

The Aarhus Convention and the Espoo Convention

Monika Anna KRÓL

ABSTRACT

More than three decades of the Espoo Convention and more than a quarter of a century of the Aarhus Convention provide a basis for assessing whether their instruments have been implemented effectively. The Conventions have not achieved a global scale, but on the European continent, they have undeniably become an expression of the implementation of the political and programmatic provisions of the Stockholm and Rio Declarations, of the principle of sustainable development and of the realisation of the human right to a clean, healthy and sustainable environment. Rather than primarily benefitting the environment and its components indirectly, the adoption of these conventions, which are fundamental to the established procedures, directly benefits human rights, participatory democracy, and civil society. The procedural foundations of these conventions have undoubtedly provided the basis for the greening of human rights, which has become a new paradigm in human rights approaches. It is also the basis for the identification of another general principle of environmental law, namely the principle of environmental socialisation. The aim of this study is to assess the effectiveness of the implementation of these two Conventions by the States Parties that ratified them and the impact of these standards on the development of environmental law in the European Union.

KEYWORDS

public participation, civil society, participatory democracy, access to information, cross-border impact

1. Introduction

The link between human rights and the right to the environment was established in documents adopted at the international level in the second half of the 20th century, most notably Principle 1 of the 1972 Declaration of the United Nations Conference on the Human Environment¹ and Principle 1 of the 1992 Rio Declaration, as contained in the Final Document of the 1992 United Nations Conference on Environment and

1 UN, 1973, pp. 3–5.

Monika Anna Król (2026) 'The Aarhus Convention and the Espoo Convention' in Raisz, A., Krajnyák, E. (eds.) *Human Rights and Environmental Protection from a Central and Eastern European Perspective*. Miskolc–Budapest: Central European Academic Publishing, pp. 137–155. https://doi.org/10.71009/2026.arek.hraep_5



Development in Rio de Janeiro (Rio Declaration).² In addition, Principle 10 of the Rio Declaration established the right to environmental information, normatively detailed at the international level and explicitly linked to the human right to live in an environment adequate for his or her health and well-being in Article 1 of the 1998 Aarhus Convention.³ The purpose of the right to environmental information is to contribute to the protection of the right of every person of present and future generations to live in an environment adequate for his or her well-being.

The development of environmental law resulted in the emergence of the first fundamental principles of this discipline, derived from the provisions of the indicated declarations, which became the basis for identifying the first rules relating to the management and use of environmental resources. These included typical principles of international law, such as the principle of good neighbourliness and the prohibition of the abuse of rights, as well as the detailed principles of the disposition and use of the environment (including the principle of rationality and equity in the use and sharing of benefits);⁴ and above all, the principle of sustainable development. In the years that followed, these principles have been refined frequently and made more specific by the many international conventions adopted in their wake.⁵

One expression of the implementation of the principle of sustainable development set out in the Rio Declaration is public participation in solving environmental problems; meaning the involvement of the widest possible social groups in solving environmental problems. This instrument aims to ensure that the environment is given its rightful place in the decision-making process, by improving the quality of information for decision-makers, so that decisions impacting the environment can be made with particular attention to minimising their effects, improving action planning and protecting the environment. Public participation is also a concomitant element of environmental impact assessment procedures, as environmental policy instruments often include environmental impact assessment procedures designed to protect the impact of human activities on the environment. The practice of applying the law and the increasingly frequent conflicts arising from the negative impact of a project carried out in the territory of one state and affecting the territory of another state or the environment of areas outside the national jurisdiction of the state, have given rise to the need for regulation that provides information on the interrelationship between certain economic activities and their environmental consequences, particularly in a transboundary context.

The aim of this study is to assess the effectiveness of the implementation of the two Conventions by the States Parties that have ratified them and the impact of these standards on the development of environmental law in the European Union.

2 UN General Assembly, 1992, pp. 3–8.

3 'No. 37770. Multilateral Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus on 25 June 1998' in UN, 2004, p. 447.

4 Ciechanowicz-McLean, 2001, pp. 22–23.

5 De Sadeleer, 2002, p. 1.

2. The Concept of Participatory Democracy and Civil Society

An assessment of normative regulation made regarding the separation of the principle of socialisation in environmental law speaks to the broader concept of civil society and participatory democracy. As pointed out in the doctrine,⁶ participatory democracy is a type of democracy in which citizens have the opportunity to make decisions, directly or indirectly, concerning the law and state affairs. Participatory democracy is closely related to direct democracy, but is a broader category, combining features of deliberative, direct and indirect democracy. It is a type of compromise between the institutions of direct democracy and representative democracy; and to a greater extent serves the community, especially local communities,⁷ where the emphasis is on the real participation of citizens in the process of making public decisions, and therefore on the relevant formal instruments, including those associated with direct democracy.

As underlined by Izdebski,⁸ the essence of deliberative democracy is the creation of opportunities for all those interested in a given public issue, particularly in a proposed public decision, to express their opinions and views. In a pluralistic society, this means the possibility of presenting various assessments and positions and should lead to dialogue and working out a solution acceptable to the majority of those interested. This democracy cannot function without ensuring that public authorities operate openly, including ensuring that all interested parties have access to information about the state of affairs and the intentions of the relevant public authorities. Participatory democracy goes further, as it implies the real participation of citizens in the process of making public decisions as a result of deliberation.⁹ It aims to involve citizens in the decision-making process, especially at the local level, the effects of which will often be felt by them.¹⁰ Public participation pursues the idea of strengthening democracy, requires the deconcentration of power, a change in the way conflicts are resolved and the empowerment of citizens.¹¹

The involvement of the public in the affairs of a given community, which is a form of participatory democracy, is the basis for the creation of an informed civil society,¹² which today is the basis for the functioning of modern states and their societies and the solution to current problems, especially those related to environmental protection. Civil society is understood as a set of activities that are complementary to the

6 On the concept and origins of participatory democracy: Sartori, 1998, p. 148; Uziębło, 2009, pp. 13–36. On this topic also Niżnik-Dobosz, 2014, pp. 21–43; Izdebski, 2021, pp. 97–98.

7 Marczevska-Rytko, 2001, pp. 31–44; Konopielko, 2011, pp. 86–94.

8 Izdebski, 2021, p. 97. and the literature indicated therein.

9 *Ibid.*, p. 98.

10 Kwiatkowska, 2013, p. 36.

11 Unger, 1986, p. 30.

12 Augustyniak, 2023, pp. 71–92.

activities of political power and pursues goals, which power by its nature does not.¹³ The origin of this concept can be traced back to ancient philosophical thought. In more modern terms, it appeared in the 18th century philosophical currents associated with the French Revolution and liberal philosophy.¹⁴ Modern political doctrines assume a three-part model that distinguishes between the economy, civil society and the state, with society providing opportunities for citizens to organise themselves into narrower, more specialised associations, societies, communities and self-government. This concept implies public participation in matters of social life, the basis of which is citizen access to public information and the organisation of citizens in various forms of social organisations. These considerations have led to the full incorporation of the assumption of participatory democracy and civil society into environmental law, which has been developing for about fifty years, especially at the international level.

3. Evolution of Environmental Socialisation in International Law

Public participation has been the subject of standardisation at the international level for many years. The Nordic Convention on Environmental Protection, concluded in Stockholm in 1974, was the first international agreement recognised in the doctrine as including provisions relating to public participation in environmental protection.¹⁵ It introduced the right of any person exposed to hazardous activities to lodge a complaint with public authorities or a court of another state on the assessment of the permissibility of such activities. The Stockholm Declaration, adopted two years earlier, only partially addressed the issue of effective public participation in environmental protection.

In 1987, the World Commission on Environment and Development (WCED), in a published report entitled, 'Our Common Future', (also known as the 'Brundtland Report'),¹⁶ identified community involvement as one of the key requirements for eco-development. The report emphasised that an equitable share of the resources needed to sustain socio-economic growth supports ensuring the effective participation of citizens in decision-making in political systems and through greater democracy in international decision-making (motive 28). Furthermore, the authors of the report noted that the law alone cannot enforce the common interest; it also needs the knowledge and support of the community, which requires greater public participation in decisions affecting the environment. The best way to achieve this is to decentralise the management of resources that local communities are responsible for, and give those communities effective influence over the use of those resources. As indicated,

13 Król, 1999, p. 106.

14 More extensively on this topic: Jeżyńska and Król, 2021, pp. 16-17.

15 Haładaj, 2013, p. 45.

16 WCED, no date.

this requires the promotion of citizen initiatives, empowerment and strengthening of local democracy (motive 77).

The reflection of participatory democracy in environmental matters as a standard can be found in the outcome documents of the 1992 United Nations Conference on Environment and Development in Rio de Janeiro. This is addressed in general terms in Principle 10 of the Declaration on Environment and Development,¹⁷ stating that environmental issues are best addressed at every level with the participation of all concerned citizens. In contrast, specific solutions can be found in Agenda 21,¹⁸ in which Chapter 8, titled 'Integrating environment and development in decision-making', identifies several objectives to be pursued by national authorities. One is to develop or improve mechanisms to facilitate the participation of affected individuals, groups and organisations in decision-making at all levels.

The above-mentioned documents have formed the basis for the adoption of norms for the socialisation of environmental protection in acts of international law. Among others, one can point to the 1994 United Nations Convention to Combat Desertification, which is the only legally binding international framework established to address the extremely topical contemporary problem of desertification and drought mitigation.¹⁹ Art. 3(1)(a) indicates that States Parties to the Convention should ensure that decisions on the design and implementation of programmes to combat desertification and mitigate the effects of drought are made with the participation of the population and local society and that an enabling environment is created at higher levels to facilitate action at national and local levels.²⁰

The political arrangements made at the Third Pan-European Conference in 1995 in Sofia²¹ were the culmination of many years of effort, where the *Final Declaration*²² in the chapter 'Public Participation', referring to principle 10 of the Rio de Janeiro Declaration, provided guidelines on access to information in environmental matters and public participation in environmental proceedings. This document called on States to ensure the effectiveness of their actions, including: adequate and effective mechanisms to ensure public access to environmental information; effective public participation as a basis for effective environmental policy; and effective public instruments for access to judicial and administrative remedies for environmental harm (recitals 41-43). The result was the adoption of the Aarhus Convention, which was the first major step towards introducing issues related to the functioning of so-called open democratic societies into the existing norms of international environmental law.²³

17 UN, 1992a.

18 UN, 1992b.

19 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly In Africa, drawn up in Paris of 17 June 1994. Ratified in Poland, Journal of Laws. 2002 No. 185 item 1538.

20 For other examples of solutions in which the indication of socialisation has been adopted at the international level, see Bukowski, 2007, p. 56.

21 UNECE, 1995b.

22 UNECE, 1995a.

23 UNECE, 2014, p. 15, 36; Jendroska, 2002, p. 4.

4. The Espoo Convention

Ciechanowicz-McLean points out²⁴ that environmental impact assessments were first introduced in the 1970s in the United States of America. In the European Economic Community (EEC), the EEC Directive 85/337/EEC of 7 June 1985 on the assessment of the effects of certain public and private projects on the environment²⁵ introduced the obligation to carry out assessments in all Member States of the European Economic Community for the first time. The idea of a convention on environmental impact assessments in a transboundary context was first proposed in September 1987 at the Warsaw seminar of the European Economic Commission on environmental impact. Negotiations on the text of the convention continued until 1989, with the active participation of Polish experts in international law and environmental impact assessment.²⁶

The Convention on Environmental Impact Assessment in a Transboundary Context, known as the Espoo Convention, is an international agreement that sets out the Signatory States' obligations to carry out environmental impact assessments of certain activities at an early stage of planning. It was drawn up in Espoo, Finland, on 25 February 1991. Poland, as a State Party to the Convention, signed it in 1991 but ratified it on 9 January 1997.²⁷

The Convention is an international agreement of a regional nature,²⁸ covering European countries as well as two Asian countries and Canada. The European Union became a State Party, through Council Decision 2008/871/EC of 20 October 2008 on the approval of the Protocol on the Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context on behalf of the European Community.²⁹

24 Ciechanowicz-McLean, 2001, p. 177.

25 Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment in the Official Journal of the European Union, 1985, 175, p. 40.

26 Ciechanowicz-McLean, 2001, p. 177.

27 Government declaration of 24 September 1999 on the ratification by the Republic of Poland of the Convention on Environmental Impact Assessment in a Transboundary Context, drawn up in Espoo on 25 February 1991, Journal of Laws, 1999, No. 96 poz. 1111; text of the Convention Journal of Law 1999, No. 96 item 1110.

28 The Convention has been signed and ratified by Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Spain, Ireland, Canada, Kazakhstan, Kyrgyzstan, Liechtenstein, Lithuania, Luxembourg, Latvia, Northern Macedonia, Malta, Montenegro, Germany, the Netherlands, Norway, Moldova, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Switzerland, Sweden, Ukraine, Hungary, Italy, the United Kingdom of Great Britain and Northern Ireland. The European Union is also a regional integration organisation member. Data from *Meetings of Parties to UNECE treaties stress role of environmental assessment to boost sustainable energy transition and SDGs*, 2023.

29 Official Journal of the European Union, 2008, 308, p. 33.

The 2001 amendment to the Convention, once ratified by all States that were Parties to the 2001 Kijev Convention,³⁰ allows accession by any Member State of the UN. Thus, making the Convention a global instrument for environmental impact assessment. In 2003, the Convention was complemented by the Strategic Environmental Assessment Protocol. Since coming into force in 2011, the Protocol has been helping to lay the foundations for sustainable development by ensuring that Parties integrate environmental considerations, including public health, and public concerns into their plans and programmes, and, as far as possible, into policies and legislation at an early stage.

The Convention is the first multilateral treaty to set out the procedural rights and obligations of Parties with respect to the transboundary impacts of the proposed activities. It also provides procedures in a transboundary context to consider the environmental impacts of decision-making. For the proposed activity, an environmental impact assessment procedure must be carried out by the Party that is likely to have a significant transboundary impact in an area under the jurisdiction of another Party.

The Espoo Convention contains explicit references to public participation (including Art. 2(2)) and, as emphasised by Bukowski,³¹ to sustainable development in the context of defining the objective of international community action. The Convention contains three references to public participation. Article 2(6) and the provisions of Articles 3 and 4 indicate the specific stages of the environmental impact assessment procedure in which the public is entitled to participate. In addition, Article 3(8) requires that the Parties concerned ensure that the public is informed and given the opportunity to comment on and object to the proposed activity in areas likely to be affected by transboundary impacts, and that documents are submitted to the competent authority of the Party of origin. Furthermore, according to Article 4(2), the Parties concerned must ensure that the environmental impact assessment documentation is forwarded to the relevant authorities and the public. By contrast, the Convention makes no provision for public hearings, although several States Parties use them as a form of public participation.³²

The Espoo Convention also contains many links to the Aarhus Convention, as their adoption was the result of a certain coincidence of events. The Espoo Convention was the first to emerge and influenced the provisions of the Aarhus Convention in many ways, particularly because of the fundamental link between environmental impact assessment and public participation in environmental decision-making. Environmental impact assessments are the main tools used by many countries in this regard. The Espoo Convention deals at its core with transboundary issues. However, its Art. 2(2) provides for Parties to establish a national environmental impact assessment procedure with certain requirements. Therefore, since the transboundary impact

30 Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, Kyiv, 21 May 2003. *Journal, Laws of 2011*, No. 180, item 1074.

31 Bukowski, 2009, p. 113.

32 Schrage, 2008, pp. 41–42.

assessment procedure has to be implemented in the context of national legislation, it thus sets standards for environmental impact assessments at the national level. In this regard, Art. 6 of the Aarhus Convention appears to be an extension of the provisions of the Convention on the assessment of transboundary environmental impacts.³³

5. The Aarhus Convention

In 1998, at the 4th Pan-European Conference of Ministers of the Environment in Aarhus, Denmark, the International Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was signed as a regional convention of the United Nations Economic Commission for Europe (UNECE), called the Aarhus Convention.³⁴ It was the first convention to explicitly set out the specific rights of citizens in relation to the environment and public authorities.³⁵

The amendment to the Aarhus Convention on ‘Public Participation in Decisions on the Intentional Release into the Environment and Placing on the Market of Genetically Modified Organisms’ was adopted at the Second Meeting of the Parties on 27 May 2005 in Almaty, Kazakhstan. As of October 2024, 32 countries have ratified this treaty, meaning that one more ratification is needed for it to enter into force.³⁶

Legal action in the European Economic Community began in the early 1990s. The first Community act in this regard, adopted many years before the start of work on the Aarhus Convention, was the Council Directive of 7 June 1990 on freedom of access to environmental information.³⁷ At the beginning of the first decade of the 21st century, without waiting for the formal approval of the Aarhus Convention, the following Directives were adopted at the Community level: the Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC³⁸ and Directive 2003/35/EC of the European Parliament; and the Directive of the Council of 26 May 2003 providing for public participation in respect to the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.³⁹ These acts were the legal basis for the transposition into the law of the EU Member States.

33 Ibid., p. 43.

34 As of 3 July 2023, there are 47 States Parties to the Convention, 38 Parties to the Protocol on Pollutant Release and Transfer Registers (PRTRs) and 32 Parties to the Amendment on Public Participation in Decisions on the Intentional Release into the Environment and Placing on the Market of Genetically Modified Organisms (GMOs).

35 Grabowska, 2000, p. 45.

36 *GMOs*, no date.

37 Official Journal of the European Union, 1990, 158, pp. 56–58.

38 Official Journal of the European Union, 2003, 41, pp. 26–32.

39 Official Journal of the European Union, 2003, 156, pp. 17–25.

The European Union formally approved the Aarhus Convention on 17 February 2005.⁴⁰ After one year, Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies was adopted.⁴¹

The importance of the Aarhus Convention derives first and foremost from its objective, set out in Article 1, which is to contribute to the protection of the right of everyone, from present and future generations, to live in an environment adequate to his or her health and well-being. The Aarhus Convention was created to strengthen the role of citizens and civil society organisations in environmental matters and is based on the principles of participatory democracy.⁴² It establishes a number of rights for individuals and civil society organisations in relation to the environment. At this point, the question may be raised whether the objectives indicated in the Convention have been achieved in legal acts directly implementing the provisions of the Convention or by transposing the legal solutions adopted in this area in EU law into national law, through the selection of appropriate forms, methods and legal instruments.

The foundations of the Aarhus Convention are based on three pillars.⁴³

First, access to information: every citizen should have the right to full and easy access to environmental information. Public authorities must provide, collect and disseminate all necessary information in a timely and transparent manner. Exceptions can only be made in special situations, for example in relation to national defence.

Second, public participation in decision-making: the public must be informed about all relevant projects and have the opportunity to participate in decision-making and legislation. Decision-makers can benefit from people's knowledge and experience; this input is a powerful way to improve the quality of environmental decisions and outcomes and to ensure procedural legitimacy. This also reveals the importance of education in the field of sustainable development.⁴⁴ As emphasised by Jendroška and Radecki,⁴⁵ the instruments contained in this international agreement constitute one of the basic means of achieving sustainable development, especially its environmental pillar.

Third, access to justice: the public has the right to resort to judicial or administrative procedures in the event of a violation or non-compliance by a Party with environmental law and the principles of the Convention.

40 Council Decision 2005/370/EC in the Official Journal of the European Union, 2005, 124, p. 1.

41 Official Journal of the European Union, 2006, 264, p. 13.

42 Official website of the Convention. UNECE, 2014, p. 36.

43 More about this in Weaver, 2023, pp. 105-134.

44 Bukowski, 2009, p. 114.

45 Jendroška and Radecki, 1999, p. 12.

6. Territorial Scope of the Aarhus Convention

As emphasised by Bar and Jendroška,⁴⁶ thus far on a global scale, there is no such binding legal instrument of international law dedicated to the socialisation of environmental protection, since it is an international legal guarantee of the rights of societies in environmental protection. In addition, the Aarhus Convention set the highest international legal standard for the socialisation of environmental protection, to which the legal norms of the European Union (e.g. Regulation 1367/2006), the EU Member States (e.g. in Poland, the Czech Republic, Slovakia) and the United Kingdom and Northern Ireland, as well as the EU candidate countries (e.g. Albania, Bosnia-Herzegovina, Montenegro, Serbia, Ukraine) were adapted.

However, it should be noted that twenty-five years after the signing of the Aarhus Convention, it is still of a regional nature, mainly affecting European countries (EU and applicant countries) and a few Asian countries (e.g. Kazakhstan, Georgia). The biggest expansion of its impact occurred at the end of the first decade when it was ratified by the countries that emerged after the break-up of Yugoslavia, namely Croatia, Serbia, Montenegro, Bosnia and Herzegovina. Since then, the only new state to adopt the Convention has been the small African Republic of Guinea-Bissau, which acceded on 4 April 2023.

The likelihood of extending the geographical scope of the Aarhus Convention in North America is weak as the Federal Freedom of Information Act in force in the United States of America since 1967⁴⁷ and the Access to Information Act of 1985 in Canada⁴⁸ also address environmental issues (Art. 20(2-4)).

Significantly, on 4 March 2018 at Escazú in Costa Rica under the auspices of the United Nations, the Latin American and Caribbean region adopted *the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*.⁴⁹ The agreement is a landmark legal instrument for environmental protection in Latin American and Caribbean countries: 24 countries have signed the agreement, and 15 have ratified it, with the process ongoing.⁵⁰ It is also an important human rights act, and its main beneficiaries are the people of the region, particularly the most vulnerable groups and local communities. The purpose of the Escazú Agreement is to ensure that all people have the right: to access information in a timely and appropriate manner; to participate meaningfully in decisions

46 Bar and Jendroška, 2005, p. 212.

47 The Freedom of Information Act (FOIA) 80 Stat. 250; United States Statutes at Large, vol. 80, 89th Congress, 2nd Session. On this subject, see Bukowski, 2007, p. 45.

48 Access to Information Act (R.S.C., 1985, c. A-1, with amendment from 2019, c. 18, s. 41(E).

49 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, LC/PUB.2018/8/Rev.1 hereinafter cited as: 'Escazú Agreement'.

50 Data collected from the official website of the ECLAC. The agreement has not been signed by Cuba, Venezuela or El Salvador.

that affect their lives and the environment; and to access justice when these rights are violated.

Although the Convention has attracted widespread interest worldwide, the predictions of doctrine expressed both at the beginning and end of the first decade of the twenty-first century⁵¹ have not materialised, nor has the expected geographical expansion of its scope. Thus, there has been neither a significant expansion of the geographic scope of the Convention nor the creation of a global convention, but rather the development of a number of international agreements or national regulations with a regional scope. This does not detract from its importance as a fundamental step towards both environmental and democratic development.⁵² For this reason, the Convention is often referred to as the most ambitious endeavour in the field of environmental democracy.⁵³

7. The Principle of Socialisation in Environmental Law as an Instrument of the Subjective Right to the Environment

The Aarhus Convention is not a typical environmental convention, and can be positioned more as a human rights Convention, as it introduces into both legal areas the principle of socialisation, realising the right to the environment, or as emphasised by the Human Rights Council on 8 October 2021 in resolution 49/13,⁵⁴ the right to a clean, healthy, sustainable environment. It has been emphasised in the doctrine that the concept of sustainable development and the human right to a healthy environment, should be the main objective of the concluded international conventions and agreements,⁵⁵ because only by doing so, can the realisation of the human right to the environment take place, with statutes at the international level.⁵⁶

The States Parties to the Convention have recognised the need for: access to information, public participation in environmental protection and access to justice in environmental matters at the international level, guaranteeing every person, from present and future generations, the right to live in an environment adequate to his or her health and well-being, but also the possibility of enforcing their rights under legislation. The realisation of this triad of guarantees, often referred to as the three pillars,⁵⁷ for the socialisation of environmental protection is crucial for the realisation of sustainable development and is one of the instruments of the human right to

51 Jendroška, 2002, p. 5; Bar and Jendroška, 2005, p. 212.

52 UNECE, 2014, p. 21.

53 The term 'environmental democracy' is used repeatedly in the interpretative guidelines, *ibidem* and earlier on the ground of the first edition it was emphasised by Jendroška, 2002, p. 4.

54 HCR Resolution 48/13 The Human right to a clean, healthy and sustainable environment on 8 October 2021, A/HRC/RES/48/13.

55 Ciechanowicz-McLean and Nyka, 2016, pp. 34–36.

56 Król, 2023, p. 103.

57 Bar and Jendroška, 2005, p. 213.

the environment. Jendrośka even stresses that the Convention is not a typical Convention in the field of environmental protection, as the emphasis is not as much on the protection of the environment itself as on the need to respect human rights to a clean environment.⁵⁸ However, Lipiński⁵⁹ points out that universal access to environmental information is an extension of one of the basic human rights, namely the right to information.

To implement the principle of socialisation, it is crucial to clarify the basic conceptual categories of the Convention, especially those defining the subject and object scope. These include the terms ‘everyone’, ‘public authority’ and ‘environment’ used in the Convention.

An instrument for the realisation of the socialisation of environmental protection is the adoption in Art. 1 of the Convention of the term ‘everyone’ to designate the widest possible range of subjects entitled to access to information, public participation in decision-making and access to justice. As Jendrośka points out,⁶⁰ the term ‘everyone’ is equivalent to ‘the public’, defined in Art. 2(4) of the Convention, namely one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups. As indicated in the doctrine,⁶¹ it has been accepted as a general principle that the rights guaranteed under the three pillars of the Convention will be enjoyed without discrimination on the basis of citizenship, nationality or place of residence. The public concerned, however, are those affected or likely to be affected, or those with an interest in environmental decisions. In accordance with the objectives of the Convention, it will be non-governmental organisations promoting environmental protection and meeting any requirements of national law that should be considered part of the ‘public concerned’.

It should also be stressed that the implementation of the principle of socialisation is also served by the instruments introduced in the norms of the Escazú Agreement. These recognise the rights of all persons, provide measures to facilitate their exercise and, most importantly, establish mechanisms to ensure their effectiveness. Furthermore, Art. 3 of the Covenant introduces a catalogue of principles applicable to the three pillars of entitlements, including the *pro personae principle* (also known as the *pro homine principle*), which is a basic instrument of international human rights law.⁶² The purpose of the *pro personae principle* is to realise human rights to the fullest extent possible. This principle gives priority to the most favourable protection of the rights of individuals and implies an obligation to apply the most favourable interpretation for this protection.⁶³

58 Jendrośka, 2002, p. 4.

59 Lipiński, 2010, p. 40.

60 Jendrośka, 2012, p. 61.

61 Śniadach and Adamczak-Retecka, 2018, p. 229.

62 de Oliveira Mazzuoli and Riberio, 2016; Rodiles, 2016, pp. 153–174.

63 Kowalska, 2021.

8. The Principle of Socialisation in Environmental Law as a Determinant of the Implementation of and Compliance with the Aarhus Convention

In environmental law, the set of general principles in this area of law has not been normatively catalogued; hence, depending on the position of the doctrine, we find a diverse catalogue of principles. The principle of the socialisation of environmental protection is rarely distinguished either in foreign or domestic literature. *Expressis verbis* it is indicated by Grabowska,⁶⁴ placing the discussed principle in the catalogue of principles of the EU environmental policy. In the author's opinion, the implementation of this set defines the broadest possible participation of society in the creation of the State's environmental policy and aims to establish mechanisms that ensure that local environmental decisions are made at the lowest and closest possible level to the citizen. The Community had Directive 90/313 for the process of socialisation of ecological policy, but only the Aarhus Convention was a genuine achievement in the implementation of the principle in question. This means increasing the participation of citizens in environmental activities, mainly through the democratisation of decision-making processes, and formulating a universal right to information about the state of the environment, the right to participate in decision-making, and access to administrative procedures and judicial complaints.

As pointed out in the doctrine,⁶⁵ the effectiveness of the implementation of and compliance with the Aarhus Convention is guaranteed by its introduction of three mechanisms: First, the mechanism of the Meeting of the Parties, provided for in Art. 10 of the Aarhus Convention, which allows Parties to make cyclical assessments of the degree of implementation of the Convention. Second, the mechanism of the non-compliance procedure, provided for in Art. 15, which allows for the establishment, by agreement of the Parties, of a voluntary mechanism of a non-contentious, non-judicial and advisory nature for the review of compliance with the provisions of the Convention. Third, the 'dispute settlement clause' in the introduction in Art. 16 of the Aarhus Convention stating that in the event of disputes between two or more Parties, negotiation, agreement, mediation, and conciliation shall be conducted in the first instance and if this mechanism proves unsuccessful, the matter shall be submitted to the International Court of Justice in the Hague (Art. 16 of the Aarhus Convention).

In implementing the provisions of the Aarhus Convention in the European Union, Art. 1 of Regulation 1367/2006⁶⁶ on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

64 Grabowska, 2001, p. 210.

65 Fitzmaurice, 2009, pp. 213–219; Iwańska, 2013, pp. 368–370.

66 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies in Official Journal of the European Union, 2006, 264, pp. 13–19.

defines the obligations incumbent on EU bodies and Member States in particular by the following: (1) Guaranteeing the right of access to environmental information received or produced by Community institutions or bodies and held by them, and by setting out the basic terms, conditions and practical arrangements for exercising that right; (2) Ensuring that environmental information is progressively made available and disseminated to the public with a view to achieving the widest possible systematic availability and dissemination. To this end, the use of, in particular, computer telecommunications or electronic technology, where available, shall be encouraged; (3) Ensuring public participation in relation to plans and programmes relating to the environment; (4) Providing access to justice in environmental matters at the Community level under the conditions laid down in legislation. The Community is also to endeavour to support and guide the public with regard to access to information, participation in decision-making and access to justice.

Instruments for achieving the requirements of the conventions in question are implemented not only in acts relating directly to access to information and public participation, but also broadly in other provisions of EU environmental law. One can therefore speak of the manifestations of the principle of socialisation implemented in other provisions of EU law. For example, one can point in this regard to the European Parliament (EP) and Council Directive 2010/75/EU of 24 November 2010 on industrial emissions,⁶⁷ which, in Art. 24, provided for integrated pollution prevention and control, access to information and public participation in the permit procedure and access to justice for members of the public concerned, in order to ensure access to a review procedure before a court of law or other independent and impartial body established by law (Art. 25). Furthermore, in accordance with the obligations under the Espoo Convention, where a Member State is aware that the operation of an installation is likely to have a significant effect on the environment of another Member State, or where a Member State which is likely to be significantly affected so requests, on a basis of equality, that all the information required must be made available as a basis for consultation within the framework of bilateral relations between Member States (Art. 26).

At the level of regulations adopted in individual EU Member States, legal solutions can be found both in general acts relating to the provision of environmental information and public participation and in the norms found in specific acts.

Poland ratified the Convention in 2003,⁶⁸ although the first legal solutions regarding access to information had already been introduced in the pre-accession period to the EU by the provisions of the Act of 9 November 2000 on Access to Information on the Environment and its Protection and on Environmental Impact Assessments.⁶⁹ The

67 Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), Official Journal of the European Union, 2010, 334/17, p. 17.

68 In Poland, ratified Journal of Law, 2003, No. 78, item 706.

69 Journal of Law, No. 109, item 1157 as amended.

Act also regulated public participation in environmental protection proceedings (Art. 1(2) of the Act).

At present, instruments implementing the requirements of the Conventions in question and the provisions of European law reflecting their assumptions can be found in the Polish legal system, primarily in the Act of 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments.⁷⁰ Similarly, the General Act of 2001 Environmental Protection Law⁷¹ provides for the possibility of public participation in, inter alia, proceedings whose subject matter is the drawing up of an environmental protection programme (Art. 17(4) P.o.ś.); or the possibility of public participation in proceedings whose subject matter is the drawing up of an air protection programme (Art. 91(9) P.o.ś.).

One can observe the implementation of the principle of socialisation and the requirements of access to information and public participation in only a few other legal acts in the field of environmental protection. For example, one can point to Art. 23(10) of the Environmental Protection Inspection Act,⁷² establishing State environmental monitoring, supporting environmental protection activities through systematic information of the public and public administration bodies on the state of environmental elements and occurring changes in the state of environmental elements. In addition, under Art. 28(1) of the u.i.o.ś., the General Inspector of Environmental Protection ensures that the public is informed about the state of the environment and makes information available to public administration bodies free of charge.

Another example is the obligation to ensure public participation laid down in Article 14 of the 2001 Act on Microorganisms and Genetically Modified Organisms⁷³ for the issuing of a permit for the contained use of a genetically modified microorganism (GMM), the contained use of genetically modified organisms (GMOs) or the deliberate release of GMOs into the environment. Additionally, this includes the issuing of a permit to operate a genetic engineering facility, the marketing of a GMO product or the entry of a GMO crop in the Register of GMO Crops.

However, public participation, in accordance with the principles set out in Section III of the 2008 u.i.ś., was ensured by the Act of 11 August 2021 on alien species.⁷⁴ Art. 4 of the u.i.s. obliges the General Director of Environmental Protection to ensure public participation in the development of an action plan for the pathways of transmission of invasive alien species.

70 Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments, i.e. Journal of Law 2024, p. 1112, hereinafter cited as: 'u.i.ś.'.

71 Act of 27 April 2001. Environmental Protection Law, i.e. Journal of Law, 2024, item 54 as amended, hereinafter cited as: 'P.o.ś.'.

72 Act of 20 July 1991 on the Environmental Protection Inspection, i.e. Journal of Law, 2024, item 425, hereinafter cited as: 'u.i.o.ś.'.

73 Act of 22 June 2001 on microorganisms and genetically modified organisms, i.e. Journal of Law, 2022, item 546 as amended.

74 Act of 11 August 2021 on alien species, Journal of Law, 2023, item 1589, hereinafter as: 'u.g.g'.

9. Summary

More than three decades of the Espoo Convention and more than a quarter of a century of the Aarhus Convention provide a basis for assessing the effectiveness of the implementation of their instruments. The Conventions have not achieved global scale, but on the scale of the European continent have undeniably become an expression of the implementation of the political and programmatic provisions of the Stockholm and Rio Declarations, of the principle of sustainable development and of the realisation of the human right to a clean, healthy and sustainable environment.

The adoption of these Conventions, which are fundamental to the established procedures, rather than primarily benefiting the environment and its components indirectly, directly benefits human rights, participatory democracy, civil society and social solidarity. The procedural foundations of the Conventions in question have undoubtedly provided the basis for the greening of human rights,⁷⁵ which has become a new paradigm in human rights concepts today.⁷⁶ It is also the basis for distinguishing another general principle of environmental law, the principle of environmental socialisation.

75 Król, 2023, p. 100.

76 This was pointed out by Secretary-General Knox in a report adopted by Resolution of the UN General Assembly on 19 July 2018, noting the interdependence of environmental protection and human rights and the universal recognition of a healthy environment as the basis for the full enjoyment of a wide range of human rights. UN General Assembly, 2018.

Bibliography

- Augustyniak, M. (2023) 'Upodmiotowienie społeczności lokalnych w świetle wybranych mechanizmów partycypacyjnych w Polsce i we Francji' in Dolnicki, B. (ed.) *Samorząd terytorialny jako forma upodmiotowienia społeczności lokalnych*. Warszawa: Wolters Kluwer, pp. 71–92.
- Bar, M., Jendrośka, J. (2005) *Prawo ochrony środowiska*. Wrocław: Centrum Prawa Ekologicznego.
- Bukowski, Z. (2007) *Prawo ochrony środowiska Unii Europejskiej*. Warszawa: C.H. Beck.
- Bukowski, Z. (2009) *Zrównoważony rozwój w systemie prawa*. Toruń: Dom Organizatora.
- Ciechanowicz-McLean, J. (2001) *Międzynarodowe prawo ochrony środowiska*. Warszawa: Ciechanowicz-McLean, J., Nyka, M. (2016) *Environmental Law*. Gdańsk: Wolters Kluwer.
- De Oliveira Mazzuoli, V., Riberio, D. (2016) 'The Pro Homine principle as a fundamental aspect of International Human Rights Law', *Meridiano 47 - Journal of Global Studies*, 17, pp. 1–9; <http://dx.doi.org/10.20889/M47e17003>.
- De Sadeleer, N. (2002) *Environmental Principles. From Political Slogans to Legal Rules*. Oxford: Oxford University Press.
- Fitzmaurice, M. (2009) 'Environmental justice through International complaint procedure? Comparing the Aarhus convention and the North American Agreement on Environmental Cooperation' in Ebbesson, J., Okawa, Ph. (eds.) *Environmental Law and Justice in Context*. Cambridge–New York: Cambridge University Press, pp. 211–228; <https://doi.org/10.1017/CBO9780511576027.012>.
- GMOs (no date) *UNECE* [Online]. Available at: <https://unece.org/environment-policy/public-participation/gmos> (Accessed: 18 October 2024).
- Grabowska, G. (2000) 'Dostęp do informacji w systemie międzynarodowego prawa środowiska', *Państwo i Prawo*, 2000/2, pp. 29–46.
- Grabowska, G. (2001) *Europejskie prawo środowiska*. Warszawa: Wydawnictwo Prawnicze PWN.
- Haładyj, A. (2013) 'Udział społeczeństwa w ochronie środowiska w prawie publicznym międzynarodowym jako gwarancja procesowa prawa do środowiska' in Galicki, Z., Gubrynowicz, A. (eds.) *Międzynarodowe prawo ochrony środowiska XXI wieku*. Warszawa: Stowarzyszenie Absolwentów Wydziału Prawa i Administracji UW, pp. 45–55.
- Iwańska, B. (2013) *Koncepcja „skargi zbiorowej” w prawie ochrony środowiska*. Warszawa: Wolters Kluwer.
- Izdebski, H. (2021) *Samorząd terytorialny. Poziomy podział władzy*. Warszawa: Wolters Kluwer.
- Jendrośka, J. (2002) *Konwencja z Aarhus – geneza, status i kierunki rozwoju*. Wrocław.
- Jendrośka, J. (ed.) (2012) *Leksykon prawa ochrony środowiska*. Warszawa: Wolters Kluwer.
- Jendrośka, J., Radecki, W. (1999) *Konwencja o dostępie do informacji, udziale społeczeństwa w podejmowaniu decyzji oraz sprawiedliwości w sprawach dotyczących środowiska z komentarzem*. Wrocław: Centrum Prawa Ekologicznego.

- Jeżyńska, B., Król, M.A. (2021) *Izby rolnicze w modelu społecznej gospodarki rynkowej*. Łódź: Wolters Kluwer.
- Konopielko, A. (2011) 'Demokracja partycypacyjna w samorządzie lokalnym', *Samorząd Terytorialny*, 2011/12, pp. 86–94.
- Kowalska, S. (2021) 'Pro Homine Principle: an Axiological Compass in Interpretation Norms in the Field of Human Rights', *The Age of Human Rights Journal*, 16, pp. 207–219. <https://doi.org/10.17561/tahrj.v16.6175>.
- Król, M.A. (1999) *Słownik demokracji*. Warszawa: Prószyński i S-ka.
- Król, M.A. (2023) 'Zagrożenia dla środowiska związane ze zmianami klimatu a podmiotowe prawo do środowiska w świetle prawa międzynarodowego (Environmental risks related to climate change and the subjective right to the environment under international law)', *Gdańskie Studia Prawnicze*, 61(4), pp. 83–107; <https://doi.org/10.26881/gsp.2023.4.05>.
- Kwiatkowska, M. (2013) 'Sądy obywatelskie jako przykład demokracji partycypacyjnej', *Samorząd Terytorialny*, 2013/6, pp. 26–36.
- Lipiński, A. (2010) *Prawne podstawy ochrony środowiska*. Warszawa: Wolters Kluwer.
- Marczewska-Rytko, M. (2001) *Demokracja bezpośrednia w teorii i praktyce politycznej*. Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej.
- Meetings of Parties to UNECE treaties stress role of environmental assessment to boost sustainable energy transition and SDGs* (2023) UNECE, 18 December 2023. [Online]. Available at: <https://unece.org/media/press/386689> (Accessed: 5 October 2024).
- Niżnik-Dobosz, I. (2014) 'Partycypacja jako pojęcie i instytucja demokratycznego państwa prawnego i prawa administracyjnego' in Dolnicki, B. (ed.) *Partycypacja społeczna w samorządzie terytorialnym*. Warszawa: Wolters Kluwer, pp. 21–43.
- Rodiles, A. (2016) 'The Law and Politics of the Pro Persona Principle in Latin America' in Aust, H.P., Nolte, G. (eds.) *The Interpretation of International Law by Domestic Courts: Uniformity, Diversity, Convergence*. Oxford: Oxford Academic, pp. 153–174; <https://doi.org/10.1093/acprof:oso/9780198738923.003.0009>.
- Sartori, G. (1998) *Teoria demokracji*. Warszawa: Wydaw. Nauk. PWN.
- Schrage, W. (2008) 'The Convention on Environmental Impact Assessment in a Transboundary Context' in Bastmeijer, K., Koivurova, T. (eds.) *Theory and Practice of Transboundary Environmental Impact Assessment. Legal Aspects of Sustainable Development*. Martinus Nijhoff Publisher, pp. 27–51; <https://doi.org/10.1163/ej.9789004164796.i-400.13>.
- Śniadach, O., Adamczak-Retecka, M. (2015) 'Prawo do wody jako element prawa ochrony środowiska? Rozważania na gruncie art. 37 Karty Praw Podstawowych Unii Europejskiej' in Kornobis-Romanowska, D. (ed.) *Unia Europejska w roli gwaranta i promotora praw podstawowych*. Sopot: Currenda, pp. 227–244.
- UN (1973) *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)*. New York: United Nations, UN Doc A/CONF.48/14/Rev.1. [Online]. Available at: <https://docs.un.org/en/A/CONF.48/14/Rev.1> (Accessed: 5 October 2024).

- UN (1992a) *Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26 (Vol. I). [Online]. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (Accessed: 5 October 2024).
- UN (1992b) *United Nations Conference on Environment & Development, Rio de Janeiro, Brazil, 3 to 14 June 1992. AGENDA 21*. [Online]. Available at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> (Accessed: 5 October 2024).
- UN (2004) *Treaty Series 2161*. [Online]. Available at: <https://www.un-ilibrary.org/content/books/9789210456708> (Accessed: 5 October 2024); <https://doi.org/10.18356/1f367f44-en-fr>.
- UN General Assembly (1992) A/RES/47/190: *Report of the United Nations Conference on Environment and Development*. [Online]. Available at: <https://www.worldlii.org/int/other/UNGA/1992/266.pdf> (Accessed: 5 October 2024).
- UN General Assembly (2018) A/73/188: *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. [Online]. Available at: <https://docs.un.org/en/A/73/188> (Accessed: 5 October 2024).
- UNECE (1995a) *Declaration by the Ministers of Environment of the Region of the United Nations Economic Commission for Europe 25 October 1995*. [Online]. Available at: <https://unece.org/fileadmin/DAM/env/efe/history%20of%20Efe/Sofia.E.pdf> (Accessed: 5 October 2024).
- UNECE (1995b) *Sofia Conference. Third Ministerial Conference "Environment for Europe" 23–25 October 1995*. [Online]. Available at: <https://unece.org/sofia-conference> (Accessed: 5 October 2024).
- UNECE (2014) *Aarhus Convention: An implementation guide*. 2nd edn. [Online]. Available at: https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf (Accessed: 5 October 2024).
- Unger, R.M. (1986) *Law in Modern Society. Toward a Criticism of Social Theory*. New York: The Free Press.
- Uziębło, P. (2009) *Demokracja partycypacyjna*. Gdańsk: Centrum Badan Społecznych.
- WCED (no date) *Report of the World Commission on Environment and Development: Our Common Future*. [Online]. Available at: <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> (Accessed: 5 October 2024).
- Weaver, D. (2023) *The Aarhus Convention. Towards Environmental Solidarisation*. Cham: Springer; <https://doi.org/10.1007/978-3-031-43536-2>.