

LOCUS STANDI BEFORE ADMINISTRATIVE COURTS IN ENVIRONMENTAL MATTERS – A EUROPEAN PERSPECTIVE**

Summary

The main goal of this article is to examine to what extent citizens and their associations as a party in court proceedings can protect the environment in EU countries and Serbia, and also to identify main trends and limitations for access to justice in European legal systems. After analysing the three prevailing approaches to the regulation of *locus standi* in European countries, the aim of this article is also to determine the extent to which Serbian legislation fits into European legal systems. A normative-dogmatic method and a comparative legal method have been used in this article in order to analyse the legislation and practise in European countries in relation to the right of the public to protect the environment in administrative judicial proceedings. The article focuses on analysing the relevant international and national legislations and their implementation. The way in which *locus standi* is formulated is the key issue in exercising the right of the (concerned) public to initiate an administrative dispute for the protection of the environment and the protection of participation rights in environmental decision-making. Access to administrative courts in environmental matters usually implies that legal standing to initiate administrative disputes is granted to environmental civil society organisations (the public concerned), although citizens (the public) may also have standing in some cases.

Key words: *locus standi* in administrative disputes, access to environmental justice, the public and the public concerned, legal standing.

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LOCUS STANDI PRED UPRAVNIM SUDOVIMA U STVARIMA OD ZNAČAJA ZA ŽIVOTNU SREDINU – EVROPSKA PERSPEKTIVA

Sažetak

Glavni cilj ovog članka je da ispita u kojoj meri građani i njihova udruženja kao strane u sudskim postupcima mogu da zaštite životnu sredinu u zemljama Evropske unije i Srbiji, kao i da se identifikuju glavni trendovi i ograničenja za pristup pravnoj zaštiti u evropskim pravnim sistemima. Takođe, cilj ovog rada je da se, nakon analize tri dominantna pristupa uređenju prava na pokretanje upravnog spora u evropskim zemljama, utvrdi u kojoj meri se pravo Srbije uklapa u navedene sisteme. Naučni metodi korišćeni za ovaj članak su normativno-dogmat-ski metod i uporedni metod prava, kako bi se analiziralo zakonodavstvo i praksa u evropskim zemljama u vezi sa pravom javnosti da zaštiti životnu sredinu u upravnom sporu. Stoga, članak se fokusira na analizu relevantnog međunarodnog i nacionalnog zakonodavstva i na njegovu primenu. Ključno pitanje za ostvarivanje prava javnosti da pokrene upravni spor, kako bi zaštitila pravo na zdravu životnu sredinu i svoje pravo na učešće u donošenju ekoloških odluka, jeste način na koji je formulisan *locus standi*. Pristup upravnom sudu u ekološkim stvarima uglavnom podrazumeva aktivnu legitimaciju organizacija civilnog društva koje se bave zaštitom životne sredine (zainteresovane javnosti) za pokretanje upravnog spora, mada u nekim slučajevima i građani (javnost) mogu imati aktivnu legitimaciju.

Ključne reči: *locus standi* u upravnom sporu, pristup pravosuđu u ekološkim stvarima, javnost i zainteresovana javnost, aktivna legitimacija.

1. Introduction

The main goal of this article is to examine to what extent citizens and their associations, as a party in court proceedings, can protect the environment in comparative law; and to identify main trends and limitations for access to justice in European legal systems. The aim of the research is therefore to analyse how the right of the concerned and the general public to bring actions before the national courts in environmental administrative matters is regulated in different European legal systems. The research provides an understanding of various

approaches to *locus standi* in environmental disputes in different European countries and provides insights into the variety of ways in which the public can protect the environment. The article assesses how different legal frameworks enable or restrict the participation of citizens and their associations (such as informal groups and civil society organisations) in administrative judicial proceedings in environmental matters. After analysing the three prevailing approaches to the regulation of *locus standi* in European countries, the aim of this article is also to determine the extent to which Serbian legislation fits into European legal systems. A normative-dogmatic method and a comparative legal method have been used in this article in order to analyse the legislation and practise in European countries in relation to the right of the public to protect the environment in administrative judicial proceedings. Therefore, the article focuses on analysing the relevant international and national legislations and their implementation.

There is no universal legal act pertained to the access to justice in environmental matters, so regional instruments are particularly important. The most important regional instrument is the Aarhus Convention, i.e. Article 9, which has contributed most to the development of access to justice in national legal systems. Article 9(1) pertains to the access to justice in relation to environmental information, Article 9(2) guarantees the public concerned access to justice in relation to public participation, and finally Article 9(3) guarantees the public access to administrative or judicial procedures to challenge acts and omissions which contravene provisions of national environmental law. This research is dedicated to the right of the public and the public concerned to challenge legal acts and to seek judicial review if they consider that there has been a violation of the rights of public participation or the provisions of environmental law, in particular the application of Articles 9(2) and 9(3) of the Aarhus Convention.

Regarding the EU law, the requirements of Article 9(2) can be found in three sectoral directives. Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and Directive 2010/75/EU on industrial emissions consistently stipulate the requirements from Article 9(2), while Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances guarantees the access to justice to the public, but does not cover all procedures to which Article 9(2) of the Aarhus Convention might apply. As regards Article 9(3) of the Aarhus Convention, only Directive 2004/35/EC on environmental liability contains provisions on access to justice for the review of decisions, acts and omissions of competent authorities in the field of environmental protection.

As there is no specific legal act in EU law regulating access to justice, it is in principle left to legal systems of Member States to regulate the rules on standing

more comprehensively. Therefore, Member States regulate this issue through national law in accordance with the Aarhus Convention, which has been signed by all Member States and the EU. Consequently, there are significant differences among European countries, but also limitations for the public in most countries as regards access to justice under Article 9.

Access to justice before administrative courts in environmental matters generally implies *locus standi* of environmental civil society organisations (the public concerned) before administrative courts, although citizens (the public) may also have standing in some cases. In most European countries, the criteria for establishing *locus standi* in environmental disputes are regulated by general procedural rules for administrative and judicial proceedings. However, a few countries have introduced special rules for *locus standi* in environmental disputes. Moreover, in some European countries, prior to contesting a decision before an administrative court, administrative remedies must be exhausted, but in others, civil society organisations and citizens can choose between administrative remedies and going directly to an administrative court (Milieu, 2007, p. 5).

Access to justice in the context of administrative law and administrative disputes is regulated differently in comparative law, ranging from *actio popularis* in certain countries (e.g. Portugal, Latvia, India) to restrictive access where protection is only possible if someone's subjective right is affected (Germany, Austria). *Actio popularis* is an action that can be brought by any person to protect an interest, regardless of whether or not they belong to the group whose interests are to be protected by the action (Rakić-Vodinelić, 1989, p. 871). This action therefore gives everyone the right to challenge a certain act, regardless of whether they are affected by this act.

In view of the fact that *locus standi* for the judicial review of administrative acts in European countries is regulated by national legislation, the approach to its formulation varies considerably. Broadly speaking, three basic approaches to the definition of standing before administrative courts in environmental matters can be identified in the European legal systems: (1) an extensive approach, usually referred to as *actio popularis*, which allows anyone to initiate proceedings before the court for the protection of environmental values; (2) a restrictive approach, which implies the existence of a subjective right to initiate court proceedings (right-based); and (3) a medium or flexible approach, which implies the existence of a sufficient interest to initiate proceedings (interest-based) (Sadeleer, Roller & Dross, 2002, p. 21; Darpö, 2013, pp. 11-14). The boundaries between these three approaches are becoming increasingly blurred, thus leading to mixed systems (Sadeleer, Roller & Dross, 2002, p. 21).

This article analyses all three abovementioned approaches to the formulation of legal standing before administrative courts in environmental matters in European countries. In this sense, the article consists of three chapters analysing three different approaches to the regulation of *locus standi* in comparative law. Following chapters are dedicated to access to justice before the Administrative Court in Serbia and to the analysis of the case law of the Serbian Administrative Court, in order to assess how national law fits into the international landscape.

2. The Extensive Approach to the Definition of *Locus Standi* before Administrative Courts in Environmental Matters

The extensive approach is not common in legal systems of European countries. Portugal stands out for its prevalence of *actio popularis*, but this approach also exists in some other countries. In Spain, *actio popularis* before administrative courts is only possible for certain issues, e.g. in connection with urban planning and national parks (Justice and Environment Network, 2010). In Latvia, Romania and Slovenia it exists to a certain extent, while in Belgium, Estonia, Finland and Sweden it can be used by residents of municipalities to review certain decisions of local authorities (Darpö, 2013, p. 12).

The Portuguese constitution guarantees everyone the legal standing for the protection of diffuse interests (Constitution of the Republic of Portugal, 7th revision). The implementation of this constitutional provision in environmental matters is regulated by three laws. The Law regulating *actio popularis*, the Law regulating administrative disputes, and the Law regulating environmental protection stipulates that any citizen exercising his or her civil and political rights, regardless of whether he or she has a direct interest or not, has the right to file a lawsuit. In addition, associations, foundations and local authorities also have *locus standi* to protect public health, the environment, urban planning, spatial planning, cultural heritage and the overall quality of life (Milieu, 2007b, p. 9; Aragão, 2013, pp. 16-17). The provisions of these laws stipulate that the use of this instrument is free of charge, which means that both individuals and civil society organisations are exempt from paying court expenses. However, despite the fact that *actio popularis* is free of charge, this instrument is not frequently used (Milieu, 2007b, p. 9; Aragão, 2013, p. 262).

An illustrative case before the Portuguese Supreme Administrative Court in 2016 concerned the recognition of the legal standing of a local citizens' association on the island of Madeira. The case pertained to an appeal against the decision of the municipality of Santa Cruz, which had permitted the construction of

several private villas and residential buildings in rural areas on the cliff tops (one of the most famous spots in Madeira). *Locus standi* of local association was recognised solely on the basis of the plaintiff's claim that the municipality had violated legal regulations for the protection of the environment (Supremo Tribunal Administrativo, Case 1362/12).

In comparative law, there are very few countries that extensively formulate *locus standi* in this area. Such provisions can be found in the Constitution of the Federative Republic of Brazil (2017, Art. 5), the Constitution of the Republic of Angola (2010, Art. 74), the Constitution of the Republic of Cape Verde (1992, Art. 58), the Constitution of the Republic of Mozambique (2007, Art. 81) and the Basic Law of the Macao Special Administrative Region of the People's Republic of China (1999, Art. 36). It can therefore be concluded that *actio popularis* is widespread in the countries where Portuguese is spoken and is established by their respective constitutions (Aragão, 2019, p. 251).

The country that has also developed an extensive approach to formulating standing in this area is Latvia (Mikosa, 2018, p. 274). In 2006, the Latvian Parliament (*Saeima*) unanimously adopted the Environmental Protection Law (LVA-2013-L-98117), which guarantees *locus standi* to every citizen and organisation in environmental disputes. This rule is an exception to the general principle of strictly formulated *locus standi* in the Latvian legal system, according to which the plaintiff must claim a violation of a subjective right in order to initiate proceedings before the court. This exception is known as the "environmental exception clause" (Mikosa, 2018, p. 277). This clause stipulates that anyone has the right to initiate proceedings before the administrative court in environmental matters without any special requirements if he or she believes that an administrative authority has made or omitted to make a decision and has thereby violated environmental laws or endangered the environment (European Commission, 2019, p. 28). Consequently, in Latvia, "effective legal remedies, such that ensure real rather than illusory protection in the area of environmental law, are available before the administrative courts" (Rodina, 2022, p. 416).

The Aarhus Convention does not require the existence of an *actio popularis*, but the adoption of an extensive approach to the definition of *locus standi* is in line with the spirit of the Convention. In the literature, the following risks of extensively formulated *locus standi* are frequently mentioned: the possibility of misuse, an excessive burden on the courts and thus an excessive length of proceedings. However, restricting access to justice on the basis of these risks is considered unjustified and unrealistic, as the problem of a large number of environmental cases has not arisen in practice so far (See: Cane, 2016 and Milieu, 2007).

3. The Restrictive Approach to the Definition of *Locus Standi* before Administrative Courts in Environmental Matters

In contrast to the extensive model of access to justice, which gives everyone the right to bring a case to the administrative court, some countries adopt a rigid approach. Under this approach, the plaintiff must prove that the decision or omission of an administrative authority could affect the plaintiff's individual or subjective right (See: Drenovak-Ivanović, 2014, p. 237; Karageorgou, 2018, p. 239). This doctrine is known as the *Schutznormtheorie* or protective norm theory, and is applied most rigorously in Germany and Austria (Darpö, 2013, p. 13). As this approach is not in line with the Aarhus Convention, one of the attempts to address this problem in Germany was the adoption of a law regulating legal remedies in environmental matters (*Umwelt-Rechtsbehelfsgesetz*) in 2006 (N. 58/2006). German law is characterised by the adoption of specialised legislation that deals with specific topics of significance (Tomić, 2023, p. 213). The solution in this law allowed civil society organisations to bring a case before the administrative court even if there was no violation of their subjective rights. However, the civil society organisations had to claim that an act of the public authorities had violated the norm protecting subjective rights. The civil society organisations must therefore claim a violation of a subjective right, even though they are not the actual holders of this right. However, this hybrid solution was not in line with the Aarhus Convention (Rehbinder, 2009, p. 133). In 2018, this law was amended and it now guarantees legal standing to recognised environmental civil society organisations in specifically listed cases, while there are no provisions granting this right to individuals (Milieu, 2019, p. 103).

As the example of Germany shows, it is a long and complicated road from the complete impossibility for the public to bring case before administrative courts in environmental matters to the recognition of the standing of environmental civil society organisations, while the possibility for individuals to protect environmental values before administrative courts is not even on the horizon.

4. The Flexible or Medium Approach to the Definition of *Locus Standi* before Administrative Courts in Environmental Matters

In most European countries, the medium approach is accepted, in which legal standing is based on the existence of interests (interest-based) rather than rights (right-based), as is the case with rigid systems (Darpö, 2013, p. 13). The distinction between a right-based and an interest-based approach is not always easy

to recognise, but in principle it is clear that these countries have a more liberal approach to the formulation of *locus standi* (Darpö, 2013, p. 13).

The example of Sweden is notable, because Sweden is considered a country with a strong environmental awareness and a strong democracy in which the principles of transparency and participation are consistently applied. The Swedish Environmental Code establishes a system of five Land and Environmental Courts and one Land and Environmental Court of Appeal, which are integrated into the regular court system as a special branch. They essentially act as administrative courts for cases relating to environmental and planning laws (Darpö, 2015, p. 2). The concept of legal standing before administrative courts in Sweden is clearly based on the existence of interests, and standing generally belongs to those who are affected by the decision (Darpö, 2015, p. 2). In practice, the courts have interpreted standing for individuals in the application of environmental laws broadly, stating that anyone who is even slightly inconvenienced by environmentally harmful activities can be considered a party with an interest in bringing an action before the court (Supreme Administrative Court of Sweden Stora Billerud (Sweden), RÅ 1997 ref 38).

In the Swedish legal system, legal standing is granted to any environmental civil society organisation that is non-profit and has at least 100 members or can otherwise demonstrate public support and has been in existence for at least three years (Nesbit, Lucha & Stec, 2019, p. 62). Organisations that meet these criteria can represent the public interest in line with their objectives without having to meet any other criteria.

On the other hand, the approach to the legal standing of informal or *ad hoc* groups is more restrictive. Given that environmental civil society organisations must be in existence for at least three years, this criterion appears to be absolutely restrictive for informal or *ad hoc* groups whose mode of formation fundamentally contradicts this criterion. Considering that legal standing of individuals is broadly defined and that proceedings in environmental matters are free of charge (no court fees, payment of the opposing party's costs or other expenses), this restriction is of little importance for informal or *ad hoc* groups, as it is not necessary to form groups to share the burden of legal costs (Lees, 2019, pp. 17-18).

It is important to bear in mind that the Swedish model features highly specialised environmental courts and technically trained judges who act under the rules specifically tailored to environmental matters (Lees, 2019, pp. 17-18). The Swedish model shows that extensively formulated *locus standi* is not a *conditio sine qua non* for effective and meaningful access to justice, as other factors significantly influence legal standing. These factors include the existence of specialised

environmental courts, the absence of court costs and consistent adherence to democratic principles in general.

Considering the fact that administrative judiciary originated in France, that the French system of administrative judiciary has influenced the systems in other countries and that the development of administrative law in Serbia has been strongly influenced by the French school of thought (Lilić, 2014, p. 129), it is important to examine the issue of *locus standi* in French administrative law. It is common to consider *locus standi* before the French administrative courts favourable to the plaintiffs, as France follows the interest-based approach (Chevalier & Eliantonio, 2017, p. 1). However, the conditions for judicial review of administrative acts in environmental matters can be considered restrictive to a certain extent.

The possibilities for individuals to access the justice before court are limited only if their individual rights or interests are violated. The role of civil society organisations is crucial in environmental matters as the approach to formulating standing for organisations is much broader and they do not need to have a direct interest to have *locus standi* (Chevalier & Eliantonio, 2017, p. 4). However, a civil society organisation must be recognised and active for at least three years. This requirement restricts access to justice for newly established organisations and has a detrimental effect on legal standing of small local organisations that are active in their local community (Milieu, 2019, p. 103).

In general, French courts have an extensive approach when it comes to recognising the legal standing of civil society organisations, and there are even cases in judicial practice in which foreign organisations have had the right to bring a case before the court. For example, an organisation from the Netherlands and the city of Amsterdam brought an action before the Administrative Court in Strasbourg against an act that allowed a mine to discharge wastewater into the Rhine (Makowiak, 2016, p. 18). In this case, the court took the view that international law, French laws and the principles of French law did not restrict the right of foreign organisations and public institutions to initiate proceedings before French administrative courts. The court also found that the Dutch institutions, civil society organisations and other entities that initiated the proceedings were involved in the management and distribution of drinking water, the quality of which might be affected by the pollution of the Rhine, so that these entities had a sufficient interest in challenging the mentioned act (Palmer & Robb, 2014, p. 212).

Also, a law regulating biodiversity and nature was passed in 2016 (N. 2016-1087). This law is incorporated into the French Civil Code and establishes a new legal regime for dealing with environmental damage that differs from the regime under Directive 2004/35/EC on environmental liability (Foulon, 2019,

pp. 309–317). Under this law, public administration bodies, registered associations and organisations that have been active for at least five years before initiating proceedings are entitled to bring an action for environmental damage (Code Civil, Art. 1247). The first court decision under this law was handed down by the Administrative Court of Paris in February 2021 (Lavrysen, 2021). In this case, four civil society organisations had brought the case against the government, as administrative courts have jurisdiction over damage caused by state bodies for failing to take action against climate change. The administrative court found that there was environmental damage within the meaning of the provisions of the law regulating biodiversity and nature and ruled that the plaintiffs should be awarded a symbolic euro as compensation for the environmental damage (Tribunal Administratif de Paris N. 1904967, 1904968, 1904972, 1904976/4-1).

The differences between countries in the regulation of legal standing are large and depend on many factors, so that it is quite complicated to recognise regularities or trends within these variations. Generally speaking, varieties of flexible approaches are in line with the Aarhus convention, since they guarantee *locus standi* to the public concerned. The literature generally points out that the broader is the scope of standing, the narrower is the scope of jurisdiction of the court. This means that in the systems where *actio popularis* is allowed in environmental matters, the jurisdiction of the court is generally limited to deciding on the legality of the administrative act, whereas in the systems where the jurisdiction of the administrative courts is broader, only those who are personally affected by the act in question can initiate proceedings (Darpö, 2009, p. 189).

5. Access to Justice and Administrative Court in Serbia

5.1. Legal framework

The plaintiff in an administrative dispute in Serbia may be a natural person who considers that his/her rights or legally based interests have been violated by an administrative act or another individual act of an administrative authority. The plaintiffs are usually natural persons or legal entities, but certain collectives without the status of a legal entity can also be plaintiffs (Lončar, 2015, p. 1697).

According to the Law on Administrative Disputes (ZUS, 2009), administrative dispute proceedings may be initiated against an individual administrative act issued in the second instance, against an individual administrative act issued in the first instance if an appeal is not admissible in the administrative procedure, as well as in cases of silence of administration (Arts. 14 and 15). This Law “ensures

the judicial protection of individual rights and statutory interests and the legality of deciding in administrative and other individual issues specified in the Constitution and the law” (ZUS, Art. 1).

Administrative disputes serve as a judicial review of the work of administrative bodies, whereby the administrative court decides on the legality of actions of these bodies. Since administrative disputes are an external form of control of administrative activity that follows internal administrative control, it is essential to examine who can have legal standing in administrative disputes by analysing who can be a party in the administrative procedure before the administrative authority.

The Law on General Administrative Procedure (ZUP) stipulates that a party in the administrative procedure may be an individual whose administrative matter is the subject of the administrative procedure and an individual whose rights, obligations or legal interests may be affected by the outcome of the administrative procedure. This also includes bodies, organisations, settlements, groups of individuals and others who are not legal entities, under the same conditions that apply to natural or legal entities. If stipulated by the law, representatives of “collective interests and representatives of broader public interests organised in accordance with the law may have the status of a party in the administrative procedure if the outcome of the administrative procedure may affect the interests they represent” (ZUP, Art. 44). Standing in administrative procedure is therefore clearly defined for the public concerned.

It should be noted that the current Law on General Administrative Procedure was adopted after the current Law on Administrative Disputes. Consequently, “representatives of collective interests and representatives of broader public interests” are not covered by the Law on Administrative Disputes, which raises the question of their legal standing in administrative disputes and the need to recognise them in the provisions of the Law on General Administrative Procedure (Jerinić, 2020, p. 506).

According to the Law on Administrative Disputes, *locus standi* in administrative disputes in Serbia can be held by natural persons, legal entities or other entities if they consider that their rights or legally based interests have been violated by an individual administrative act. The plaintiff may also be “a settlement, a group of individuals and others who do not have the status of a legal entity, provided that they may be the holders of rights and obligations that are the subject of a decision in administrative procedure” (ZUS, Art. 11).

The Law on Administrative Disputes allows legal standing of an informal group of citizens that does not have the status of a legal entity (not registered under national law), but whose members are united by common ideas or interests,

such as environmental protection, on condition that the group can be the bearer of rights and obligations that are decided in the administrative procedure. This means that the party capacity acquired in the administrative procedure is also retained in the administrative dispute (Milkov, 2013, p. 81).

It is important to examine how the role of the public is regulated by environmental legislation, namely in specific administrative procedures in environmental matters.

Firstly, the Law on Environmental Protection (2004) guarantees the right to legal protection to the public concerned by stating that “in exercising the right to a healthy environment, the public concerned has the right to initiate a review procedure of decisions before the competent authority or the court in accordance with the law” (Law on Environmental Protection, Art. 81a). However, this general provision is not further elaborated or specified in separate legislation (Etin-ski, 2013, p. 40). The Law on Environmental Impact Assessment Act (2004) stipulates that the public concerned has the right to “appeal against the decision of the competent authority on the request for a decision on the need for an environmental impact assessment” (Art. 11) and “against the decision of the competent authority on the request to determine the scope and content of the environmental impact assessment study” (Art. 15). However, if the competent authority makes a decision to approve the environmental impact assessment or to reject the request for approval of the environmental impact assessment study, this decision is final and cannot be appealed, but “the public concerned may initiate an administrative dispute against it” (Art. 26). The public concerned therefore clearly has legal standing in an administrative dispute.

The Law on Integrated Prevention and Control of Environmental Pollution (2004) and the Law on Strategic Environmental Impact Assessment (2004) do not guarantee the right of the public concerned to initiate administrative disputes or the right to appeal in administrative proceedings.

ZUS states that the plaintiff, in order to have a *locus standi*, must invoke a violation of individual rights or statutory interests, which indicates a more restrictive approach to the definition by ZUS. However, ZUS also stipulates that the plaintiffs may be groups, provided that they “may be holders of rights and obligations that are the subject of a decision in an administrative procedure”. In addition, since 2018, ZUP stipulates that a party in the administrative procedure may be “representatives of collective interests and representatives of broader public interests”, which, however, reflects a flexible approach, but also underlines the need to recognise these representatives in the provisions of the ZUS. To conclude, Serbian law falls under a flexible approach, although certain elements remain rigid.

5.2. Case Law of the Serbian Administrative Court

It is often argued in the literature that the practice of the Administrative Court is restrictive with regard to recognising legal standing of the public concerned in administrative disputes, especially when it concerns persons who did not participate as parties in the administrative procedure preceding the administrative dispute (Jerinić, 2020, p. 526).

A recent case before the Administrative Court, relevant to national practice, was brought by an environmental civil society organisation with the aim to annul the decision of the Ministry of Construction, Transport and Infrastructure (Decision of the Ministry of Construction, Transport and Infrastructure of the Republic of Serbia, No. 351-02-00063/2019-07). The contested decision allows the investor to carry out preparatory works for the construction of the “Kalemegdan” gondola station. The plaintiff representing the public concerned challenged the legality of the contested decision on the grounds that “the factual state is incompletely or incorrectly defined, the identified facts brought to an incorrect conclusion”, the substantive law was not correctly applied and “in the process of issuing the act, the rules of the proceeding were not followed” (Administrative Court, No. 6063/2019).

In this case, the Administrative Court agreed to the plaintiff’s request to postpone the enforcement of the Ministry’s decision until the court makes its final decision. The Administrative Court recognised the legal standing of the public concerned, as the organisation was established to represent “collective interests and broader public interests” in promoting and improving the right to a healthy environment, and it operates in accordance with the laws, so it has standing within the meaning of the Law on General Administrative Procedure (Art. 44, para. 3).

The participation of the public concerned in this case enabled a judicial review of the legality of the Ministry’s decision. The decision of the Administrative Court in this matter ensured the protection of environmental values of public interest. The environmental civil society organisation was finally recognised as a party in the administrative dispute on the basis of the Law on General Administrative Procedure (Art. 44).

6. Concluding Remarks

Administrative court protection is the most common and most important form of judicial protection of environmental values. In most European legal systems, environmental civil society organisations (the public concerned) can bring a case before the administrative court to challenge administrative decisions in

environmental matters. In some comparative legal systems, this possibility is also available to all concerned citizens (the public). Generally speaking, *locus standi* in administrative disputes is regulated in three ways in the national legislation of European countries. The first group of countries includes those that extensively formulate standing in administrative disputes and allow anyone to initiate a dispute to protect environmental values. This approach could be considered an exception. Although these countries give everyone the right to initiate an administrative dispute to protect environmental values, there are not many examples of such cases. These disputes are primarily initiated by members of the public concerned and much less frequently by citizens (the public). In the literature, the argument is often made that such an extensively formulated *locus standi* opens the door to misuse and unnecessarily burdens the courts, leading to inefficient and lengthy proceedings. However, as no significant number of cases has been brought in this way in countries where *actio popularis* is established, the fear of overloading the courts with lawsuits filed by citizens (or the public concerned) to protect environmental values is not supported by judicial practice. Only a few countries take a restrictive approach and require the plaintiff to claim that their subjective right has been violated (“right-based”). This approach makes access to justice considerably more difficult in the case of violations of environmental laws and the protection of environmental values. In the third group, which includes Serbia, there are countries that follow a medium or flexible approach, where the existence of *locus standi* requires that the plaintiff has a sufficient interest (“interest-based”). This approach is common in most European countries and demands the presence of a “sufficient interest” for legal standing.

In Serbian law, the standing of the public concerned in administrative disputes could be improved by amending the laws that establish specific administrative procedures in environmental matters, such as the Law on Integrated Prevention and Control of Environmental Pollution and the Law on Strategic Environmental Impact Assessment. Citizens (the public) concerned for the protection of environmental values do not have legal standing before the administrative court if their subjective rights are not violated. This possibility is not yet seriously considered in national legislation, practice and literature.

The comparative analysis conducted suggests that there are still significant limitations on public access to justice in most European countries. While extensive access to justice and *locus standi* align with the spirit of the Aarhus Convention, it still remains uncommon. There is no noticeable trend among states to make standing more extensive. Rather, states are striving to maintain certain rigidity and adjust standing to a limited extent to order to meet the minimum standards of the Aarhus conventions (e.g. Germany). To overcome these

limitations, EU law would have to harmonise the right of the public to access to justice in environmental matters at Member State level. The studies examining *locus standi* before administrative courts in environmental matters in the context of comparative law, the results of which have been discussed in this article (see: Sadeleer, Roller & Dross, 2002; Milieu, 2007; Eliantonio *et al.* 2012; Darpö, 2013; Milieu, 2019) point to considerable differences in the formulation of standing, even between countries with similar legal traditions. A comparative analysis of the rules on legal standing is challenging due to this considerable variety. Nevertheless, the general conclusion that can be drawn is that the more broadly standing is formulated, the narrower the court's jurisdiction is when deciding, and the more restrictively standing is formulated, the broader the scope of court's jurisdiction becomes.

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