

Mirjana Drenovak-Ivanović, PhD, Associate Professor

University of Belgrade Faculty of Law

Bulevar kralja Aleksandra 67, 11000 Belgrade, Serbia

mirjana.drenovak@ius.bg.ac.rs

THE PUBLIC'S RIGHT OF ACCESS TO INFORMATION ON CLIMATE CHANGE AND TRANSPOSITION OF THE ENVIRONMENTAL ACQUIS INTO SERBIAN LEGISLATION

ABSTRACT

This paper analyzes the results of application and protection of the right of access to information on climate change achieved thus far. The paper aims to point out the basis of the legal nature of information on climate change in international law and environmental acquis. It determines if the legal framework regulating the right of access to environmental information in Serbia can be applied to access to information on climate change. The final section suggests possible means to overcome the shortcomings found in domestic and comparative law.

Keywords: *Access to Information on Climate Change, Paris Agreement on Climate Change, Environmental Acquis and Climate Change*

1. INTRODUCTION

The report of the World Commission on Environment and Development (Brundtland Commission) named “*Our Common Future*” pointed out that the economic growth that does not comply with the Earth’s regenerative capacities can endanger human life and health and the environment.¹ The Brundtland Commission defined sustainable development as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The Brundtland Commission recommendations were adopted at the United Nations Conference in June 1992 in Rio de Janeiro. Another document was adopted at the same conference – the United Nations Framework Convention on Climate Change.² In mid-2001, Serbia has become a member of United Nations Frame-

¹ Report of the World Commission on Environment and Development: *Our Common Future*, Transmitted to the General Assembly as an Annex to document A/42/427 - Development and International Cooperation: Environment

² Drenovak-Ivanovic, M., Djordjevic, S., *Practicum on the Right to Legal Protection in Environmental Matters in Administrative Procedure and Administrative Dispute*, the Ministry of Energy, Development

work Convention on Climate Change. Although the Convention does not specify the obligations of the Parties that are directly related to the introduction of quotas to reduce emissions of greenhouse gases, for the first time it determines a common goal of Convention Parties – emission stabilization and stopping their rise. By joining the Convention, the Parties have committed to form national registries of greenhouse gas emissions. In order to achieve cooperation between the Parties in the implementation of measures on mitigating the effects of climate change, the Convention emphasizes the need for the Parties to establish a system that would allow information exchange.

The next stage in evolution of the right to protection from the effects of climate change started with signing the Kyoto Protocol to the United Nations Framework Convention on Climate Change.³ The Kyoto Protocol related further course of the fight against climate change to reduction of carbon dioxide and other greenhouse gas emissions and limiting the rise in global temperature leading to climate change. Its adoption was a first attempt at establishing the legal basis for the continuous reduction of emissions of greenhouse gases. It was adopted at COP3 meeting in December 1997 and entered into force in February 2005. Although it was signed, the USA never ratified the Kyoto Protocol, while Canada withdrew a statement on acceptance of the Protocol. Serbia has ratified the Kyoto Protocol in 2007.⁴

The following legally binding document that defines the obligations of the Member States of the United Nations Framework Convention on Climate Change for the period after 2020 was adopted in December 2015 at the UN Conference on Climate Change in Paris. The basis for the adoption of the Paris Agreement on Climate Change consists of the results of scientific analyses which suggest that the activities initiated by the Kyoto protocol, which was repealed on 31 December 2012, should be pursued, and supported by the new instruments of technical, financial and legal protection from the effects of climate change.⁵

By signing the Paris Agreement on Climate Change, the Parties commit to limiting the rise in global average temperature “well below 2° C” above pre-industrial levels, while pursuing efforts to limit the temperature increase to 1.5° C.⁶ This is a long-term goal, time-bounded by the fact that global maximum emissions of

and Environmental Protection / OSCE Mission in Serbia in 2013, pp. 15-20

³ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997

⁴ Law on Ratification of Kyoto Protocol to the United Nations Framework Convention on Climate Change, „Official Gazette of the RS“, no. 88/2007

⁵ *Paris Agreement*, Dec. 1/CP.21, Annex, UN Doc. FCCC/CP/2015/10/Add.1

⁶ *Paris Agreement on climate change* (2015), Art. 2(a)

greenhouse gases should be reached “as soon as possible”, so that in the second half of the XXI century a balance is reached between anthropogenic emissions by sources and removals by sinks.⁷ As a special contribution to mitigating the effects of climate change, the Paris Agreement imposes the obligation of Parties to “improve educational programmes on climate change ... and to encourage public participation and access to information” (Art. 12). Before the Paris Agreement, international law has been powerless to address the challenge of mitigating and adapting to climate change and the results of this Agreement should make a change.⁸

Ever since the Stockholm Declaration the Human Environment (1972), a considerable number of declarations and conventions were adopted under the auspices of the United Nations that define, in general or in detail, an obligation to apply the right of public access to environmental information. The need for “fuller knowledge and developing awareness about the basic characteristics of the environment”, as one of the principles of the Stockholm Declaration, the adoption of the Rio Declaration (1992) becomes a right of each individual “... to have an easy ... access to information relating to the environment and held by public authorities, including the information on hazardous materials and activities in the community”.⁹ The content of the right of access to environmental information and the access itself are further regulated by the Convention on Access to Environmental Information, Public Participation in Environmental Decision-making and Access to Justice in Environmental Matters (2009).¹⁰ Natural or legal person applying for access to environmental information needs a legal standing to institute proceedings in which to challenge the decision, act or omission of a public authority which acted on the request. Although the right of access to information on measures for mitigating climate change, adaptation to climate change and the damage as a result of climate change, is guaranteed both by conventions on climate change and environmental conventions, its application raises many questions. This paper firstly analyzes the legal framework for access to information on

⁷ *Paris Agreement on climate change* (2015), Art. 4(1). Jeanette Schade, Wolfgang Obergassel, “Human Rights and the Clean Development Mechanism” (2014) 27 *Cambridge Review of International Affairs* 717

⁸ Carlame, C., “*Climate Change Policies an Ocean Apart: United States and European Union Climate Change Policies Compared*” in 14 *Penn State Environmental Law Review*, 2006, pp. 435-482; Waxman, H., “*An Overview of the Clean Air Act Amendments of 1990*”; in 21 *Environmental Law* 1721, 1991; Bogojevic, S., “*Litigating the NAP: Legal Challenges for the Emissions Trading Scheme of the European Union*”, in *Carbon and Climate Law Review*, 2010

⁹ The Rio Declaration on Environment and Development (1992), Principle 10

¹⁰ Law on Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice on issues related to the environment (Aarhus, 25 June 1998) „Official Gazette of the RS- International Documents“ no. 38/2009

various aspects of climate change in a positive and comparative law, and further it deals with questions raised in the administrative and judicial practice. This paper aims to determine whether the right of access to information on climate change applies both in the process of deciding upon individual measures and in the process of adopting strategic documents on mitigating climate change and adaptation to climate change. The final section provides scenarios for evolution of the legal framework regulating procedural rights in the process of access to information on climate change.

2. THE CONCEPT AND THE LEGAL NATURE OF INFORMATION ON CLIMATE CHANGE

The law amendments which constitute a legal framework for the application of horizontal environmental law in Serbia established guarantees for the implementation of the right of access to environmental information. The European Commission Report on Serbia's progress in 2014 does not identify progress in the process of harmonization of horizontal environmental legislation and it states a "need to increase capacity for effective public participation and public debate in environmental decision-making, especially at the local level".¹¹ The European Commission Report on Serbia's progress in 2016 identifies progress in the transposition and implementation of horizontal environmental *acquis*¹², while the Call for negotiations on environment and climate change, extended in January 2017, points out that in the area of horizontal legislation there is „a high degree of compliance“, while in the process of environmental impact assessment it is still necessary to strengthen informing of the public concerned about alternatives, coordinated action plans, programs and measures for mitigating the effects of climate change.¹³ The question that remains open is whether the results apply equally to all environmental information and whether the right of access to information on climate change is in compliance with the standards of the environmental *acquis*.

¹¹ *The European Commission Report on Serbia's progress in 2014*, SVD (2014) 302, Brussels, 8. November 2014, the report follows the Commission Communication on the Enlargement Strategy and key challenges for the period 2014-2015 COM (2014) 700 p. 99. A similar assessment was presented in the *European Commission Report on Serbia's progress in 2015*, SVD (2015), Brussels, 10 November 2015. The report follows the Commission Communication on EU Enlargement Strategy COM (2015) 611, p. 78

¹² *The European Commission Report on Serbia's progress in 2016*, Brussels, 9 November 2016, report follows the Commission Communication on EU Enlargement Strategy COM (2014) 700 p. 87

¹³ *Screening report Serbia, Chapter 27*, MD 114/16, 8 June 2016

The comparative literature contains a number of definitions of the concept of climate change.¹⁴ The report of the International Panel on Climate Change for 2014 indicates that the anthropogenic factors are “extremely likely the dominant cause of climate change”.¹⁵ The local policy documents define climate change as “change directly or indirectly conditioned by human activities, causing changes in the composition of the global atmosphere, and which are superimposed on the natural climate fluctuations, observed during the comparable time periods”.¹⁶ This further means that the definition of information on climate change should start from the activities of the participants in the process of adoption of general and individual decisions on matters of importance for environmental protection which have an environmental impact and directly or indirectly contribute to climate change. We distinguish information on measures to adapt to climate change and measures to mitigate the effects of climate change. Information on measures to adapt to climate change is that relating to the procedures for adapting the nature and the people to the existing or expected climatic challenges and their effects that lead to damage or impair the value of the environment.¹⁷ Information on measures to mitigate the effects of climate change applies only to measures on reducing emissions of greenhouse gases.¹⁸

The question arises whether the information on climate change is a part of the environmental information or, taking into account the concept and the legal nature of information on climate change, it should be defined in the narrow or broader sense? The Law on Amendments to the Law on Environmental Protection, adopted in February 2016, provides the first legal definition of environmental information, which transmits guarantees of access to environmental information determined by the Aarhus convention (1998).¹⁹ It defines the environmental information in a broader sense.

¹⁴ Rajamani, L., “*Differentiation in the Emerging Climate Regime*”, in 14 *Theoretical Inquiries in Law* 151, 2013

¹⁵ IPCC, *Climate change — 2014: Impacts, Adaptation and Vulnerability: Summary for Policymakers*, Cambridge University Press 2014, 4

¹⁶ *Water Management Strategy*, 2016, p. 213

¹⁷ IPCC, *Climate change — 2014: Impacts, Adaptation and Vulnerability: Summary for Policymakers*, Cambridge University Press 2014, 5

¹⁸ IPCC, *Climate Change — 2014: Mitigation of Climate Change*, Cambridge University Press 2014, 4-5. Mayer, B., “*Climate Change Reparations and the Law and Practice of State Responsibility*”, in *Asian Journal of International Law*, 2016

¹⁹ The Law on Environmental Protection „ Official Gazette of the RS“, no. 135/2004, 36/2009, 36/2009 – other law 72/2009 – other law 43/2011 – Decision of the Constitutional Court I 14/2016, Art. 3 par. 1 point. 33a

In theory, (non-) existence of environmental risk is the criteria used for separating special administrative procedures with the public participation in environmental matters, which include the inclusion of the public in the decision-making process, from the administrative procedures in a given administrative matter relating to the environmental protection. In this sense, the environmental administrative matter is, in principle, an uncertain situation where the competent authority decides on conducting activities, taking into account the risk that they may have on human health and the environment.²⁰ We regard that the same criteria could be used to separate the concept of information on climate change, as a narrow term, from the concept of environmental information. While the concept of environmental information includes environmental information, regardless of whether the information is about the state of the environment or relating to activities that (may) have a negative impact on the environment, the concept of information on climate change would apply to the information relating to activities that (may) contribute to climate change. Starting from the theoretical and legal framework, the information on climate change is any information in written, visual, aural, electronic or any other material form, available to a public authority or kept in the name of public authority, about: 1) the state of the environmental elements, such as air and atmosphere, water, soil, land, natural landscape, and areas including marshy and coastal, river and lake areas, biodiversity and its components, geological diversity and heritage, genetically modified organisms, as well as interplay between these factors; 2) factors such as the matter, energy, radiation or waste, emissions, discharges and other forms of transmission in the environment which (may) affect environmental factors and contribute to climate change, 3) measures (including administrative measures), such as: public policy, strategy, legislation, plans, programs, agreements on climate matters and the activities undertaken to mitigate the effects of climate change and adapt to climate change; 4) reports on the implementation of the stated measures and regulations in the field of climate change; 5) the cost-benefit analyses, economic analyses and assumptions used in the context of these measures and activities; 6) the state of human health and safety, including the threat to the food chain and, if necessary, on the conditions of human life, to the extent they are or may be affected by climate change.

Singling out information on climate change has considerable consequences for the application of exceptions to the right to access information of public importance. According to the Law on Free Access to Information of Public Importance, the justified interest of the public to know exists in terms of all the information public authority bodies dispose of. However, the public authority may prove that in a specific case the protection of other legally protected interest overrides the importance

²⁰ Drenovak Ivanovic, M., *Access to Justice in Environmental Administrative Matters*, Belgrade 2014, p. 56

of protection of public's right to know.²¹ Pursuant to Article 8 of the Law on Free Access to Information of Public Importance, the right of access to information can be limited exceptionally if it is necessary in a democratic society for the purpose of preventing a serious violation of an overriding interest based on the Constitution and the Law. Art. 4 of the same law stipulates that there is a justified interest of the public to know whenever it comes to information regarding a threat to, or protection of public health and the environment, which is in accordance with the practice of the Commissioner for Information of Public Importance stating that access to environmental information cannot be denied. Until the Law on Environmental Protection was amended in 2016, the Law on Environmental Protection determined a large number of exceptions to the right of access to environmental information. Those amendments affected Art. 78 p. 2 which now stipulates that the access to environmental information is achieved in accordance with the law that regulates the access to information of public importance. With this, the provisions on deadlines for providing the environmental information, which were significantly longer (30 days) compared to the same prescribed by the Law on Free Access to Information of Public Importance (48 hours) and the provisions on the costs of access to environmental information ceased to apply. Still, bearing in mind the need to revise the adopted amendments and the possibility of introducing certain exceptions to the right of access to environmental information (e.g., in order to protect the environment to which such information relates to, such as the location of rare species of wildlife) one should be aware that even in this case the right of access to information on climate change should be regulated without exception, given the fact that subject information is substantially related to emissions into the environment, for which the Aarhus Convention does not allow exceptions.²²

3. THE RIGHT OF ACCESS TO INFORMATION ON CLIMATE CHANGE AND THE OBLIGATIONS OF PUBLIC AUTHORITIES

3.1. Active Public Information on Climate Change

The right of access to information on climate change implies that public authorities have an obligation of both active and passive public information. Active public information represents an obligation of public authorities to inform the public about the state of the environment and to provide information on climate change, regardless of whether the request for access to certain information had been sub-

²¹ Roesler, S., "*Responding to Climate-Related Harms: A Role for the Courts?*", Craig, R. K., Miller, A. R. (eds.), *Contemporary Issues in Climate Change Law and Policy: Essays inspired by the IPCC*, Environmental Law Institute Washington, 2016, Chapter 9

²² See art. 4 of the Aarhus Convention

mitted.²³ The European Court of Justice in the case of *East Sussex*²⁴ expressed their stand, for the first time, on the obligations of public authorities that derive from the right of the public to be actively informed. In this case it is pointed out that the public authorities have an obligation to keep, store and update public registers and other types of records for whose establishment and maintenance public authorities are in charge. The public must be provided with the right to free access to these registers, which is a form of active information. Keeping and updating of such databases and registers may represent a certain cost for the public authority. However, the cost cannot be borne by the requester.²⁵

Active public information about climate change and its effects to the environment has a particular importance in the case of the right to health care. Thus, for example, in EU law, the Directive on Public Access to Environmental Information stipulates the obligation of active public information in case of an imminent threat to human health and the environment of all the information stored at or for the public authority, which may provide the public exposed to the threat to take measures on protection or mitigate possible damage. The public is to be informed about this “immediately and without delay”.²⁶ An illustrative example is found in the Directive on Establishing Infrastructure for Spatial Information (INSPIRE), which stipulates the obligation of Member States to establish and manage networking the system allowing access to spatial data sets. These data have to be accessible via the Internet or other telecommunications equipment.²⁷

The right of access to information on climate change relies to a large extent on access to information on water quality. It is indicated in Serbian Water Management Strategy (2016) that climate change has to be taken into account when making long-term plans in the field of water use. This particularly applies to including climate change as an element when determining the available amount of surface water,²⁸ the change of the underground water,²⁹ the preparation of the plans of flood protection,³⁰ and others.

²³ Williams, T., Preston, H., “*Culture, Law, Risk and Governance: Contexts of Traditional Knowledge in Climate Change Adaptation*” in *Climatic Change* 3/2013, pp. 531-544

²⁴ *East Sussex County Council v. Information Commissioner Property Search Group Local Government Association*, C-71/14 [2015] ECLI:EU:C:2015:656

²⁵ *Ibid.*, para. 50

²⁶ Directive 2003/4 / EC on Public Access to Environmental Information, OJ L 41, 14.2.2003, pp. 26-32 Art. 7 para. 4

²⁷ Directive 2007/2 / EC on Establishing an Infrastructure for Spatial Information (INSPIRE), OJ L 108, 25 April 2007, pp. 1-14, Art 11

²⁸ *Water Management Strategy* (2016), 140

²⁹ *Ibid.*, 153

³⁰ *Ibid.*, 186 and 213

The need for active public information about the quality of drinking water in case of potential danger to human health or the quality and quantity of drinking water is also prescribed by the Directive on Drinking Water. In such cases, “timely active public information” is required.³¹ It is a standard that cannot be found in Serbian Water Act.³² The Energy Development Strategy of the Republic of Serbia by 2025 with projections until 2030 states the impact of climate change on the availability to use water flow for electricity generation,³³ as well as the impact of active public information on the increased use of renewable power sources.³⁴

3.2. Passive Public Information on Climate Change

The field of climate change and risks of the activities that may contribute or can be determined to contribute to the climate change is treated as the decision-making process involving the public. When it comes to the basics of conducting activities that may have a negative environmental impact, the public involvement is determined by the rules of the strategic environmental impact assessment, while the public involvement in decision-making in individual cases of proposed activities which have been found to have a negative environmental impact is regulated by the rules on integrated control and environmental activity management. Public involvement in decision-making on specific activities that may have a negative environmental impact is regulated by the legal rules on environmental impact assessment. Passive access to information on climate change is mainly connected to the procedures of public involvement in the implementation of the above assessments, i.e. issuing integrated permits.

The degree of public involvement in these procedures may have an impact on the passive access to information on climate change. Providing the public with opportunity to adequately participate in decision-making about activities which may have an impact on climate change underlines the significance of such activities and their potential negative impact, which may increase the degree of public interest in information on climate change.³⁵

³¹ Directive 98/83 / EC on the Quality of Water for Human Consumption, OJ L 330, 5.12.1998, pp. 32-54 Art. 8 para. 4

³² Water Act „Official Gazette of the RS“, no. 30/10, 93/12 and 10/16

³³ Energy Development Strategy of the Republic of Serbia until 2025 with projections to 2030 „Official Gazette of the RS“, no. 124/12, 8

³⁴ *Ibid.*, 24

³⁵ The Energy Development Strategy of the Republic of Serbia by 2025 with projections until 2030 states that “although the Aarhus Convention was ratified, it is not fully implemented in the legal system, because the provisions on public participation at the early stages of decision-making were not adopted in certain projects and those that were are not always implemented adequately. Public participation in

Serbian law does not encounter the provisions that give special grounds for access to information on climate change. Thus, for example, the Law on Environmental Impact Assessment regulates the right of public concerned to access information on the environmental impact assessment study. The data in question contain, among other things, a list of main alternatives that the project holder considered.³⁶ However, the applicant is under no obligation to present information on climate change. The same applies for data regarding the description of possible significant environmental impacts. The Law on Environmental Impact Assessment does not even prescribe the obligation of impact assessment of proposed projects on climate change or a description of the measures envisaged to prevent, mitigate or eliminate the effects of climate change. For the purpose of comparative analysis, in the part explaining passive public information on climate change we point to innovations in the Directive on Environmental Impact Assessment, introducing obligatory project impact assessments on climate change.

Another means of active public information is the disclosure of information on the results of policy measures reducing the effects of climate change. Those include information about the financial consequences of implementing a climate change policy to operators.³⁷ In comparative law, we find situations where balance sheets of oil companies suggested significantly higher costs of policy implementation in the field of climate change. One such example is the case which was launched into allegations of *Exxon Mobil Corporation* that the implementation of policy measures in the field of climate change significantly increases the cost of oil exploitation, which led the company to consider shutting down 20% of the plant. This led to a decline in the company's shares by 13% during 2016. Taking into account independent analyses which show that the implementation of policies in the field of climate change does not have such a financial impact, several civic associations started the initiative, thus triggering more proceedings regarding possible false in-

decision-making on individual projects is particularly important at the early stages of the project, when all options are open, and before making a final decision. It is important for the public to participate in decision-making on the disposal of 'public good'. In this segment, spatial and urban planning can determine decisions in the energy sector, so that at the earliest stages of documents it is necessary to achieve adequate public participation", p. 58. It is the process of deciding on activities that can contribute to climate change. Failure to include the public in the decision-making process at the earliest stage of deciding on activities that may have a negative impact on climate change, has a negative impact on both active and passive right to access information on climate change

³⁶ Law on Environmental Impact Assessment „*Official Gazette of the RS*“, no. 135/04 and 36/09, Art. 17 para. 1 point 4

³⁷ Hojnik, J., „*Ecological modernization through servitization: EU regulatory support for sustainable product-service system*“, in *RECIEL*, 2018, pp. 1-14

formation about climate change.³⁸ Bearing in mind the comparative practice, the legal framework of active access to information on climate change should *de lege ferenda* contain the norms regulating the public's right of access to information on the impact of policies on climate change, but also obligations of operators, when preparing such information, to use reports on the impact of climate change policies produced by environmental protection agencies, as independent regulatory bodies.

3.2.1. *Passive Public Information on Climate Change and Directive 2014/52/ EU on Environmental Impact Assessment of Certain Public and Private Projects*

The need for an analysis of environmental impact of certain public and private projects was marked as a pillar of impact assessment procedure regulated by Directive 2014/52/EU.³⁹ In this directive the project's impact on climate change is introduced as information that should be included in the study of the environmental impact assessment.

It is, firstly, the information on greenhouse gas emissions from power plants, and the information on the impact on the population and human health, biodiversity, soil, air and water, and the interplay between these elements, which have a particular importance in applying climate change adapting measures.⁴⁰ There is also the information describing possible significant environmental impacts of the project, resulting from the project's impact on the climate, and the impact of climate change on the proposed project.⁴¹ Impact assessments of suggested activities to climate change are made on the basis of the available positions of science on the impact of human activities on climate change.⁴²

³⁸ *People of the State of New York v. Exxon Mobil Corporation, Supreme Court of the State of New York, No. 451962/2016*, accessed 6 February 2017, <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=RjOFq8qu5DQSZFG-VHWo4cw==&system=prod> Accessed 8 October 2017

³⁹ Directive 2014/52 / EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment, *OJ L 124, 25 April 2014*, pp. 1-18. Preamble, points 7 and 13

⁴⁰ Directive 2014/52 / EU, Annex IV, Art. 4. Verschuuren, J., „*Legal Aspects of Climate Changes Adaptation*“, in Hollo EJ., *et al.* (eds) *Climate Change and the Law*, Springer 2013, pp. 257-287

⁴¹ Directive 2004/52/EU, Annex IV, Art. 5(f)

⁴² Drenovak Ivanovic, M., *Environmental Law of the European Union - the principles and characteristics of specific administrative procedures*, Belgrade 2017, pp. 96-102. Cameron, J., Juli, A., „*The precautionary principle: a fundamental principle of law and policy for the protection of the global environment*“ in BC Int'l & Comp. L. Rev. 14/1991, pp. 1-27; Sunstein, C. R., *Laws of fear: Beyond the precautionary principle*, Cambridge University Press 2005, pp. 35-64

4. THE RIGHT OF ACCESS TO INFORMATION ON CLIMATE CHANGE IN COMPARATIVE PRACTICE

In comparative practice there are many cases of requested access to information about the financial guarantees of countries for projects and activities that contribute to climate change. In the case *Friends of the Earth et al. v Spinelli et al.* the two NGOs and four cities applied for compensation arguing that the state agencies financed projects that contribute to climate change.⁴³ In this case, access to information on projects contributing to climate change was also requested. Although the case ended in a settlement, this was the first case in the US where access to information on climate change was requested and pointed to the public's role in decision-making with potential impact on climate change.⁴⁴

A similar request is found in practice of the Administrative Court of Berlin. In the case *Bundes für Umwelt und Naturschutz Deutschland e.V. & Germanwatch e.V. v. Bundesrepublik Deutschland*⁴⁵ the Administrative Court considered whether the information on export incentive measures for projects that have a negative impact on climate change is in fact the information on climate change. Germany adopted the Law on Free Access to Information of Public Importance *Informationsfreiheitsgesetz (IFG)*⁴⁶ in 2005 and the Law on Access to Environmental Information *Umweltinformationengesetz (UIG)*⁴⁷, which contains and closely regulates accessing environmental information as a separate procedure.⁴⁸ *IFG* and *UIG* serve as a general and special law (*lex specialis derogat legi generali*).⁴⁹ To avoid conflict of laws, *UIG* prescribes minimum standards in the implementation and protection of the right to free access to environmental information. Only if, in a particular situation, *IFG* provides broader powers for access to environmental information in relation to the solution provided by *UIG*, it is possible to apply *IFG* as a general

⁴³ *Friends of the Earth et al. v Spinelli et al.*, US District Court of California 2009

⁴⁴ Savaresi, A., „EU and US Non-State Actors and Climate Governance”, in Bakker, C., Francioni, F. (eds.), *The EU, the US and Global Climate Governance*, Routledge 2016, pp. 211-224

⁴⁵ *Bundes für Umwelt und Naturschutz Deutschland e.V. & Germanwatch e.V., v. Bundesrepublik Deutschland*, vertreten durch Bundesminister für Wirtschaft und Arbeit (The Administrative Court of Berlin, 2006)

⁴⁶ *Gesetz zur Regelung des Zugangs zu Informationen des Bundes (Informationsfreiheitsgesetz – IFG)*, BGB1, I S. 2722, dated 5 September 2005

⁴⁷ *Gesetz über die Umweltverträglichkeitsprüfung*, BGB1, I S. 1757, dated 25 June 2005 and BGB1, I S. 1794, dated 24 June 2005

⁴⁸ Jastrow, S.D., Schlatmann, S., *Informationsfreiheitsgesetz – IFG Kommentar*, Hüthig Jehle Rehm 2006, p. 219; Erbguth, W., Schlacke, S., *Umweltrecht*, Nomos 2008, pp. 118–120

⁴⁹ Schrader, C., Schrader, C., „*UIG und IFG – Umweltinformationengesetz im Vergleich*“, in *Zeitschrift für Umweltrecht* 2005, pp. 572–573

law.⁵⁰ However, the concept and the legal nature of information on climate change are not regulated either by *UIG* or *IFG*. Access to information in the case *Bundes für Umwelt und Naturschutz Deutschland e.V. & Germanwatch e.V. v. Bundesrepublik Deutschland* was requested in accordance with the provisions of the *UIG*. The competent ministry rejected the request, arguing that the information on export incentives cannot be considered environmental information. The Administrative Court in Berlin overturned that decision, arguing that it is special environmental information since the activities in question may have a negative impact on the environmental elements, and hence on climate change.

In comparative law we find cases that indicate the importance of a general law on access to information of public importance and the law regulating the access to environmental information. While a general law provides the foundation of the legal regime relating to access to information of public importance, a special law explains the characteristics of environmental information and can serve as the basis for closer regulation of the right of access to information on climate change.⁵¹ The question as to which law provides better legal protection for access to environmental information was also raised in the case *Keiller v. Information Commissioner*.⁵² The framework for legal regulation of access to environmental information in the United Kingdom consists of the Act on Free Access to Information from 2000 (*FOIA*)⁵³ and the Environmental Information Regulation Act from 2004 (*EIR*).⁵⁴ The case was launched with regard to the request to one of the UK's universities for a remote access to information contained in the electronic correspondence including the documents on the alleged manipulation of the data on climate change by a University's Associate. The Commissioner for Information refused access to the requested information, referring to the *EIR*. Since the e-mail was deleted, the information was no longer in the possession of the University, and thus could not be granted access. On appeal to the decision of the Commissioner for Information, the Tribunal held that the e-mail is still located on a server or is in the possession of a person storing the data on behalf of the authorities. In accordance with the *FOIA*, such information is deemed information held by public authorities, and as such it should be granted access.⁵⁵

⁵⁰ *UIG* Art. 3 (2), *IFG* section 1 (3)

⁵¹ Kaminskaite-Salters, G., *Constructing a Private Lawsuit under English Law*, Walters Kluwer 2010, pp. 89-90

⁵² *Keiller v. Information Commissioner* (EA/2011/0152), United Kingdom, 18 January 2012

⁵³ *The Freedom Information Act (FOIA)*, 2000

⁵⁴ *The Environmental Information Regulations (EIR)* 2004

⁵⁵ More on the case see

[<https://www.informea.org/sites/default/files/court-decisions/COU-158374.pdf>]. Accessed 7 October 2017; see Drenovak Ivanovic, M., *Access to Justice in Environmental Administrative Matters*, p. 86

Bearing in mind the previous analysis of the case and the legal nature of information on climate change and comparative practice, we believe that the legal framework for access to environmental information should contain provisions in accord with the nature of information on climate change.

5. CONCLUSION

Information on climate change is the information of public importance. In terms of legal nature, it is closely related to the concept of environmental information. However, information on climate change, such as the information on export incentive measures for projects that have a negative impact on climate change, information on financial guarantees of countries for projects and activities that contribute to climate change, information about the financial consequences of the implementation of a policy on climate change for operators, differ from the environmental information inasmuch they border on the information of public importance where it is possible to apply many exceptions to the right of access. This requires amendment of the legal framework in order to closely regulate the right of access to such information, as evidenced by the analysis in comparative practice.

The legal framework should set deadlines for access to information on climate change, longer than those for access to environmental information (48 hours, 15 days) taking into account the complexity of analyses indicating the effects of climate change. Minimum criteria should be determined by the standard “as soon as possible”, while the deadline may vary depending on the type of information requested. The foregoing analyses suggest the outstanding issues in the implementation of exceptions to the right of access to environmental information. Frequent amendments of positive law governing this issue and uneven practice of the Commissioner for Information of Public Importance, as well as examples of comparative legal practice, emphasize the need for clear criteria against which to apply the exception to the right of access to information on climate change, with the exception of right of access to information on emissions into the environment, which cannot be limited.

REFERENCES

BOOKS AND ARTICLES

1. Bogojevic, S., “*Litigating the NAP: Legal Challenges for the Emissions Trading Scheme of the European Union*”, in *Carbon and Climate Law Review*, 2010
2. Cameron, J., Juli, A., “*The precautionary principle: a fundamental principle of law and policy for the protection of the global environment*”, in *BC Int’l & Comp. L. Rev.* 14/1991, 1-27

3. Carlarne, C., "Climate Change Policies an Ocean Apart: United States and European Union Climate Change Policies Compared", in 14 Penn State Environmental Law Review, 2006, pp. 435-482
4. Drenovak Ivanovic, M., *Access to Justice in Environmental Administrative Matters*, Belgrade 2014
5. Drenovak Ivanovic, M., *Environmental Law of the European Union - the principles and characteristics of specific administrative procedures*, Belgrade 2017, pp. 96-102
6. Drenovak-Ivanovic, M., Djordjevic, S., *Practicum on the Right to Legal Protection in Environmental Matters in Administrative Procedure and Administrative Dispute*, the Ministry of Energy, Development and Environmental Protection / OSCE Mission in Serbia in 2013
7. Erbguth, W., Schlacke, S., *Umweltrecht*, Nomos 2008
8. Hojnik, J., "Ecological modernization through servitization: EU regulatory support for sustainable product-service system", in RECIEL, 2018, pp. 1-14
9. IPCC, *Climate Change — 2014: Mitigation of Climate Change*, Cambridge University Press 2014
10. Verschuuren, J., „Legal Aspects of Climate Changes Adaptation”, in Hollo, EJ. et al. (eds) *Climate Change and the Law*, Springer 2013, pp. 257-287
11. Jastrow, S., Schlatmann, A. *Informationsfreiheitsgesetz – IFG Kommentar*, Hüthig Jehle Rehm 2006
12. Kaminskaite-Salters, G., *Constructing a Private Lawsuit under English Law*, Walters Kluwer 2010
13. Mayer, B., "Climate Change Reparations and the Law and Practice of State Responsibility", in *Asian Journal of International Law*, 2016
14. Rajamani, L., "Differentiation in the Emerging Climate Regime" in 14 *Theoretical Inquiries in Law* 151, 2013
15. Roesler, S., "Responding to Climate-Related Harms: A Role for the Courts?", in Craig, R.K., Miller A.R. (eds.), *Contemporary Issues in Climate Change Law and Policy: Essays inspired by the IPPC*, Environmental Law Institute Washington, 2016, Chapter 9
16. Savaresi A., „EU and US Non-State Actors and Climate Governance”, in Bakker, C., Francioni, F. (eds.), *The EU, the US and Global Climate Governance*, Routledge 2016, pp. 211-224
17. Schade, J., Obergassel, W., "Human Rights and the Clean Development Mechanism", in 27 *Cambridge Review of International Affairs* 717, 2014
18. Schrader, C., "UIG und IFG – Umweltinformationsgesetz im Vergleich“, in *Zeitschrift für Umweltrecht* 2005, pp. 572–573
19. Sunstein C. R., *Laws of fear: Beyond the precautionary principle*, Cambridge University Press 2005
20. Waxman, H., "An Overview of the Clean Air Act Amendments of 1990" in 21 *Environmental Law* 1721, 1991
21. Williams, T., Preston, H., "Culture, Law, Risk and Governance: Contexts of Traditional Knowledge in Climate Change Adaptation", in *Climatic Change* 3/2013, pp. 531-544

EU LAW

1. Report of the World Commission on Environment and Development: Our Common Future, Transmitted to the General Assembly as an Annex to document A/42/427 - Development and International Cooperation: Environment
2. *The European Commission Report on Serbia's progress in 2014*, SVD (2014) 302, Brussels, 8. November 2014, the report follows the Commission Communication on the Enlargement Strategy and key challenges for the period 2014-2015 COM (2014) 700
3. *European Commission Report on Serbia's progress in 2015*, SVD (2015), Brussels, 10 November 2015. The report follows the Commission Communication on EU Enlargement Strategy COM (2015) 611
4. *Screening report Serbia, Chapter 27*, MD 114/16, 8 June 2016
5. Directive 2003/4 / EC on Public Access to Environmental Information, OJ L 41, 14.2.2003, pp. 26-32
6. Directive 2007/2 / EC on Establishing an Infrastructure for Spatial Information (INSPIRE), OJ L 108, 25 April 2007, pp. 1-14
7. Directive 98/83 / EC on the Quality of Water for Human Consumption, OJ L 330, 5.12.1998, pp. 32-54
8. Directive 2014/52 / EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment, *OJ L 124, 25 April 2014*, pp. 1-18
9. Case C-71/14 East Sussex County Council v. Information Commissioner Property Search Group Local Government Association [2015] ECLI:EU:C:2015:656

WEBSITE REFERENCES

1. *People of the State of New York v. Exxon Mobil Corporation*, Supreme Court of the State of New York, No. 451962/2016, [<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=RjOFq8qu5DQSZfGVHwo4cw==&system=prod>] Accessed 8 October 2017