <https://wecf-france.org/limpact-des-polluants-chimiques-sur-la-sante-des-femmes/>

¹⁸⁹ <https://eige.europa.eu/gender-statistics/dgs/data-talks/decision-making-environment-and-climate-change-women-woefully-under-represented-eu-member-states>

¹⁹⁰ <https://eige.europa.eu/gender-statistics/dgs/data-talks/decision-making-environment-and-climate-change-women-woefully-under-represented-eu-member-states>

¹⁹¹ https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2021-02/1297700-Gender-based%20Violence%20in%20Disasters-EN-LR.pdf

¹⁹² https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2021-02/1297700-Gender-based%20Violence%20in%20Disasters-EN-LR.pdf



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We will analyze now various legislations to address inequalities some of them due to discriminations regarding environmental justice as we will see in the following developments for Montenegro.

B) Key international and national legal frameworks on gender equality in Montenegro: Insights and case study:

1) Key international and national legal frameworks on gender equality in Montenegro:



Gender equality in Montenegro is guaranteed by the Constitution¹⁹³ like in the article 6 “**Human rights and liberties**” and in the article 8 “**Prohibition of discrimination**” which sets the equality of all citizens as one of its main principles.

Montenegro ratified international conventions specifically targeting gender equality, like the **Convention on Elimination of All Forms of Discrimination against Women (CEDAW)**¹⁹⁴, **Security Council Resolution 1325**¹⁹⁵ (Women, Peace and Security) and the **Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence**¹⁹⁶.

The Law on Gender Equality¹⁹⁷, enacted in 2007¹⁹⁸ and last amended in 2015, serves as the cornerstone, emphasizing equal participation and opportunities for individuals of all genders in both public and private sectors. This law explicitly defines gender-based discrimination and stipulates equal participation for women and men, as well as persons of other gender identities in all areas of public and private sectors for exercising all rights and freedoms.

¹⁹³ <https://api.skupstina.me/media/files/1708526717-constitution-of-montenegro.pdf>

¹⁹⁴

<https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth>

¹⁹⁵ <https://www.peacewomen.org/SCR-1325>

¹⁹⁶ <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>

¹⁹⁷ <https://legislationline.org/taxonomy/term/12284>

¹⁹⁸ <https://legislationline.org/taxonomy/term/12284#:~:text=This%20Law%20regulates%20the%20method,and%20men%20in%20all%20fields>

We can also mention **the national gender equality strategy for the 2021-2025 period**¹⁹⁹, along with an **action plan for 2021-2022**²⁰⁰, aligns with EU policies, notably the **EU Gender Equality Strategy 2020-2025**²⁰¹.

In the **national gender equality strategy 2021-2025**²⁰², the low level of gender equality in Montenegro is recognized as a central problem. It also encompasses an assessment of the impact and implementation of prevention measures to reduce the negative impacts of climate change and natural disasters on the health of women, men, people of different gender and gender identities, as well as marginalized and particularly vulnerable people and groups.

Although legislation guarantees equal pay for women and men for equal job, the pay gap exists, and **women make 86.4% of a salary of a man**. As noted in the report of the protector of Human Rights and Freedoms, ***“women employment is characterized by more frequent acceptance of jobs that are less paid, and also of temporary jobs, and jobs with poor working conditions.”***²⁰³

Few women in the governing bodies of political parties, in decision-making positions (managing positions) in the national and local governments, low representation of women in entrepreneurship and the concentration of women in **low-paying jobs** (education, health, social care), confirm that gender roles are deeply entrenched, including the general perception that women's priority is family care and **that women have no place in public life**²⁰⁴.

According to MONSTAT, there is a **substantial gender gap among legislative, official and manager positions**. Accordingly, **only 22.0 % of legislators, officials and managers are women**, and the absolute majority are men (78,0%)²⁰⁵. When it comes to economic decision making, women make a minority among high level decision makers in private enterprises. According to the results of the study carried out by the Union of Employers of Montenegro in 2012²⁰⁶, women are most present in middle management (54%), while the average representation of women in company management boards is 28.2%.

The Protector of Human Rights and Freedoms of Montenegro (Ombudsperson) presented its **2022 Report on Roma and Egyptians in Montenegro, saying that ““ The position of Roma and Egyptians is still unfavorable in all key aspects of life, from social and economic status to education and political participation ”**²⁰⁷. They are still isolated from the rest of the population.

Moreover, concerning rural women, they are living in remote communities, and they are **at a high risk of violence** since communities located in mountains adhere to strong patriarchal norms and cultural consideration against the disclosure of “private matters”, including domestic violence²⁰⁸. **Services are hardly accessible for rural women**, due to the difficult terrain in their areas and isolation. According to the 2011 census, **36.8% of the overall population lives in rural areas**²⁰⁹ where **violence against women is underreported**.

¹⁹⁹ https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=116801

²⁰⁰ https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=116801

²⁰¹ <https://ec.europa.eu/newsroom/just/items/682425/en>

²⁰² https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=116801

²⁰³ https://www.ombudsman.co.me/docs/1491305524_final-izvjestaj-za-2016-04.pdf

²⁰⁴ <https://www.gov.me/en/documents/33985332-d431-4c25-9643-e9a15d76e548>

²⁰⁵ <http://www.monstat.org/userfiles/file/publikacije/ZENE%201%20MUSKARCI%20U%20CRNOJ%20GORI%20-%202016%20za%20STAMPU.pdf>

²⁰⁶ <https://www.ilo.org/publications/women-business-and-management-gaining-momentum>

²⁰⁷ <https://www.coe.int/en/web/podgorica/-/level-of-discrimination-against-roma-and-egyptians-still-high-in-montenegro-says-ombudsperson-s-report>

²⁰⁸ <https://rm.coe.int/gender-analysis-final-hf7/16809963c1>

²⁰⁹ <https://rm.coe.int/gender-analysis-final-hf7/16809963c1>

On January 24, 2023, the Institute for Standardization of Montenegro and The United Nations Economic Commission for Europe (UNECE) signed **the Declaration for Gender Responsive Standards and Standards Development**²¹⁰. By its signing, the Institute for Standardization of Montenegro, as national standardization body, i.e., the organization for the standards development, committed itself to recognize Goal 5 in the Sustainable Development Goals of the **United Nations 2030 Agenda for Sustainable Development**²¹¹ (*achieving gender equality and empowering all women and girls*) and foster the standards and the standards development process to be gender responsive.

By participating in the international dialogue on **the Sustainable Development Goals**²¹² and the **2030 Agenda for Sustainable Development**, Montenegro's full commitment to the priority issues of sustainable development, such as gender equality, was stated.



@ <https://sdgs.un.org/goals>

Guided by the recommendations of this **2030 Agenda for Sustainable Development**, Montenegro, by developing the **National Strategy for Sustainable Development to 2030**²¹³, set up a platform for transposing the goals, tasks and indicators of sustainable development into the national context.

In this way, Montenegro has established a **comprehensive framework** for the national response to the **challenges facing the achievement of sustainable development** of the Montenegrin society in the field of economy, environment protection and social development within which are the challenges related to solving the issues of discrimination on multiple grounds.

Attention to gender equality has increased in the political and legislative arena, resulting in the ratification of several international treaties in Montenegro. However, progress toward gender equality has been slow despite well-developed legal and institutional frameworks and it's important to see how to develop initiatives aimed at defending **women's rights in environmental justice**, like in the case study that we will see in the next section.

2. Case study of gender equality initiatives from Montenegro:

²¹⁰ https://unece.org/DAM/trade/wp6/AreasOfWork/GenderInitiative/UNECEGenderDeclaration_English.pdf

²¹¹ <https://sdgs.un.org/2030agenda>

²¹² <https://sdgs.un.org/goals>

²¹³ https://climate-laws.org/document/national-strategy-for-sustainable-development-to-2030_5ace

The project “Gender Equality and Justice in Montenegro” realizing with UNDP²¹⁴ starts the 1st august 2024 and will end the 31 July 2025. It offers a valuable entry point to explore the **intersection between gender and environmental justice**. Both gender equality and environmental justice involve addressing systemic inequalities and **ensuring fair access to resources, participation and protection from harm**. The project’s focus on gender-responsive justice and security delivery **aligns with the principles of environmental justice**, as marginalized groups particularly women often face compounded barriers to justice in both social and environmental contexts as we have seen in previous developments.

By **promoting women’s meaningful participation and leadership in decision-making processes**, this project addresses a critical component of environmental justice: **amplifying the voices of those disproportionately impacted by environmental challenges**. Women, especially in marginalized communities, are often **key actors in environmental stewardship** but **lack representation in policy-making**. Similarly, the use of evidence-based, intersectional research to inform policies not only enhances the rule of law but also builds pathways for integrating gender and environmental considerations into broader justice reforms. This integrated approach is essential for achieving **equitable and sustainable outcomes in both gender equality and environmental justice**.

Building on the analysis of Albania’s, North Macedonia’s and Montenegro’s legal framework for gender equality and its relation to environmental justice both at the national and international levels, it is evident that legislative measures play a pivotal role in advancing women’s rights and addressing systemic inequalities. However, the implementation of these frameworks requires concrete actions. Thus, achieving gender equality in environmental justice requires integrated strategies like we will see through the followed recommendations.

E) Recommendations to achieve gender equality in environmental justice:

- **Strengthen legislation to promote gender equality in environmental justice:** It’s necessary **to ensure equal access for women and men to natural resources and increase women’s representation in environmental decision-making spheres**.
- **Gender based violence (GBV) prevention in environmental programs:** Integrate measures to prevent and address GBV specifically in all environmental initiatives and projects to ensure safe and inclusive participation.
- **Mandatory training programs:** Implement **gender equality and its relationship with environmental justice** thanks to **trainings** in this field that will be carried out for legal, politicians, policymakers and all public officials to build awareness and accountability.
- **National and international collaborations:** Support **gender-responsive environmental cooperation programs** that strengthen the role of women in **decision-making and resource management**. It will be also important to foster collaboration with grassroots organizations and local communities **to enhance women’s leadership** and their participation in **environmental initiatives**.
- **Equitable access to resources and services:** Ensuring an **equitable distribution of resources** by giving women the same opportunities for use and responsibility as men. **Gender equality in the distribution and equitable access to resources** has positive multiplier effects for a range of key development goals, including **poverty reduction**.

²¹⁴ <https://open.undp.org/projects/01002861>

- **Women's empowerment programs:** Develop programs that **enhance women's access to land ownership, education and decision-making** while engaging communities to challenge discriminatory practices. We can find some ideas to develop more such practices like with the **women's leadership Curriculum**²¹⁵ which has developed training courses in this field aimed at ensuring the **economic autonomy of women** by enabling them to follow leadership training courses.
- **Gender-disaggregated data:** Establish mechanisms **to collect and analyze data** on gender inequalities in environmental justice to ensure and develop a better comprehension on such specific topic in the Balkans region and worldwide.

Achieving **gender equality** requires **the active involvement of all stakeholders**, governments, civil society, private sector and international and national organizations across all levels and sectors, including politics, legal, economics, health and education, like we can see in this graphic:

Gender equality is a **fundamental necessity for sustainable development**. Despite progress, significant gender gaps persist, particularly in labor market participation, entrepreneurship and in the distribution of resources. These disparities, exacerbated by societal norms and structural barriers such as the so called "motherhood penalty" which **limit women's opportunities for professional and personal advancement**.

It's essential to **establish genuine funding sources** that are ready to integrate a **gender dimension into global policies and environmental actions**, ensuring the effective representation of women.

To **fully mitigate the effects of climate change on women** and ensure **equitable environmental justice**, current systems that marginalize women and hinder their leadership in roles of responsibility must be reformed.

Without gender equality, there is little hope of achieving the transformation needed to combat climate change and ensure effective environmental justice, as well as a sustainable and equitable future for all.



²¹⁵ <https://www.crs.org/our-work-overseas/research-publications/women-leadership-curriculum>