

Oleksandr Kopylenko

ORCID: <https://orcid.org/0009-0002-8819-3048>

Doctor of Law, Professor of Legal Sciences, Ukrainian People's Deputy in the Parliament, Deputy Chairman of the Committee of the Verkhovna Rada of Ukraine on Foreign Policy and Inter-parliamentary Cooperation, Head of the National Commission on Radiation Protection of the Population of Ukraine

Iryna Sopilko

ORCID: <https://orcid.org/0000-0002-9594-9280>

Doctor of Law, Professor of Legal Sciences

Kseniia Tokarieva

ORCID: <https://orcid.org/0000-0001-5705-5211>

Doctor of Law, Associate Professor of Constitutional and Administrative Law, Faculty of Law National Aviation University (Kyiv, Ukraine)

EXPERIENCE OF FOREIGN COUNTRIES IN THE IMPLEMENTATION OF THE RIGHT TO ACCESS TO ENVIRONMENTAL INFORMATION

Abstract

Purpose: to analyze the experience of foreign countries in implementing the human right to access to environmental information, their legislation, practice, and peculiarities of implementation of this right in different countries of the world. Also, to explore the judicial practice and the functioning of the institution of the Information Commissioner.

The methodological basis of the study comprises general scientific, philosophical, ideological, method of analysis and special methods.

Results: studying and summarizing the experience of foreign countries in the field of implementing the human right to access to environmental information is extremely important for the modern world. Overall,

Sweden, Finland, Norway, Estonia, Denmark, Iceland, and the United Kingdom have progressive and effective legislation in this field. However, the authors conclude that the experience of Sweden is the most optimal.

Discussion: modern social needs, the development of intellectual technologies and artificial intelligence, information wars have raised questions about the need for constant dynamic improvement of the mechanism for implementing the human right to access to environmental information, including the use of the latest developments, the Internet network, modern information protection systems, etc. On the one hand, modern technologies simplify and speed up access to environmental information, but on the other hand, a range of opportunities for technological manipulations, concealment of information, and so on, arise. Therefore, there is a problem with the absence of a proper mechanism for realizing human rights in the sphere of access to environmental information. There is a need to study the experience of foreign countries in this field. These processes are confirmed by the Law of Ukraine "On Access to Public Information" of January 13, 2011, No. 2939-VI, the Resolution of the Plenum of the Supreme Administrative Court of Ukraine No. 10 of September 29, 2016, "On the practice of application by administrative courts of legislation on access to public information," and other regulatory acts.

Keywords: *environmental information, information, access to information, ensuring the right to information, national security, information rights.*

Introduction

The problem of access to environmental information is at the center of attention of Ukrainian society and the state. Clearly, it is through full and timely access to environmental information that the principles of sustainable development, rational use of natural resources and preservation of nature for future generations, as well as effective provision and realization of other human rights and freedoms, both in the world and in Ukraine, are possible. Modern social needs, development of intellectual technologies and artificial intelligence, information wars have led to the question of the need for constant dynamic improvement of the mechanism for implementing the right of access to environmental information,

including the use of the latest developments, the Internet network, modern information protection systems, and studying and generalizing the experience of foreign countries in the implementation of the right of access to environmental information is extremely important for the present.

Materials and Methods

First and foremost, we will examine the legal framework and conceptual apparatus of environmental information law in different countries around the world. In general, the most progressive countries in this area are the Nordic countries, namely Sweden, Norway, and Finland, which have ratified the Aarhus Convention. It is no coincidence that the first law on free access to information was adopted in Sweden in 1776. A century later, laws on free access to information began to be adopted in other countries. Today, about 70 countries around the world have already adopted legislation on free access to information.

Results and Discussion

In Finland and Sweden, access to environmental information is covered by general rules on access to information. According to the principle of public access to information set out in the Constitution of Sweden, citizens and representatives of the media have the right to inspect the activities of government and local government authorities and access information about them. Typically, when discussing the principle of public access to information, it primarily relates to rules on the public nature of official documents, set out in Chapter 2 of the “Freedom of the Press Act”, which is one of Sweden’s four fundamental laws. The provisions of another important law, the “Freedom of the Press Act”, are complemented by the “Environmental Information Act”, which is maintained by some private sector entities. This law defines environmental information as information about the environment and factors that can affect the environment or health, safety, and living conditions, cultural conditions, and activities that can affect the environment, or factors that can affect the environment. Overall, Sweden is a leading country in the world that progressively implements the principles of access to public information. In Finland, the law on access to information

covers the performance of state tasks by entities outside the responsibility of state sector authorities. Legislation on public access to information guarantees that the protection of commercial interests cannot outweigh the public interest in environmental information. The law does not contain specific rights of public access to environmental information. A thorough review of Norway's national legislation was conducted prior to the adoption of the Norwegian Environmental Information Act in 2003, which concluded that most of the provisions of the Aarhus Convention relating to access to information were already applied in the Freedom of Information Act. However, some elements of these provisions were found to be insufficient, leading to changes in Norwegian legislation to ensure full compatibility with the Aarhus Convention. Therefore, the Norwegian Environmental Information Act (miljøinformasjonslov) meets the requirements of the Aarhus Convention and the EU Directive, and goes further by providing the right to information from private companies. On January 1, 2009, a new Freedom of Information Act came into force, which provides even simpler and wider access to public information than the previous act. Therefore, the Norwegian Environmental Information Act contains specific provisions on access to environmental information, but is supplemented by the Freedom of Information Act regarding exceptions and processing of information requests. Danish and Icelandic laws on environmental information use the same criteria as the Aarhus Convention and Directives. Denmark and Iceland have special laws on environmental information. Danish legislation requires a general assessment of each case, with greater attention given to public access to information and limited exceptions, except for information related to environmental crimes. The legislation of Iceland does not require a specific evaluation of each individual case with greater attention to the consideration of access to the public and limited exceptions (Jørgensen, 2014). Legislation in other northern countries does not fully meet international requirements for access to environmental information. As of 2017, the United Kingdom regulates access to environmental information through EU legislation. On January 28, 2003, Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive

90/313/EEC, which established measures for the exercise of the right of the public to access environmental information, was adopted. In Scotland, there are separate agreements provided by the “Environmental Information Regulations” (The Environmental Information..., 2004), aimed at improving the adoption of environmental policy by improving data exchange, availability, and use. The Freedom of Information Act 2000, which came into force on January 1, 2005, and the Scottish Laws of 2002 made significant changes in access to information held by public bodies. In the countries of the former USSR, a similar situation has arisen with the legal implementation of access to environmental information. The acquisition of destructive union policies has had a negative impact on the legal provision of access to environmental information. Only during the years of independence have differences appeared in the legal provision and realization of the right of individuals to environmental information. Another situation has arisen in ensuring the right to environmental information in the Republic of Belarus. The right to environmental information is enshrined in the constitution at the constitutional level. On the other hand, the authorities almost completely ignore citizens’ environmental rights, while the public actively defends their own ecological interests (Protection of environmental rights..., 2019). Article 74 of the Law of the Republic of Belarus “On Environmental Protection” provides the following definition: environmental information is documented information containing information on the state of the environment, its impacts and measures for its protection, as well as on the impact of the environment on humans, the composition of which is determined by the Law, other legislative acts of the Republic of Belarus and international treaties (Access to information on issues...; Access to environmental information..., 2013). The legislation of the Republic of Belarus, which enshrines the right to a favorable environment, is dynamically developing. The dynamics and trends in the studied area are determined by the adoption of international agreements, which contain provisions on the connection between human rights and the state of the environment. The Aarhus Convention has been ratified in the Republic of Belarus, but the authoritarian regime negates the achievements of the legislation (UNEP, 2019). It is the provisions of the Aarhus Convention that

have significantly influenced the fact that in 2002 the Law of the Republic of Belarus “On Environmental Protection” was adopted in a new edition, in which the area of legal regulation of relations regarding the implementation and protection of the right to a favorable environment underwent significant updating.

Let’s pay attention to the legal principles of access to environmental information in Germany. Respect for human rights is enshrined in the Basic Law of Germany. Germany makes efforts at the national and international level to protect human rights and fundamental freedoms (Protection of human rights...). In Germany, according to the federal system of competence sharing, the enforcement of laws in the field of environmental protection is mainly the responsibility of the federal states. Therefore, state authorities are much more involved in the practical implementation of the provisions of the Aarhus Convention than federal agencies. In Germany, the provisions of the Aarhus Convention and the provisions of Directive 2003/4/EC are regulated by the Environmental Information Act (Umweltinformationsgesetz) with amendments made on December 22, 2004. Accordingly, the federal states have adopted relevant laws within their sphere of competence: the Baden-Württemberg Environmental Information Act of 2006; the Bavarian Environmental Information Act of 2006; the Berlin Freedom of Information Act with amendments; the Brandenburg Environmental Information Act of 2008; the Bremen Environmental Information Act of 2005; the Hamburg Environmental Information Act of 2005; the Hesse Environmental Information Act of 2006; the Lower Saxony Environmental Information Act of 2006; the Mecklenburg-Western Pomerania Environmental Information Act of 2006; the North Rhine-Westphalia Environmental Information Act of 2007; the Rhineland-Palatinate Environmental Information Act of 2006; the Saarland Environmental Information Act of 2007; the Saxony Environmental Information Act of 2006; the Saxony-Anhalt Environmental Information Act of 2006; the Schleswig-Holstein Access to Information Act of 2012; and the Thuringia Environmental Information Act of 2006 (UNECE, 2017).

The legislation of the Turkish Republic in the field of environmental protection consists primarily of national laws, regulatory acts, statutes, and decisions. Key elements of

environmental protection legislation include the “Environmental Protection Law” of August 11, 1983, the Mining Law of June 15, 1985, the Forest Law of September 8, 1956, the Regulation on Environmental Impact Assessment of October 25, 2014 (EIA Regulation), and so on (Hergüner Bilgen Özeke). One of the main principles of Turkey’s environmental policy, on which its environmental law is based, is the principle of participation, the need to play a role in the management process. Law No. 4982 of April 19, 2004, establishes the right to information, but it does not contain specific rules regarding access to environmental information. Citizens have the right to demand information and documents based on applications submitted in accordance with the provisions of this law. Specific norms of access to information were not established in the 1982 Constitution of Turkey. Article 26 emphasizes the right to freedom of expression, including “the right to receive information”. In the 2001 Constitution, Article 74 specifically relates to the right to information, which establishes that everyone has the right to receive information (EU integrated environmental...). One of Turkey’s peculiarities is that it participated in the discussion of the Aarhus Convention but did not join it. One of the three resolutions adopted at the General Assembly of the European Environmental Bureau in 2013 was a General Assembly resolution calling on the Turkish Republic to take necessary measures to become a party to the Aarhus Convention and ensure its prompt implementation (EEB calls on Turkey...; Hergüner Bilgen Özeke). However, Turkey is currently not a participant in the Aarhus Convention. India’s experience in providing information to local communities is noteworthy. India’s “Right to Information Act”, which was passed in 2005, ranks second in the world in terms of quality, according to the Global RTI Rating rankings by international organizations Access Info and the Centre for Law and Democracy. However, there are numerous problems with the practical implementation of the right to information. The experience of Latin American countries that have signed a Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters is interesting. The agreement was adopted in Escazu, Costa Rica, on March 4, 2018, and signed at the UN headquarters in New York on September 27, 2018. Article 1 of the agreement defines the purpose of the agreement as guaranteeing

full and effective implementation in Latin American and Caribbean countries of the right of access to information about the environment, public participation in environmental decision-making, access to justice in environmental matters, and the creation and strengthening of potential and cooperation, contributing to the protection of the right of every person of current and future generations to live in a healthy environment and sustainable development. Environmental information is defined as information that is written, visual, audio, electronic, or recorded in any other format relating to the environment and its elements and natural resources, including information related to environmental risks and any possible adverse effects that affect the state of the environment and health, or may also affect the environment and its management. So, legislation in different countries widely considers the concept of environmental information. Systems that recognize the right to all information held by government authorities have significant advantages. Proper compliance with information laws guarantees the human right to access environmental information worldwide.

Regarding administrative-legal ways of realizing the right to environmental information, it should be noted that in Sweden, the main ways of accessing and publishing information are through information requests and publishing such information on official websites. Ukraine uses a system of information requests borrowed from Sweden. Martin Hagström notes that in Sweden, anyone can make any request and receive information in electronic, printed, video, or audio format. Thus, in Sweden, human and citizen rights to information access are ensured.

In the Republic of Moldova, a system of information requests is also in place, which anyone can provide. The response must arrive no later than 15 days after the request is registered. However, a formal reply or refusal can be received citing state or commercial secrets. Investigative journalism is in a difficult state, with journalists often being refused. Officials do not comply with deadlines, and officials try to extend the response time. Accordingly, conditions are created for the restriction of human rights and freedoms by illegal methods.

In the Republic of Belarus, the provision of environmental information to legal entities that are not state-owned is carried out in

accordance with Article 74-4 of the Law of the Republic of Belarus "On Environmental Protection." Thus, environmental information of general purpose is provided by the owner of environmental information upon the application of an interested person free of charge within ten working days from the date of receipt of the application for its provision. However, there are frequent cases of unjustified or illegal refusal in Belarus.

The Indian Right to Information Act provides the opportunity to request any information in any form. It is the duty of the authorities to provide assistance in drafting information requests, especially for people with special needs who are unable to make such requests themselves. The law also stipulates that the Information Officer must provide a response as quickly as possible, but no longer than 7 days. Indian law does not provide for the possibility of extending the deadline for responding to a request. Despite the high praise for Indian law, there has recently been a trend towards worsening access to information. The Right to Information Act does not establish a fee for submitting an information request. However, Indian regulations provide for payment of the cost of copying and printing materials only for more than 20 pages. At the same time, an additional fee has been established for submitting requests, which applies to all categories except those submitted by Indians living below the poverty line. In addition, there is a limit on the number of words in a request, which cannot exceed five hundred.

According to the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin American and Caribbean countries, the exercise of the right to access environmental information includes: requests for and obtaining information from competent authorities without specifying any particular interests or explaining the reasons for the request. Each party promotes access to environmental information for individuals or groups in vulnerable situations, establishing procedures for assistance, from formulating requests to providing information, taking into account their conditions and characteristics; for this purpose, promotion of access and participation occurs on equal terms. Each party guarantees that the aforementioned individuals or groups in vulnerable situations, including indigenous peoples and ethnic groups, receive assistance in preparing their requests and

receive a response. Therefore, we can indicate that the information request is an effective and well-known form of access to information in the world. The effectiveness and adequacy of the response to the request depend on the proper functioning of the civil society regime in the country.

Next, let's consider the institution of the Information Commissioner and the Ombudsman for human rights in different countries. In general, the Ombudsman institution originated in Sweden in the mid-eighteenth century with the aim of ensuring control over the actions of the authorities. Models of the Ombudsman institution in foreign countries are diverse. It can be one person (Russia, France), or several officials at the parliament (Germany, Sweden), or a collegial body (Hungary). The common European practice provides for the introduction of the position of Commissioner for the protection of personal data in the state (Bryzhko *et al.*, 2016, p. 272). The creation of such an institution carries not only a practical component but also an important theoretical approach to understanding the process of reorganizing governance bodies. If we consider foreign experience, there are four main types of supervisory bodies at the global level: Information Commissioner (Great Britain, Slovenia, Serbia, Hungary, Scotland); Commission or institute (Mexico, France, Portugal); Ombudsman with supervisory powers (Sweden, Norway, Bosnia, New Zealand); other bodies (South Africa, Turkey) (RTI..., p. 47). Therefore, the question arises as to what form such an institution should take in Ukraine. The need to improve the management structure is obvious, however, scientists have different views on ways to improve it. In Germany, the Institute of the Commissioner for Data Protection began to form in 1970, when the world's first "Data Protection Act" was adopted in the state of Hesse, which established the state position of the Commissioner for Data Protection with sole authority. This elected state official was granted the right to complete independence from governmental structures, as well as the right to monitor activities related to personal data (Bryzhko *et al.*, 2016, p. 29). In France, a government commissioner for data protection is appointed. He participates in Commission meetings and can, within 10 days, request a rehearing on any matter that was previously considered by the Commission. In the UK, there is an independent

appeals body and its own system for resolving issues related to access to information. The work of a separate body, namely the Information Commissioner, is also in place. This organization helps to access public information. In the UK, bureaucrats themselves use the legislation on access to information by submitting requests about their bosses and their own institutions. According to the changes to the Constitution of Turkey in 2010, the right to appeal to the Human Rights Ombudsman is granted. Institutional structuring and access to environmental information are implemented in accordance with the EU Directive on public access to environmental information. After the attempted coup on July 15, 2016, the level of restrictions on freedom of information dissemination increased, censorship and self-censorship in the country increased. Therefore, it is emphasized that a position similar to the information commissioner's institution should be created in Ukraine. Another important aspect is the impact on the policies of NGOs in countries. It is the civil society that is the driving force in the development of human rights. Interestingly, NGOs in Sweden receive financial support. The Swedish Environmental Protection Agency distributes funds to NGOs every year. In 2016, the Agency allocated about 48 million Swedish kronor to the Swedish Society for Nature Conservation, which since 2011 has taken on the task of distributing grants to various organizations in accordance with the Decree on state grants for active leisure organizations. The agency also distributed grants of approximately 14.5 million Swedish kronor to 16 non-profit environmental organizations whose work contributes to achieving environmental quality goals. Overall, NGOs have the right to freely operate without punishment, persecution, or harassment, as guaranteed by constitutional norms of freedom of information, association, assembly, demonstration, and expression of views. Most organizations in the non-profit sector take the form of non-commercial associations. Creating a non-profit association in Sweden is easy. A non-commercial association does not need to be registered with any government agency, and non-profit associations with public benefit have certain tax benefits. The knowledge accumulated by these organizations is used, for example, by being directed towards commenting procedures and other consultations, including legislative ones, in accordance with the Environmental

Code. There are also a number of formalized forums for dialogue between government agencies and representatives of different associations.

It can be noted that during the quarantine of 2020, a high level of legal awareness and civil society was demonstrated in Sweden. While the global community resorted to strict restrictive measures, the Swedish government, relying on traditional trust, limited itself to recommendations, relying on the legal consciousness of Swedish citizens. In Turkey, on the other hand, significant influence of civil society is not observed. Among the known civil movements are the Turkish Foundation for Soil Erosion Control for Forestry and the Protection of Natural Habitats, and the Turkish Association for Environmental Protection. Quite a few Turkish NGOs are engaged in environmental protection issues.

Work on promoting environmental education and awareness is being carried out in countries around the world, both in the school system and in other institutions. However, we note the educational system in Sweden. As part of the work on the 2030 Program and the Sustainable Development Goals, the Swedish National Agency for Education is working on Goal 4: Quality Education for All. The National Agency for Education is collaborating with Uppsala University to develop a national action plan for further work on environmental education and sustainable development. According to the preschool education curriculum, everyone working in preschools must promote respect for nature, and preschools must give a high priority to environmental conservation issues. Preschools should encourage children to develop caring attitudes towards nature and to understand that they are part of the natural cycles. According to the curriculum for comprehensive schools, schools have the task of giving students the opportunity to take responsibility for the environment, which they can directly influence, and to develop a personal approach to general and global environmental issues. The Swedish University of Agricultural Sciences (SLU) has more than 30 educational programs that conduct extensive environmental research. To create an effective system of transparency and interaction with the public, an e-government system has been created and internet networks have been used, which were implemented in Ukraine using the experience of Sweden and Estonia. In Sweden, there is a special

website called OpenAid, where all projects of the Swedish government's international development are published. There is also a special portal that can be used once a week by anyone. Moreover, in Sweden, all declarations are open for public access. When officials publish their declarations, the information immediately goes to media resources. This openness has helped increase trust in society. The main rule of Swedish legislation regarding access to information held by government bodies is that official documents are public unless otherwise provided. In our view, the system of access to environmental information in Sweden is based on general information and legal principles.

In Great Britain, there is an interactive web map called MAGIC that collects information about the environment from the government (MAGIC). There is also a transparency team in the Cabinet (Transparency and accountability). In addition, official websites of authorized government bodies actively operate in Great Britain, such as the Department for Environment, Food and Rural Affairs (DEFRA Opinions), the Environment Agency for England (The Environment Agency), the Scottish government (Environment and climate change), the Welsh government (GOV.WALES), and the Department of Agriculture, Environment and Rural Affairs of Northern Ireland (The Department of the Environment), which publish a large amount of information about the state of the environment.

In the US, there is an electronic FOIA system at the Department of Justice (FOIA.gov), where requests can be made. A response to the request can be obtained within 20 business days. Most requests are free, but the requester may be asked to pay a small fee for photocopies or postage expenses. In 2013, the Department of Justice received 70,081 FOIA requests, which involved 501 employees designated to respond to these requests. There are nine exemptions to the right of access to information in the US, which can be classified as follows: national security and foreign policy; materials that pertain solely to the internal personnel rules and practices of federal agencies; information specifically exempted from disclosure by other federal laws; trade secrets and financial information obtained from individuals in a confidential capacity; internal memoranda and policy discussions of agencies; personal information, such as medical

records, personnel files, and place of employment; law enforcement information regarding investigations; information from federally regulated financial institutions. For example, in the Republic of Belarus, such electronic databases available to the public are only beginning to be created. So, the website www.minpriroda.by provides information on the state of the environment in the Republic of Belarus, statistical materials on the state of the environment, texts of the main legal acts regulating relations in the field of environmental protection and rational use of natural resources (Implementation of the Aarhus Convention...). Thus, the experience of using electronic systems, social networks and official resources, and other multimedia tools can be borrowed for use in Ukrainian realities. Another unique and important direction of work in Sweden is the "Whistleblower Protection Act". It gives anyone, including civil servants, the right to anonymously provide information for publication. This also includes certain secret information of public importance. Furthermore, examining the judicial system, one can determine the peculiarities and unique decisions of many countries. One of the means of protecting public interests by private individuals in Roman law was the *actio popularis*. The term *actio popularis* is used to define the appeal of individuals, groups of people, and NGOs to a court or other authority in general, social interests or the interests of certain groups, without the need to prove personal interest. In some countries, a so-called "class action" is used to protect public interests and is filed to protect the interests of an undefined group of people (Poland). *Actio popularis* is prevalent mainly in countries in Africa, Central and North America, plays a minor role in Liechtenstein, where several conditions must be met for its submission, Malta, Peru, and Chile. In Hungary, Croatia, and Georgia, it also contributes to the development of the rule of law. In the Republic of South Africa, a natural or legal person may apply to a court to protect public interests. However, most states have not provided for *actio popularis*, seeking to prevent abuse of filing claims. In Japan, according to the 1962 Law on the Procedure for Resolving Administrative Disputes, there are four main types of administrative claims: 1) "Kokoko", 2) "Todjisha", 3) "popular action", and 4) "Kika" claim or a claim regarding a dispute between bodies and institutions. "Popular action" is filed only in cases

specifically provided for by law and provides that a person who files a claim challenging an illegal administrative claim and has no direct legal relationship to the substance of the claim (Lebedeva, 2019). We believe that the Ukrainian judicial system should resort to this type of claim in environmental cases, including the protection of the right to environmental information. Other significant features of the judicial system in foreign countries include the presence of environmental courts. Such a system is used in certain European countries and the United States. An environmental court is a state court, a fully and independently functioning part of the Vermont judicial system, as a sovereign entity of the federation that deals with environmental law issues. The court consists of only two judges who hear cases related to environmental disputes. The court conducts hearings and sessions throughout the state. In the event that a hearing needs to be held in court, it is conducted in the district where the incident that is the basis for judicial review occurred. Overall, environmental court judges are appointed in district and circuit courts throughout the state. For example, in New Zealand, an environmental court was established as early as 1991 on the basis of the Resource Management Act. It is an independent specialized court consisting of 8 permanent and 10 reserve judges who are specially trained in environmental and natural resource law, as well as 15 environmental commissioners (experts in specific areas of scientific and technical activity, economics, agriculture, as well as mediation experts). The functions and powers of this court include not only interpreting the law and resolving disputes, but also enforcing the decisions made. The judges are constantly present in three districts. If necessary, judges from these three districts travel to the site of environmental issues for hearings. This allows the Court to carry out environmental justice and ensure uniform application of environmental and legal norms, protect environmental rights, and be accessible and transparent to all citizens.

Conclusions

Ukraine is borrowing leading experience from around the world, namely the experience of Sweden and Estonia, which promotes the rapid development of information law in Ukraine.

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