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Analyzing the Environmental Democracy in International Law and Iran's Legal System

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Abstract

Procedural environmental law, also known as environmental democracy consists of three Pillars, which include the right of access to environmental information, the right of participation in environmental decision-making procedures and the right of access to justice. Environmental democracy is granted to citizens for their empowerment in order to protect their health against environmental damage and to ensure the environment. The aim of this study is to investigate the above rights in the international documents, jurisprudence and domestic legal systems of some leading States and then to analyse the Iranian legal system through a descriptive-analytical method. We found that Iranian legal system still suffers from some gaps despite the positive efforts to achieve environmental democracy in recent years. The most important issues are the lack of specific rules on people's access to environmental information, a favorable system for citizen participation in environmental decisions, and a dedicated environmental court.

Keywords

International Jurisprudence, Environmental Democracy, Access to Environmental Information, Access to Justice, Public Participation, Iranian Legal System.

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Introduction

Environmental democracy is a concept that goes beyond the individual's relationship with the State and basically refers to human needs in environmental commons. These commons are the public interest in environment. From this perspective, categories such as biodiversity, water, air, ecosystem, etc. are considered as environmental commons.[1]

According to Professor Shelton, the term environmental law refers to any human rights claim to environmental conditions.[2] Legal doctrine has divided environmental law into two categories: Procedural and substantive. The scope of substantive environmental rights is very wide and can cover a wide range of rights, from the right to life to the right of a healthy environment. Procedural rights include the right of access to information, the right to participation, the right of access to the judiciary for citizens, which allows them to take appropriate actions against industrial projects or the effects of environmental policies and decisions on the society. It is certain that Procedural rights are required in addition to substantive rights for the citizens of a country to benefit from environmental commons. These procedural rights fall under the heading of so-called environmental democracy.[3]

Currently, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, known as the Aarhus Convention,[4] is the only document that brings the constituent elements of environmental democracy together. It is the first international agreement whose main purpose is determinationof the environmental obligations of governments for citizens and non-governmental organizations. In Article 1 states that, "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."

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1. The Australian Panel of Experts on Environmental Law (APEEL), Democracy and the Environment, 2017, p. 10, available at: <http://apeel.org.au/s/APEEL_democracy_and_environment.pdf>, last seen 27 April 2023.

2. Shelton, Dinah, "Developing Substantive Environmental Rights", *Journal of Human Rights and the Environment*, vol. 1, No. 1, 2010, p. 90.

3. Pickering, Jonathan, Bäckstrand, Karin, Schlosberg, David, "Between Environmental and Ecological Democracy: Theory and Practice at the Democracy-Environment Nexus", *Journal of Environmental Policy & Planning*, vol. 22, No. 1, 2020, pp. 6-7.

4. The Aarhus Convention on Access to Information, Participation in Decision-Making and Access to Justice in Environmental Matters was signed by 35 European Economic Commission member States in 1998 in Aarhus. The convention entered into force on October 30, 2001, following the signatures of 16 countries. Although this convention has been proposed at the European level, it is open to all member States of the United Nations, provided that it is ratified by the members.
Palmertz, Mark, "Regulating Environmental Law: A Review of the Aarhus Convention", translated in Persian by Ali Mashhadi, *Davar Law Journal*, Faculty of Law, Shahid Beheshti University, No. 2, 2009, p. 348.

In domestic law of some States, important activities have been carried out in this field. Other notable instruments in this regard are the Regional Agreement on "Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean", known as the Escazu Convention. After 6 weeks of continuous negotiations by 24 governments, this agreement was concluded on March 4, 2018. One of the differences between this document and the Aarhus Convention is that the Escazu Convention does not confine to procedural environmental rights, it also refers to substantive rights, including the right of access to a healthy environment. The agreement also contains innovative provisions such as protecting environmental defenders (Article 9), public participation in the environmental decision-making process from the early stages (Article 7), and early warning system to avoid imminent danger (Article 6), to facilitate access to justice in environmental matters for the public (Article 8), etc., which distinguishes it from other environmental conventions.[5] Article 1 of this agreement, like the Aarhus Convention, states that its purpose is to guarantee access to information, public participation and justice. With all these explanations, according to the first paragraph of Article 22, the recent agreement will enter into force nineteen days after the submission of the eleventh instrument of ratification. This condition has not been met so far.

Since the different international documents have paid attention to the notion of environmental democracy and most of developed and even developing countries enact new regulations to achieve optimal environmental democracy, these questions arise as to whether the international legal system has been able to achieve specific criteria for recognizing environmental democracy? Secondly, what legislative, executive and judicial measures have been taken by the Iranian legal system for citizens to achieve environmental democracy and what are its current circumstances compared to other developing countries. In order to answer the first question, at the beginning of every part, each component of environmental democracy i.e., access to information, public participation, and access to the courts have been analyzed precisely and separately from the perspective of international documents and jurisprudence. In the following, the last part of each section has been devoted to investigating Iran legal system with the purpose of demonstrating how the elements of environmental democracy are applied and exploited in Iran's domestic law.

1. The Right of Access to Environmental Information (RAEI): Regulatory Framework

The right to information is a human right enshrined in international law. It

5. Ferrucci, Giada. "A Pioneering Platform: Strengthening Environmental Democracy and Justice in Latin America and the Caribbean", *Journal of Management Policy and Practice,* vol. 20, 2019, p. 12.

is the right of every person to obtain information and data from governmental bodies. It is an enabling right and important tool for journalists, activists and communities to find information on key issues which affect their lives. The Universal Declaration of Human Rights and the CCPR recognize the right of every human being to receive and impart information without any interference. The EU Convention on Human Rights also declares access to information as a human right (Article 10).

In June 1972, the United Nations Conference on the Human Environment provided related evidences of man-made harm in many regions of the earth, thus concluded that it is the government's duty to protect and improve the human environment. A slight reference was made in Principle 20 as to the use of environmental information, *"... the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems;"* Subsequently the Rio Declaration mentioned the right of access to environmental information. Principle 10 of Rio, seeks to ensure that every person has access to information, available to public authorities, including information on hazardous substances and activities…, governments should strive to promote public awareness in this area by disseminating information about the environment…".[6] Following the Rio Declaration, in June 1998, 40 countries as well as the European Community met in the Danish city of Aarhus at the Fourth Ministerial Conference in the "Environment for Europe", adopting the UNECE Convention on the Access to Information, the RAEI enshrined in relatively similar terms. Aarhus Convention requires public authorities to provide environmental information if requested by public (Article 4). The main concern of the Convention is to make environmental information available, to update it and to shape the procedures for access to information.[7]

The Aarhus Convention is implemented in the European Community and supported by the four EU Directives. According to Public Access to Environmental Information (EU Directive 2003/4/EC) The objectives of this Directive are, a) to guarantee the right of access to environmental information, b) to set up the basic terms and conditions of, and practical arrangements for, its exercise; and c) to ensure that environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination of environmental information to the public. To this end, the

6. <http://www.unic-ir.org/hr/rio-declaration.htm>, last seen 27 April 2023, In the Declaration, flow of information was also mentioned to occur between States. Principle 19 declares: "States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith".

7. Ramezani Ghavam Abadi, Mohamad Hossein, Shamlu, Bagher, Sajjadi, Seyed Bagher, "A Comparative Study of the Concept of Access to Information in Aarhuss Convention and the Law of Publication and Free Access to Information", *International Relations Research,* vol. 6, Issue 21, 2016, p. 243.

use of computer telecommunication and/or electronic technology, where available, shall be promoted.

In addition, environmental information encompasses a wide range of information, including any written, visual, audio, electronic or any other types of information that include the status of environmental elements (such as air, water, soil ...), factors affecting them (such as energy, sound, radiation), administrative actions (such as policies, laws, plans, programs and environmental agreements), as well as reports on the implementation of environmental laws, economic analysis and the status of human health and safety (paragraph 1, Article 2 EU Directive 2003/4/EC).

1-1. Case Law and Legal Dimensions of RAEI

Although the role of documents in regulating access to environmental information should not be overlooked, there were some ambiguities, especially in implementation. For example, ambiguities and questions like this, what kind of information can be classified as environmental information, who can legally apply for access to information, which institutions are obliged to disclose information at the national level, are governments able to prevent the disclosure of environmental information, and etc. Fortunately, the jurisprudence has played a significant role in consolidating the status of accessing to environmental information as a human right and it has also helped to make this right more transparent.

Explaining the institutions which are responsible for disseminating information is one of the ambiguous issues that the procedure has obscured. In this regard the *Fish Legal, Emily Shirley v. Information Commissioner, United Utilities Water plc., Yorkshire Water Services Ltd., Southern Water Services Ltd.* is noteworthy, where the CJEU was questioned about two NGOs which were operating in the field of water.[8] The Court was asked to interpret the term "*public authorities*" in Directive 2003/4/EC[9] relating to the dissemination of environmental information. The Court initially stated that the Directive should be interpreted within the framework of the Aarhus Convention. CJEU has also interpreted the term in a way that requires more institutions to disseminate information (extensive interpretation) and stated that, institutions such as United Utilities Water plc. and Yorkshire Water Services Ltd. may be classified as *legal persons* having a *public administrative function*.[10] The judicial procedure of the CJEU, has always sought to expand the scope of issues that fall within the framework of

8. United Utilities Water plc. and Yorkshire Water Services Ltd.

9. To read the Directive 2003/4 / EC, see: <https://eur-lex.europa.eu/eli/dir/2003/4/oj> last seen 27 April 2023.

10. CJEU, Annual Report 2013, Luxembourg: Publications Office of the European Union, p. 45, Case C-279/12: Judgment of the Court (Grand Chamber) of 19 December 2013, Request for a Preliminary Ruling from the Upper Tribunal, United Kingdom, available at: <https://curia.europa.eu/jcms/jcms/Jo2_7015/en/>, last seen 27 April 2023.

environmental information by having a broad and extensive interpretation of EU laws and directives.

Apart from the broad interpretation of public authorities' term, same approach has been used to interpret the concept of *environmental information*. Generally, in cases of doubt, the documents have interpreted in such a way as to oblige the government and public authorities to make them transparent. In this regard, *the Minch v. the Commissioner for Environmental Information* case is noteworthy. Mr. Minch, an Irish national, requested access to a copy of a report on Internet speed-up and bandwidth services provided by the Irish Department of Natural Resources, Energy and Communications (IDNREC). But The IDNREC rejected his request, arguing that "the requested information was not considered environmental information". Mr. Minch then objected to the decision made by the Environmental Information Commissioner.[11] However, this body upheld the opinion of the IDNREC. He then appealed to the Irish Court of Appeals in 2015. Ireland Court of Appeal first notes that, *the accepted definition of environmental information is that set out in EC Directive 2003/4 (Article2).*[12] in contrast, the Commissioner for Environmental Information argued that firstly, Mr. Minch's requested report was related to the broadband development infrastructure by the private sector which contrary to issues such as radio spectrum, installation of underground masts or cables and …, had no direct impact on the environment. Secondly, the report even does not deal with issues such as energy, radiation, etc. which can affect the environment…. Therefore, as the content of the alleged report does not fall under *EC Directive 2003/4*, the Commissioner does not consider it necessary to be published.[13] But the Irish Court of Appeals found the commissioner's approach too narrow. The Court finds that the terms of directive are written in such a way that one could not interpret them narrowly. For example, the term "*measures or activities…likely to affect the environment"* has a broad meaning or the term "*economic analysis"* goes beyond the mere information and includes any analysis of environmental issues. Finally, the Irish Court of Appeals reversed the Commissioner's decision.[14]

The European Court of Human Rights in the case of *Öneryildiz v. Turkey* has more explicitly acknowledged catastrophic environmental events such as the methane explosion, the subsequent collapse of the mountain, and the destruction of farmland, killing people.[15] The ECHR explicitly acknowledges

11. The Environmental Information Commissioner is an institution tasked with reviewing decisions made by government officials on environmental information. For more information about Commissioner see:< https://www.ocei.ie/>, last seen 27 April 2023.

12. Ireland Court of Appeal, Stephen Minch *v.* Commissioner of Environmental Information and Minister for communications, Energy, and Natural Resources, No. 2016/255, 2016, para. 16.

13. *Ibid*., para. 30.

14. *Ibid*., paras. 62-63.

15. ECtHR, Öneryildiz *v.* Turkey, Application No. 48939/99, 30 November 2004, para. 18.

that "*access to "clear" and "full" information on "environmental hazards" is a fundamental human right.*[16]

In addition, NGO's such as Human Rights Watch and Amnesty International emphasize the importance of access to (governmental) information as a fundamental human right and consider awareness of the activities of community leaders as a guarantor of other human rights.[17]

Although the existing jurisprudence has sought to interpret regulations in such a way as to guarantee the right of citizen to access to environmental information, but as already mentioned, this right faces some limitations. For example, where the law does not allow publication or the dissemination of information is in conflict with public order and…. this controversial issue is well described in *Claude Reyes et al. v. Chile in ACHR*. The case concerns a foreign investment project which had devastating effects on the Chile's environment. Referring to Article 13 of the American Convention on Human Rights, the court addresses the legal restrictions of this right and declares that *the restrictions provided by law to guarantee the rights and good reputation of individuals, national security, public health or other purposes under the Convention allowed necessity, are acceptable. Although, the court acknowledges that restrictions, should not be interpreted and enforced in a way that overshadows the main purpose of the article 13*.[18] A noteworthy point in this judgment is the allusion to the conditions required to apply the restrictions: firstly, the restrictions must be proportionate to the public interests and the purposes for which they are set outed; secondly, they do the least detriment to the right of access to environmental information; Thirdly, a government that refuses to disclose or access to information should justify this behavior.[19]

1-2. RAEI in the Light of Iran's Legal system

In the first decades of the 21st century, many of developing countries enacted laws and regulations toward freedom of access to information in their domestic legal systems.[20] Given that different legislative models have been envisaged for the realization of the right of access to environmental information in different domestic legal systems, we will first examine some of the most common models before examining the Iranian regulations.

According to statistics provided by the World Resources Institute, as of 2015, 65 States have enacted domestic legislation on the right of access to

16. *Ibid*., para. 62.

17. Birkinshaw, Patrick, "Freedom of Information and Openness: Fundamental Human Rights", *Administrative Law Review*, vol. 58, No. 1, 2006, p. 179.

18. IACHR, Claude Reyes *et al. v.* Chile, Merits, Reparations and Costs, ser. C No. 151, 2006, para. 90.

19. *Ibid*., para. 91.

20. For example, Bulgaria in 2000, Pakistan and Mexico in 2002, Armenia and Turkey in 2003 enacted laws to protect freedom of information.

environmental information.[21] this right has been mentioned in constitutional law of some States, e.g. Article 45 of the Slovak Constitution (1992) provides: "*Everyone has the right to timely and fully access to information on the state of the environment…"*[22] or Article 37 of the Moldovan Constitution which states: "*The government will guarantee that all citizens have the right to access to the true information about the natural environment..."*.[23]

Some other States have not considered the law on free access to information (general) sufficient and have enacted a special law for access to environmental information, this indicates the importance of the environment in their domestic law. Norway, for instance, passed the Freedom of Information Act in 1970 and then in December 2000 the Access to Environmental Information was adopted. Meanwhile, countries that have enacted the law on access to environmental information even before the adoption of law of access to information (general) are exemplary. Poland, for example passed the Law on Access to Environmental Information and the Assessment of Environmental Impacts on November 2000 and the Law on Access to Information in September 2001.[24] Others assign a specific place for environmental information in access to information law such as the Public Information Act of Estonian (2000). The Act stipulates that *environmental information must be disclosed without any exception,* contrary to personal information and confidential government information, which are excluded from the public access.[25]

The latter has also been reflected in the Iranian legal system. According to Article 2 of the Law on Dissemination and Free Access to Information of (2009): "*every Iranian person has the right of access to public information, except in cases prohibited by law*. The foresaid law considers the broad meaning of information; it includes any type of data, whether contained in documents or stored as software or recorded in any other means (article 1). Also, according to Article 5, *public institutions* are required to provide information to the public as soon as possible and without any discrimination. Iranian legislature has dedicated the fourth chapter of the Law on Dissemination and Free Access to Information (Articles 13-17) to the exceptions which include government secrets, protection of privacy, protection of health and business information, public security, crime

21. Worker, Jesse, "The Best and Worst Countries for Environmental Democracy", 2015, available at: <https://www.wri.org/blog/2015/05/best-and-worst-countries-environmental-democracy>, last seen 27 April 2023.

22. Banisar, David, *Freedom of Information and Access to Government Records around the World*, Privacy International, 2002, p. 36.

23. *Ibid*., p. 26.

24. *Ibid*., pp. 31- 36.

25. *Ibid*., p. 13.

prevention or detection, tax audit or fees, monitoring immigration. Iran's Law on Dissemination and Free Access to Information for proper implementation, stablishes a supervisory body i.e. Commission for Dissemination and Free Access to Information (Article 18). However, the Note to Article 17 (information on the existence or occurrence of environmental hazards) does not include these exceptions.

In 2014, the executive regulations of this law were approved by the Cabinet. This executive by law, while emphasizing the protection of individuals' privacy, obliges law-abiding institutions to gradually make the relevant laws and regulations available to users within three years from the date of notification. Also in March 2018, the Commission for Dissemination and Free Access to Information, in a resolution entitled *the Procedure for Dissemination and Free Access to Information* obliged non-governmental organizations (NGOs) to provide relevant information to citizens at their request.[26]

Despite all the aforementioned progresses, the following gaps can be seen in Iran's domestic law, the term "environmental information" is not defined, so it is not clear what information can be considered environmental. There is no doubt that the enactment of an independent law on access to *environmental* information can better ensure citizens' right to access environmental information and the need to facilitate the process of accessing information. Besides, the guarantee of lacking access to information or access to incomplete information, corresponding damages has not been specified, and there is no environmental-related governmental body in the Commission for Dissemination and Free Access to Information. In this regard, the Norwegian Environmental Information Act (2003) is noteworthy; the purpose of which is to ensure access to environmental information, facilitate citizen participation in environmental protection and better and easier protection of citizens against environmental damages.

In order to promote citizenship rights, the President of Iran signed the Charter of Civil Rights (CCR) in 2016. According to Article 30, citizens have the right to access *public information* available in public institutions and private institutions providing public services. Furthermore, all institutions and organizations are obliged to continuously publish unclassified information needed by the society. Although environmental protection and sustainable development are among CCR goals, it does not explicitly mention the right to access environmental information in article 30. After all, the Charter of Citizen Rights is not considered as a binding document. Considering the method of formulation and presentation, it can be considered as a program with a moral character for the executive power

26. Procedure for Dissemination and Free Access to Information of (Non-Governmental Organizations), approved by the 15th session of the Commission for Dissemination and Free Access to Information, 02.24.2019, Article 10.

which shows the policies and priorities of this organ. To prove this allegation, the text of the CCR can be used. According to the text, the President Special Assistant is responsible for the implementation and overseeing it and its executive power is limited to the institutions that are a subset of and subordinate to the executive power (not the legislature and the judiciary powers).

Iran's legal system, despite all the mentioned legislative capacities, still suffers from gaps and weak points that show the necessity of passing an independent law on the access of individuals to environmental information.

Furthermore the range of environmental information is very wide and this is an obvious reason for the necessity of establishing an independent law. In fact, Iran's legal system requires a law that, in addition to defining environmental information and determining its content, covers and regulates a wide range of related issues, from natural elements such as air, water, soil, and biodiversity to materials, energy, sound, radiation, policies, laws and reports, economic analysis, human health and safety. It should also specify the authorities that are obliged to publish this information and list its exceptions. A law that defines environmental information can prevent interpretations that may actually be inconsistent with environmental goals.

2. Public Participation in Environmental Decision-making (PPED): the Legal Basis

Citizens' participation in environmental decision-making is often considered as a condition for the democratic legitimacy of decisions, as well as an important opportunity to improve quality and effectiveness of those decisions.[27] The right of participation in decision-making is both a right by nature as well as an essential tool for exercising other rights, such as the right to life, the right to the highest attainable standard of health, the right to adequate housing and others. A turn to participatory procedures is inherent in the quest for democratic legitimacy of decision-making processes and their outcomes.[28] People have the right to be informed and participat in shaping decisions that will affect their world. Since the 1970s and with increasing attention to the environment, governments have become responsible for environmental hazards that threaten citizens. For this purpose, governments realized that it is not enough to only provide legal protection to individuals, but also citizens and other stakeholders should have the opportunity to play an effective and active role in decision-making

27. O'Brien, Mary, *Making Better Environmental Decisions: An Alternative to Risk Assessment*, MIT Press, 2000.

28. Summers, Robert, "Evaluating and Improving Legal Processes: A Plea for Process Values", *Cornell Law school*, vol. 60, No. 1, 1974.

about environmental issues.[29] Public participation in environmental decision-making includes both formal participation processes and mobilization by engaged citizens. Policy-makers should invest resources in the capacity building necessary to facilitate equitable and inclusive participation. The importance of this issue is when we take into account that at the end, the citizens must comply with the laws. The importance of public participation is particularly evident when deciding on environmental projects that have far-reaching consequences and may affect a large number of citizens.[30]

Since the founding of United Nations, public participation in political decision-making has been addressed in numerous regional and international instruments. For instance, Article 21 of the Universal Declaration of Human Rights and Article 25 of the Covenant on Civil and Political Rights are noteworthy. Accordingly, everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

From the 1970s onwards, international instruments began to introduce public participation in environmental decision-making. Albeit the Stockholm Declaration does not explicitly address PPED, but the preamble of this document refers to the general effort of citizens, communities, public and private sectors to protect and improve the environment, which can imply public participation in environmental decision-making. Principle 10 of the Rio Declaration effectively established procedural environmental rights, including public participation. Environmental decision-making faces a series of unique challenges due to the (i) volume and diversity of environmental interests, (ii) the plurality of environmental values involved, (iii) the uncertain nature of environmental knowledge, and (iv) the complex nature of environmental risk. Principle 10 brought awareness to these particular needs and provided broad mechanisms on the way of addressing them. However, its language is significantly general, leaving the details to how these should be implemented to countries all around the world. Thirty years later, we can certainly say that Principle 10 has affected environmental decision-making worldwide. We are facing a growing age of emancipatory environmental politics, and this historic moment comes with the recognition of this fact that environmental issues are best handled with the participation of all concerned citizens. The negotiation of this new political declaration exemplifies the role of broad participation in different levels of environmental governance. Clearly the participation of all citizens is a factor in solving environmental problems. The United Nation World Charter for Nature[31] (1982) also stipulates in article 23 the opportunity of all persons, in

29. C. Gellers, Joshua, Jeffords, Chris, "Toward Environmental Democracy? Procedural Environmental Rights and Environmental Justice", *Global Environmental Politics*, vol. 18, No. 1, 2018, p. 102.

30. Madhuri, Parikh, "Public Participation in Environmental Decision Making in India: a Critique", *Journal of Humanities and Social Science*, vol. 22, issue 6, 2017, pp. 56-57.

31. UN Doc A/Res/37/7

accordance with their national legislation, to participate, individually or with others, in *the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation*. In addition, one of the principles of United Nations Convention to Combat Desertification (1996) is the *participation of populations and local communities*. For this purpose, the Parties should ensure that decisions on the design and implementation of programs to combat desertification and/or mitigate the effects of drought are taken with public participation.[32] In general, the CCD considers virtually impossible to achieve its goals without public participation.

The preamble of the Paris Agreement on Climate Change (2015) affirms the importance of public participation alongside education, training, public awareness, public access to information and cooperation at all levels on the matters addressed in this Agreement. The interesting point is that the attention should be given to the situation of vulnerable groups and communities in the process of public participation. In "The Future We Want", the outcome document of the 2021 United Nations Conference on Sustainable Development (Rio+20 Conference), States recognized that "*opportunities for people to influence their lives and future, participate in decision-making and voice their concerns are fundamental for sustainable development*".[33] Many other multilateral environmental treaties promote public participation in environmental decision-making on issues within their purview, including The Convention on Biological Diversity (Art. 14(1)), The United Nations Framework Convention on Climate Change (Art. 6(a)), and The Aarhus Convention (Arts. 6-8).

2-1. Ensuring the PPED in the Light of Case Law

According to the precedent, participation in environmental issues allows citizens to freely express their views and criticisms against environmental projects to achieve democracy. Environmental project taskmasters can also take advantage of these ideas to improve these projects. Among the cases related to this issue is the case of *Taskin et al. v. Turkey*. The case concerned the granting of permits to operate a gold mine in Ovacık, in the district of Bergama (Izmir). The applicants lived in Bergama and the surrounding villages. The applicants alleged that, as a result of the Ovacık gold mine's development and operations, they had suffered and continued to suffer from the effects of environmental damage; specifically, these included the movement of people and noise pollution caused by the use of machinery and explosives.[34] The applicants alleged that both the national authorities' decision to issue a permit to use a cyanidation operating process in a gold

32. United Nations Convention to Combat Desertification (1996), Article 3.

33. A/CONF.216/16, para. 13.

34. ECtHR, Taşkin and others *v.* Turkey, Application No. 46117/99, 10 November 2004, paras. 11-13.

mine and the related decision-making process had given rise to a violation of their rights guaranteed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The court concluded that Article 8 of the Convention was applicable and that the respondent State had not fulfilled its obligation to secure the applicants' right to respect for their private and family life, in breach of Article 8. There has consequently been a violation of that provision.[35] During the meeting, residents criticized the destruction of trees and the use of explosives and sodium cyanide, and eventually called for a referendum.[36] Apart from the main issue of the recent case, which is related to the right to life and privacy of the residents of the area, it is important to note that the residents were given the opportunity to comment and criticize the proposed project. The court held that *the right to respect for privacy and family life also includes a right for the individuals concerned to appeal to the court's environmental decisions, act or omission where they consider that their interests or comments have not been given sufficient weight in the decision-making process.*

Democracy is realized by expressing opinions in the context of participation in environmental issues. Also, citizens can protect their rights and the environment against industrial projects, and in a way, the provisions of many human rights are based on the participation of citizens. *The case of Tătar v. Romania* has been mentioned to clarify this issue. The plaintiffs claimed that sodium cyanide gas had been released into the air as a result of factory activities at a gold mine, and that government officials had generally taken a passive stance despite repeated protests against the threats to the health of the claimants and the environment.

The European Court of Human Rights pointed out that, authorities had to ensure public access to the conclusions of investigations and studies. It reiterated that *the State had a duty to guarantee the right of members of the public to participate in the decision-making process concerning environmental issues*. It stressed that the failure of the Romanian Government to inform the public, in particular by not making public the 1993 impact assessment on the basis of which the operating license had been granted, had made it impossible for members of the public to challenge the results of that assessment. The ECHtR further noted that this lack of information had continued after the accident of January 2000, despite the probable anxiety of the local people.

The court concluded that *the Romanian authorities had failed in their duty to assess, to a satisfactory degree*, the risks that the company's activity might entail, and to take suitable measures in order to protect the rights of those concerned to respect for their private lives and homes, within the meaning of Article 8, and more generally their right to enjoy a healthy and

35. *Ibid*., para. 120.

36. *Ibid*., para. 20.

protected environment.[37] According to ECtHR precedent, it can be said that the court has construed the rights to respect for privacy and family life as providing for a right of members of the public to participate in decision-making prosses is also a part of the right to private and family life.

2-2. Iran's Legal System

Generally, in domestic legal systems effective public participation in environmental issues is possible when people are first educated and then have the opportunity to interact with the government; it is in this status that people have the chance to make decisions.[38] Of course, the level of public participation in environmental issues depends on various components, including providing the necessary training, encouraging people to increase participation, allocating sufficient funds, increasing transparency and reducing corruption, strengthening the role of NGO's and access to information.[39] As mentioned, the role of education is prominent because providing appropriate education with the approach of creating a culture of nature protection, friendship with it and the use of clean technologies increases awareness and participation in environmental issues. The right to environmental education is a right that must be available to everyone at all levels, including formal and informal education.[40] Concerning this, one study conducted in 2012 shows that, the main reason for low public participation in environmental decision-making in Kenya is the lack of necessary training and the high rate of illiteracy. In South Africa, some regions have scarce public participation in environmental decision-making and the reason is the long distance from the center. These faraway areas do not have access to the Internet.[41]

In Iran, there are several ways to increase public participation in environmental decision-making. On one hand, The Environmental Protection Organization can use the capacities of broadcasting and cyberspace to provide public education on a wide scale; on the other, by including environment courses in schools and universities, we can teach the environment subjects officially.[42] In this regard, the Environmental Protection Organization has created "Department of Education and Planning"

37. ECtHR, Environment and the European Convention on Human Rights, Fact Sheet, 2019, p. 13, avalable at: <https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf>, last seen 27 April 2023.

38. Njagi Ngonge, David, *Evaluation of Public Participation in Environmental Impact Assessment of the Southern Bypass Road in Nairobi, Kenya*, A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Arts in Environmental Law of the University of Nairobi, 2015, p. 32.

39. *Ibid*., pp. 27-29.

40. Ghadir, Mohsen, "Right to Healthy Environment from the Perspective of International Human and Islamic Law", *Comparative Studies on Islamic and Western Law,* vol. 2, issue 2, 2015, p. 108.

41. Njagi Ngonge, *op.cit*., p. 30.

42. Lata, Manju, Gupta, Ann, "Role of Social Media in Environmental Democracy", in: Kumar, Vikas, Malhotra, Geetika, *Examining the Roles of IT and Social Media in Democratic Development and Social Change*, Information Science Reference, 2020, p. 282.

which consist of three independent offices amongst Office of Environmental Education.[43] The preparation of a training program in the field of environment, the arrangement of a "National Environmental Curriculum", providing educational resources for different groups, preparing educational content for training courses are examples of the main objectives of this office. Achieving these goals requires measures such as the establishment of education departments in environmental offices of different provinces, organizing training courses for environmentalists and employees of governmental and non-governmental organizations, holding training workshops for judges, and environmental protection workshops for teachers. Founding educational programs for villagers is aimed at improving and raising the environmental information of these peoples as well as the level of general culture of environmental protection. Non-governmental organizations (NGOs) are other important instruments for attracting public participation in environmental decision-making.[44] Although the decisions of NGOs are not binding, they often have relatively effective as well as organized tools at the national and international levels which can use them to influence the environmental decision-making process. They can act as an expert in the decision-making process by gathering and analyzing information.[45] As a successful and leading example in this regard, *the Irish Citizens' Assembly*, an Irish non-governmental organization that was created in July 2016 can be mentioned.[46] The Citizens' Assembly is an exercise in deliberative democracy, placing the citizen at the heart of important legal and policy issues facing Irish society. Their conclusions formed the basis of a number of reports and recommendations that were submitted to the Houses of the Oireachtas (the Irish Houses of Parliament) for further debate by their elected representatives. For example, in fall 2017, Ireland's Citizen Assembly took up the challenge of addressing "How the State can make Ireland a leader in tackling climate change".[47]

The activity of environmental non-governmental organizations in Iran dates back to before the Islamic Revolution. According to statistics, until 1976, 22 NGOs were active throughout Iran.[48] The number of these

43. Rezaei Nadeali, Mahbobeh, "Executive Capacities of Iranian Public Law to Eealize the Principle of Environmental Participation", *Environmental Science*, vol. 11, No. 3, 2013, pp. 130.

44. Siekiera, Joanna, "Implementation of Legal Mechanisms of Environmental Protection by the South Pacific Regional Organizations", *Revista de Direito Internacional, Brasília,* vol. 16, No. 2, 2019, p. 122.

45. Ramezani Ghavam Abadi, Mohamad Hossein, "Examining the Content of the Principle of Participation in International Environmental Law", *Public Law*, vol. 12, Issue 29, 2010, p. 103.

46. https://oecd-opsi.org/innovations/the-irish-citizens-assembly/, last seen 27 April 2023.

47. Berry, H., Koski, Laura Jessica, Verkuijl, Cleo, Strambo, Claudia and Piggot, Georgia, *Making Space: How Public Participation Shapes Environmental Decision-Making,* Stockholm Environment Institute, 2019, p. 3.

48. Golmohammadi, Sara, Yousefi, Arash. "The Role and Participation of Non-Governmental Organizations in the Development of Environmental Law", *Internal Quarterly Journal of Mountain Environment*, vol. 14, Spring and Summer 2009, p. 9.

organizations has increased after the Islamic revolution.[49] Currently 900 environmental NGOs have been registered, although not all of them are active.[50] The Impact of the Iran Third and Fourth "Economic, Social and Cultural Development Programs" is one of the main reasons for quantitative growth of non-governmental organizations in Iran. Based on these programs, the use of NGOs' power and potency to solve many social problems has been emphasized. In order to strengthen and support non-governmental organizations that support the environment and natural resources, in Article 104 of the Third Development Program, the financial assistance of natural and legal persons to these organizations has been considered. According to Article 140 of the Fourth Development Program, the government is allowed to develop the private and cooperative sector and attract participation of Non-governmental Organizations and other parts of civil society in the administration of the country's affairs and increasing efficiency including non-governmental institutions necessary for development of entrepreneurship, …… and protection of environment and improvement of environmental standards and people's health.

However, the number of NGOs is very rare compared to other countries. For example, Turkey with nearly the same population as Iran has 9700 environmental NGOs. In addition, political, legal, administrative, economic, social and domestic problems and obstacles have prevented non-governmental organizations from taking initiative and developing their activities.[51] Many challenges are facing the emergence and activities of these organizations and they have also had little ability to achieve public participation in environmental decision-making. The lack of an independent law to cover non-governmental organizations' issues is one of the major gaps in the Iranian legal system. Despite the efforts made to pass such a law, it was abandoned due to substantial and formal defects. In addition, economic and social problems have reduced the effectiveness of environmental NGOs in Iran. The bureaucratic process of creating such institutions along with the inexperience as well as callowness of their members, traditional management, erroneous public belief and prospect of their measures, together with the poor function of most of these institutions besides the low level of social participation in the society are among the most important social factors affecting the successfulness of environmental NGOs in Iran. At the same time, poor or even lack of access to information also inadequacy of an efficient database is the most important political

49. Bahreini, Hossein, Amini, Farhad, "The Role of Environmental Non-Governmental Organizations in Citizens Participation for Environmental Conservation in Iran", *Journal of Environmental Studies*, vol. 26, Issue 26, 2000, pp. 45-46.

50. Until 1996, 22 NGOs were active throughout Iran. (Gol Mohammadi, 2009: 9). By 2014, the number reached to 764 NGOs. Although at times the number of environmental NGOs decreased, but overall the statistics show an increasing trend. (Bahreini, Amini, *op.cit.*, pp. 45-46)

51. Bahreini, *op.cit*.

problem of non-governmental organizations.

In order to overcome the above deficiencies of environmental non-governmental organizations in Iran, it is necessary to create appropriate, legal, social and economic platforms in order to benefit from the knowledge and capacity of such organizations optimally.

3. The Right of Access to Justice in Environmental Matters: Legal Basis

The puzzle of environmental democracy is completed with the right of access to justice. Access to justice in environmental matters is a set of guarantees that allows citizens including NGOs to challenge the legality of decisions, acts or omissions of public authorities of the Member States before a national judge. This right is significant for three reasons: firstly, it increases the protection of environmental interests, secondly, it helps to implement the existing environmental laws more effectively, and thirdly, by challenging the government's environmental decisions in the courts, in addition to acquiring public acceptance, their legitimacy will increase.[52] The degree of legitimacy of laws and requirements depends on the judicial procedure related to them, the degree of public participation in their implementation, and the degree of their application and enforcement.[53]

Basically, access to justice is a fundamental right guaranteed by international human rights law. The Universal Declaration of Human Rights (Article 8) as well as the International Covenant on Civil and Political Rights (Article 14) and the ECHR (Article 6) considered the access to justice as the right of every human being. With regard to the right of access to justice in environmental matters, principle 10 of Rio Declaration refers to *effective access to judicial and administrative proceedings, including redress and remedy*. The United Nations Conference on Sustainable Development (Rio + 20) has re-confirmed Principle 10, in its outcome document, "The Future We Want", also underlining its importance at the regional level. The Aarhus Convention (Article 9 (3)) ratified by the EU and its Member States with the goal of improving environmental democracy is remarkable. The Convention distinguishes between three categories of acts, decisions and omissions for which access to a review procedure must be ensured by the Convention parties. In effect, these three categories cover all kinds of acts and omissions relating environmental laws. First, access to a review procedure before a court or court-like body must be ensured for situations where a member of the public considers that his or her request for environmental information has been ignored or wrongfully handled. Second, access to a review procedure

52. Hjalmarsson, Karin, *Access to Justice in Environmental Matters in The EU Member States, A Study of the Case Law from the European Court of Justice on Access to National Courts for Non---Governmental Organizations and the Costs of Environmental Proceedings*, JURM02 Graduate Thesis, 2014, p. 8, available at: <https://lup.lub.lu.se/studentpapers/search/publication/4451220>, last seen 27 April 2023.

53. Ebbesson, Jonas, *Access to Justice in Environmental Matters in the EU*, Kluwer, The Hague, 2002, p. 7.

must be provided for members of the public concerned to challenge the substantive and procedural legality of any decision, act or omission relating to permits and permit procedures for specific activities. The Aarhus Convention provides criteria for determining the scope of "the public concerned". Third, each party shall ensure members'of the public access to administrative or judicial procedures to challenge any other act or omission, by private persons and public authorities, which contravene provisions of national law relating to the environment. In different ways, the Convention limits the discretion for the parties in defining the scope of persons with access to review procedures. Moreover, for all these situations, the parties shall ensure that the procedures provide "adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive". The Aarhus Convention Compliance Committee (ACCC) has also reviewed compliance with the provisions on access to justice, e.g. for Kazakhstan, Turkmenistan, Armenia, Belgium, Denmark, and Lithuania.

Article 11 of the 2015 Draft of the International Covenant on the Human Right to the Environment refers to this matter under the title of *Right to Recourse*, accordingly everyone has the right to effective recourse before *competent judicial or any impartial and independent administrative bodies* to challenge acts or omissions of public or private persons who violate national or international environmental law.

Statistics show that the tendency to create environmental courts in domestic legal systems is increasing. The UNEP addresses this issue in "Environmental Courts and Tribunals: A Guide for Policymakers" report. According to this report, over 1,200 environmental courts and tribunals now operating worldwide at the national and state/provincial level.[54] Environmental Courts and Tribunals (ECTs) help countries meet the objectives of the United Nations 2030 Agenda for Sustainable Development and the Paris Agreement on Climate Change.[55] They provide access to environmental justice and remedies, strengthen judicial systems to ensure accountability, and spur legal innovation and reforms. ECTs may take different forms and models, with no single best model or "one-size-fits-all" design. What is best for each country depends on what fits the country's unique ecological, historical, legal, judicial, religious, economic, cultural and political conditions. The main ECTs models available, which can be environmental courts (i.e., instituted in the judicial branch of government) and environmental tribunals (i.e., instituted in either the executive or

54. Smith, Don, "Environmental Courts and Tribunals: Changing Environmental and Natural Resources Law around the Globe", *Journal of Energy & Natural Resources Law*, vol. 36, No. 2, 2018, p. 138.

55. Pring, George; Pring, Catherine, "United Nations Environment Program", *Environmental Courts & Tribunals: A Guide for Policy Makers*, Published by UN Environment, 2016, pp. IV-V.

administrative branch).[56] These ECTs may have different degrees of independence. They may be configured to include legally trained judges possessing a diverse range of environmental law expertise, and even non-law actors (e.g. policymakers and technical experts). Aside from ECTs, other institutions such as ombudsman offices, prosecutors and human rights commissions also contribute to achieve environmental justice.[57]

Accordingly, it seems that the first category can be called environmental judicial authorities and the second group can be named environmental quasi-judicial institutions, we will examine both types below.

3-1. Environmental Courts

As mentioned, every environmental court and environmental tribunal reflects its national character, culture and legal system. This is understandable because what is best for each country is an ECT that fits that country's unique ecological, historical, legal, judicial, religious, economic, cultural and political environment. According to the studies conducted, national environmental courts can be classified into 5 principal distinct models.

The first category includes States that are equipped with an operationally independent environmental court (OIEC).[58] Courts in this model are separate, fully or largely independent. OIECs are described as representing the peak of environmental courts due to their wider jurisdiction and interpolation of the greatest number of beneficent practices. Three environmental courts were described in the UNEP 2016 ECT Guide Report as examples that fall within this category: the LECNSW, Australia; New Zealand's Environment Court; and the Court of Environment and Agrarian Issues of Amazonas, Brazil. As of 2021, all three environmental courts remain operational.[59]

The second category includes Decisional Independent Environmental Courts (DIEC). These are within a general court and under the supervision of the general courts in terms of budget; staff and management but have substantial independent to make their own rules, procedures and decisions. The Planning and Environment Court in Queensland, Australia, and the Environmental Division of the Vermont Superior Court in the United States of America are good examples of this model. Similarly in Europe, the

56. Yanti Sulistiawati, Linda, Bouquelle, Farah J., *et al*., *Environmental Courts and Tribunals; A Guide for Policy-Makers*, UNEP, 2021, p. II.

57. Ombudsman is a Swedish term that means spokesperson, representative, etc. and an independent and impartial body that often deals with public complaints against injustice and mismanagement of organizations. Ombudsman is not a judge or court and therefore does not have the power to issue verdicts or change administrative decisions. He seeks to find solutions through the process of research and compromise. Seifzadeh, Ali, "What is Ombudsman?", *Center for Administrative Health and Anti-Corruption Studies and Research*, vol. 7, No. 76, 2015, pp. 8-9.

58. UNEP 2021, *op.cit*., p. 44.

59. *Ibid*.

dominant ECT model is also one of specialized chambers within the general courts. Such specialization can be seen including in Belgium, Bulgaria, Finland, Greece and Italy. France, taking a different approach, created 36 specialized environmental courts within the general courts without creating any new structure.[60] Ghana, which has 16 environmental courts, which form a part of the Land and Environmental Divisions of the High Court and Pakistan, which has 250 green benches, one for each court (including the state-level High Courts and its Supreme Court).

The third category is a court with a mix of law-trained and science or technically trained judges. In this model, two types of judges share the decision-making. This ECT model can be found in both environmental courts and environmental tribunals and both are operationally independent and decisional independent models. The difference between this model and the previous two models is the cooperation of judges and scientific and technical experts. Judges with different complementary expertise hear the cases as co-judges. Among the merits of this, combined ECTs can point out delivering more experts, fair and balanced judgments, which can directly contribute to sustainable development and environmental protection. The Land and Environment Court in Sweden is an example of a decisional independent environmental court with a multidisciplinary judicial approach. Environmental courts in Chile are another good example of multidisciplinary decision-making. The authorizing law in Chile specifies that each of the environmental courts will have three judges – two of them must have a law degree and have excelled in professional or academic activities in the field of administrative or environmental law. The third judge must hold a Bachelor of Science with a specialization in environmental matters.[61]

The fourth category consists of General Court Judges Assigned Environmental Cases. This model assigned environmental cases in addition to their regular docket, sometimes without necessary interest, expertise or training. It should be noted that the effectiveness of such a model is highly dependent on judicial expertise in environmental law. For example, the judicial system of Hawaii in the United States, allocates certain days of each month to environmental cases, without the reviewing judges necessarily experts in the field. This means that the mentioned branches, in addition to dealing with legal, criminal, etc. cases, also deal with all environmental cases. The last category, which some do not consider an environmental court in the true sense is the case that some elected judges of the General Court are periodically trained on the environmental issues. Indonesia and Argentina have chosen this method. The Indonesian Supreme Court finds that the

60. European Union Forum of Judges for the Environment and Milieu Consulting, 2019.

61. Bauer, C., Blumm, M. C., Delgado, V., Guiloff, M., Hervé, D., Jiménez, G., Benson, R., McKay, T., Marshall, P., "The Protection of Nature and a New Constitution for Chile: Lessons from the Public Trust Doctrine" *SSRN Electron. J.*, 2021.

reason for choosing this method is to avoid political processes in which the legislature and the executive can play a role. Simply put, the reason for choosing this method is to maintain the independence of the judiciary. The Supreme Court of Argentina, in the early stages of the establishment of the Environmental Court, in 2014 established an environmental office in the Supreme Court of this country. Although the office does not issue a verdict to be considered as an environmental court, but one of its activities is to provide environmental training to the staff of the judiciary.[62]

3-2. Quasi-judicial institutions

The study of domestic legal systems shows the diversity of proceedings in quasi-judicial environmental institutions, which can be classified into three categories according to the status quo.

The first category includes quasi-judicial institutions that operate separately from the public institutions of the country, so that they have full authority in determining the rules governing the proceedings. An example is the Kenya - National Environment Tribunal. Its task is to investigate objections to the decisions of the National Environmental Agency of Kenya. The task of the Kenya National Environment Agency is to issue permits for road construction, factory establishment, tourism facilities, and so on. These activities require a permit to assess the environmental effects, and any objection to the permit can be reviewed by the National Environmental Tribunal of Kenya, and the time and cost of hearing in this court is much less than other courts. The Environmental Disputes Coordination Commission of Japan also falls into this category. The commission is an independent body that does not have the authority to review or overturn government decisions and only provides advisory opinions. However, due to its fair, fast and cheap process, it reviews many cases annually.[63]

The second category is the institutions that are in the body and structure of government organizations and operate under their supervision in terms of budget and administrative activities. The India - National Green Tribunal falls into this category. As part of the Indian Ministry of Justice, this court is completely independent from the Indian Ministry of Environment. The tribunal, like the judiciary, has broad powers such as summoning witnesses, interim injunctions, confiscating property, etc., and the Supreme Court of India is the authority to review its decisions, and so far in very important environmental cases such as the pollution of the Ganges, air pollution in New Delhi etc., have been addressed.[64] The third category of quasi-judicial

62. *Ibid*., pp. 22-32.

63. *Ibid*., pp. 32-34.

64. Rengarajan, Sridhar, Palaniyappan, Dhivya, Ramachandran, Purvaja, Ramachandran, Ramesh, "National Green Tribunal of India: An Observation from Environmental Judgments", *Environmental Science and Pollution Research*, vol. 25, 2018, pp. 11313-11318, 11325.

institutions are institutions that are financially, administratively and politically controlled by a governmental institution. In other words, these types of institutions are not structurally independent but have complete independence in their decision-making. For this reason, some of them have been able to establish good practices by gaining public trust. An example of this is the Environmental Appeals Board of the US Environmental Protection Agency, which is the appellate authority for the decisions of the Office of Administrative Law Judges of the US Environmental Protection Agency. Although the Environmental Appeals Board is part of the structure of the US Environmental Protection Agency, its practice demonstrates independence in decision-making, and decisions made for the organization are final and can only be challenged in federal court in some cases.

3-3. Case Law and Extensive Interpretation

The European Court of Justice has upheld paragraph 3 to Article 9 of the Aarhus Convention on access to court in a number of cases, and has provided the widest possible access to the courts for citizens by providing extensive interpretations of the Convention. One of the cases that has been well debated by jurisprudence is the phrase "the criteria… laid down in its national law" in paragraph 3 to Article 9 of the Aarhus Convention. This can place restrictions on environmental litigation. In other words, by relying on this condition, governments can legislate to determine the conditions for filing environmental lawsuits. In this regard, the dispute between the NGO Djurgården-Lilla Värtans Miljöförening (DLVM) against the Stockholm Municipal Land Committee[65] in the Court of Justice of the European Union is noteworthy.

The Swedish Government shall make regulation in accordance with paragraph 3 og Article 9 of the Convention and accordingly, it allows only NGOs with more than 2,000 members to make environmental claims. The NGO DLVM has filed an environmental lawsuit, but the District and Appellate court have rejected the lawsuit based on the above regulation. This time, the organization files a lawsuit with the Swedish Supreme Court, which will ask the European Court of Justice whether the law is in line with the Aarhus Convention. In response to this question, the Court explicitly states that the domestic laws of States should guarantee maximum access to the courts and should not violate Union Law on the access of individuals to the courts in environmental matters. Referring to the small number of non-governmental organizations, more than 2,000 people in Sweden, the Court states that local law deprives local and small non-governmental organizations from accessing to the courts, and this is in violation with the

65. Djurgården-Lilla Värtans Miljöskyddsförening *v.* Stockholms Kommun Genom dess Marknämnd

Aarhus Convention.[66]

In another case, the European Court of Justice challenged the German Rules of Procedure, arguing that in the light of the objectives of the Aarhus Convention, environmental NGOs should have a broad right to advocate for the effective enforcement of environmental law.[67] In the case known as the Slovak Brown Bears (2012), the Court also described the Aarhus Convention as an integral part of Union Law[68] and states that as far as the species protected by the European Union are concerned, the courts of the Member States are obliged to interpret their national laws in such a way as to comply with the objectives set out in paragraph 3 of Article 9 of the Aarhus Convention to ensure effective judicial protection within the framework of EU environmental law.[69]

3-4. The Lacuna of an Environmental Court in Iran's Legal System

Principle 50 of the Iranian Constitution expresses the stall of the environment in the legal system of this country. Six years after the Stockholm Declaration, this principle was included in the Iranian constitution. It is considered a turning point in the formation of environmental protection principles in Iran's legal system.[70]

Although the constitution of Iran does not allude to the establishment of an environmental court, some of laws and regulations foresee the possibility of suing and claiming environmental damages. for example, according to article 10 of the Law on Organizations and Procedures of the Court of Administrative Justice, the jurisdiction and limits of the court's powers include complaints and grievances and objections of natural or legal persons from decisions and actions of governmental units, including ministries, organizations, institutions, state companies, municipalities, social security organization, revolutionary institutions and their affiliated institutions.

According to this article, if the decisions and actions of governmental organizations and institutions lead to environmental degradation, lawsuits can be filed against them.[71]

The 2014 Code of Criminal Procedure (Article 66) is another regulation that is provided for bringing environmental suits in Iran's legislative system. In accordance with this regulation, non-governmental organizations whose

66. CJEU, Case C-263/08 Djurgården-Lilla Värtans Miljöskyddsförening *v.* Stockholms kommun genom dess marknämnd, ECR 1-9967, 2009, para. 50.

67. CJEU, Case C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV *v.* Bezirksregierung Arnsberg Trianel Kohlekraftwerk Lünen, I-03673, 2011, paras. 41-48,.

68. *Ibid*., para. 30.

69. *Ibid*., para. 50.

70. Ramezani Ghavam Abadi, Mohamad Hossein, "The Preservation of the Environment in Iran's Constitution", *Judicial Law Views Quarterly*, vol. 18, Issue 63, 2014, p. 94.

71. Hemmati, Mojtaba, "The Role of the Judiciary in Preventing and Compensating for Environmental Damage in the Iranian Legal System", *Judicial Law Views Quarterly*, vol. 23, Issue 81, 2018, pp. 242-243.

statutes are in the field of protection of the environment and natural resources, can declare crimes committed in the above fields and participate in all stages of proceedings.

The inclusion of NGOs in the Code of Criminal Procedure is one of the manifestations of participatory criminal policy, which supports the victim and has a significant role in the realization of citizenship rights and the prevention of secondary victimization.[72]

Non-governmental organizations, which today are referred to as "private prosecutors or quasi-prosecutors", can defend the rights of individuals and society in their interactions with prosecutors, especially in areas where access to prosecutors and prosecution are difficult.[73] It can be said that the locus of non-governmental organizations before Article 66 of the Code of Criminal Procedure were active and after that changed to passive. In other words, the role of non-governmental organizations in Iran criminal policy was purely preventive, but today NGOs have several roles in the criminal process, including attending as a complainant or declarant of crime, court assistant, and victim's attorney in the courts.[74]

However, this provision contains weaknesses that result in non-acceptance by environmental NGOs. An objection to Article 66 is that the conditions of non-governmental organizations that can report environmental crimes have not been specified. Obviously, this defect provides the ground for different tastes and opinions. Also, according to Article 66 (Note I), the action of environmental NGOs to declare a crime, depends on the consent of specific victims. Otherwise, they will be deprived from the rights mentioned in Article 66.[75]

As well, in accordance with the Law on Permanent Decrees of the Development Programs (Paragraph III), NGOs can use the right mentioned in (Article 66) above, if they take permission from the relevant legal authorities at the same time. If an NGO declares a crime three times consecutively will definitively be rejected by competent courts and they will be deprived from using the mentioned right in (Article 66) for one year.[76]

Given the arguments expressed, despite the potential of Article 66, this article has not been welcomed by non-governmental organizations practically and as a result, no procedure has been formed in this regard so

72. Varvaee, Akbar, Mohammadi, Hemmat, Norian, Ayub, "Participation of Non-Governmental Organizations in the Criminal Process", *Quarterly Journal of Private and Criminal Law Research*, vol. 12, Issue 2, 2016, pp. 30-32.

73. Chakani, Mostafa, Hasani, Mohammad Hasan, "Strategies of NGO Participation in the Criminal Procedure (A Critical Review of Article (66) of the Iranian Criminal Procedure Code)", *Majilis & Rahbord*, vol. 25, Issue 94, 2018, p. 346,.

74. *Ibid*., p. 349.

75. Khaleghi, Ali, *Brief Commentaries on: Code of Criminal Procedure*, The SD Institute of Law, Research and Study, Tehran, Publish 33, 2019, p. 102.

76. *Ibid*., p. 358.

far. Therefore, despite all efforts, which have been made in Iran's regulations, the lack of a centralized specialized forum equipped with experts in environmental subjects is visible. Because determining the victims, analyzing the concept of damage, environment, etc. are complex and interconnected tasks that are better to be left to special or specialized courts and bodies with expert judges.

The point to consider is that the establishment of special or specialized courts in Iran is not a new issue. In Iran's legal system, for instance the childrens' court is a special court which acts as a branch of the general court while the family court is an example of specialized courts.[77] Iranian legislator should take a progressive step to establish a special or specialized environmental court in order to achieve to environmental democracy and fulfillment the goals of sustainable development. Considering the sensitivity of environmental matters in Iran and the fragile conditions that the environment is dealing with in terms of soil erosion, pollution, endangered fauna and flora species, etc., the establishment of such tribunals is doubly necessary. In the meantime, considering courts and tribunals to have the authority to issue binding decisions, it seems that the establishment of special or specialized tribunals is more appropriate than quasi-judicial bodies. From our point of view, firstly the proposed tribunal should have wide jurisdiction (both criminal and legal) and in addition to issue compensation orders, punish criminals by issuing criminal orders. Secondly, the composition of the court should consist of judges with scientific and technical experts. Given that the judiciary has the right to issue vote and have the necessary facilities to implement it, it seems that the establishment of special or specialized courts is more appropriate than quasi-judicial institutions. The proposed court must first have broad jurisdiction (criminal and legal) and, in addition to issuance of compensation sentences, be able to punish offenders by issuing criminal verdicts. Second, as was mentioned, the composition of the court should consist of educated (and, of course, trained in environmental law) judges and scientific and technical experts in this field. In the case of such experts, two assumptions are conceivable: they can either submit their opinions in an advisory manner or have the right to vote as experts and members of the court, but since the issuance of the judgment is in the specialty of judges, it is better for judges to issue a final decision. To clarify the dimensions of the case under review, it is necessary to provide an advisory opinion by experts with a time frame. Thirdly, in order to attract public interest and on the other hand, due to the environmental damage requirements, the trial process in this court should be as fast as possible and

77. It is important to note that in Iran's legal system, a special court is different from a specialized court. Specialized court is a type of court with limited subject-matter jurisdiction concerning particular field of law, compared to 'ordinary court' with general subject-matter jurisdiction. This concept of court usually includes administrative court or family court. But a special court is a branch of the general court that deals with certain types of subject-matters, such as juvenile court.

the court costs should be reduced as much as possible. Considering the above points, among the mentioned examples, it seems that the establishment of a special environmental court in the Iranian legal system is the most appropriate option.

Conclusion

Today, the issue of sustainable development is reflected in international environmental law documents and domestic laws of many countries. Along with economic and social elements, environmental sustainability is one of the elements of sustainable development. In the meantime, one of the tools to ensure the sustainability of the environment and consequently sustainable development is the realization of environmental democracy. According to international instruments, in particular the Aarhus Convention, three fundamental rights: access to information, access to public participation and access to justice, as key pillars of sound environmental governance. The "access rights" have emerged to be very important in promoting transparent, inclusive and accountable environmental governance. "Access to information" empowers citizens and incentivizes them to participate in decision and policy-making processes in an informed manner. "Public participation" is increasingly becoming a vital part of addressing environmental problems and achieving sustainable development by encouraging governments to adopt policies and enact laws that take community needs into account. "Access to justice" provides the foundation of the access rights, as it facilitates the public's ability to enforce their right to participate, to be informed, and to hold regulators and polluters accountable for environmental harms. Accordingly, governments have adopted regulations in their domestic laws to recognize these pillars and also use different methods to guarantee them, these methods include a variety of judicial to quasi-judicial institutions. Nevertheless, in Iran's legal system and despite of passing various laws such as the law on publication and free access to information, the Charter of Citizen Rights and etc, there are serious legal and executive gaps on the way to realize environmental democracy pillars. As a result sustainable development faces serious challenges.

This noticeable lack and ignoring the importance of environmental democracy occur in a situation where the sensitivity of environmental issues in Iran is an undeniable crisis such as soil erosion, water bankruptcy, air pollution, endangered species, climate change effects and many others. Considering the importance of paying attention to environmental issues, changing the approach of the Iranian government is necessary. According to what was mentioned, one of the measures that must be taken to ensure the three pillars of environmental democracy firstly is the approval of the *law on access to environmental information* in which the various dimensions of environmental information, the authorities required to publish the

information and the exceptions are clearly defined.secondly is to *strengthen and consolidate the role of non-governmental organizations* in order to increase people's participation in environmental issues, and thirdly is to *create judicial or quasi-judicial institutions* to deal with environmental disputes. As shown by the preceding models presented in this article, the most suitable model for Iran is the foundation of a special environmental court. This is unprecedented in Iran's legal system and in other areas such as the dedicated family court.

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