FACULTY OF LAW
Lund University

Sara Engström Bubenko

Accessing environmental information in Belarus

- a comparative study on the implementation of the right

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Supervisor:
Joanna Cornelius, Doctoral candidate, Department of Law, Lund University
Consultation:
Miriam Bak Mckenna, Postdoctoral fellow, Department of Law, Lund University

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Contents

Abstract

This master's thesis is based on a field study in Belarus. It investigates how the right to access environmental information according to article 4 of the Aarhus Convention (AC) has been implemented in the country and how the right works in practice.

Adhering to the view of comparative international law, according to which international law is seen as a social construct with fragmented and nation-specific properties, and to the emerging discipline of global environmental law, which regards environmental protection as a result of a plurality of legal mechanisms and orders, the study analyses the implementation of the right to access environmental information both from a formal and functional perspective. In doing so, it combines a doctrinal method with socio-legal methods, consisting of the collection and analysis of quantitative data together with qualitative interview material. The findings are then analysed in relation to various legal, political and historical factors specific to Belarus.

Even though Belarusian legislation has mostly been aligned with article 4 of the AC, there are problematic aspects of the formal implementation of the right. Belarusian law enables that environmental information is classified as official information for limited distribution through a procedure enshrined in a decree to the *Law on Information, Informatisation and Information Protection (No. 4553 of 10 November 2008*) which in itself is classified. This legal construction undermines an effective formal implementation of the right to access environmental information and highlights a broader issue in Belarusian legislation with confusions about the hierarchy of legal norms.

The interview study reveals that many members of the Belarusian public regard requesting environmental information as a complicated exercise and deem authorities difficult to approach. There is also wide-spread distrust regarding the quality and validity of environmental information and suspicions that public authorities withhold, and even distort, sensitive or unfavourable environmental information. Consequently, incentives to employ alternative strategies to obtain useful environmental information arise. The perceived difficulties with obtaining environmental information seemingly relate to nation-specific factors such as the vertical power structures of Belarusian public authorities; limiting the real executive powers of authorities on the lower levels. Furthermore, they hinder an effective enforcement of the right to access environmental information.

The quantitative data reveals that Belarusian authorities frequently fail to comply with the national legal provisions about access to environmental information; most often by not responding to requests or by not submitting the information in the requested form or within the prescribed time frame. Failures to comply with applicable legislation could be attributed to a lack of knowledge and possibly also to the vertical power structures of the authorities. However, it has seemingly become easier to obtain environmental information on request in

the last few years. This trend cannot be properly explained by the findings of the study but signals a positive development of the right to access environmental information in Belarus.

Sammanfattning

Denna masteruppsats grundar sig på en fältstudie i Belarus (även kallat ”Vitryssland”). Uppsatsen undersöker hur rätten att få tillgång till miljöinformation enligt Artikel 4 i Århuskonventionen (ÅK) har genomförts i Belarus och hur denna rättighet fungerar i praktiken.

Studien tar sin utgångspunkt i komparativ internationell rätt, som betraktar internationell rätt som en social konstruktion med nationsspecifika egenskaper, samt i global miljörätt där miljöskydd antas resultera av samspelet mellan flera rättsliga mekanismer och rättsordningar. Mot denna bakgrund analyseras genomförandet av rätten att få tillgång till miljöinformation både ur ett formellt och ett funktionellt perspektiv. Analysen kombinerar en rättsdogmatisk metod med rättssociologiska metoder, bestående av insamling och analys av kvantitativa data tillsammans med kvalitativt intervjumaterial. Resultaten analyseras därefter och sätts i samband med olika rättsliga, politiska och historiska faktorer som är specifika för Belarus.

Trots att belarusisk rätt till största del överensstämmer med Artikel 4 i ÅK finns problematiska aspekter med genomförandet av rätten att få tillgång till miljöinformation. Detta eftersom belarusisk rätt möjliggör att miljöinformation klassificeras som officiell information för begränsad spridning genom ett förfarande beskrivet i ett sekretessbelagt dekret till den generella lagen om information[1]. Denna rättsliga konstruktion underminerar ett effektivt formellt genomförande av rätten att få tillgång till miljöinformation och belyser förekomsten av oklarheter kring rättsnormers inbördes status i belarusisk rätt.

Intervjustudien visar att många människor i det belarusiska civilsamhället tycker att det är komplicerat att begära ut miljöinformation från myndigheter och upplever dessa som svåra att kommunicera med. Det finns också ett utbrett misstroende gällande kvaliteten och trovärdigheten av befintlig miljöinformation, samt misstankar om att myndigheter hemlighåller och till och med manipulerar känslig eller ofördelaktig miljöinformation. Följaktligen skapas incitament att tillämpa alternativa strategier för att få tag i användbar information. De upplevda svårigheterna med att erhålla miljöinformation verkar stå i samband med nationsspecifika faktorer såsom vertikala maktstrukturer inom belarusiska myndigheter, vilka begränsar de faktiska beslutsmandaten hos lägre instanser. De förhindrar även ett effektivt genomförande av rätten att få tillgång till miljöinformation.

Studiens kvantitativa data visar att myndigheterna ofta inte efterlever den nationella rättens bestämmelser om tillgång till miljöinformation, vanligen genom att inte besvara begäran eller

[1] På engelska: *Law of the Republic of Belarus on Information, Informatisation and Information Protection* (No. 4553 of 10 November 2008).

genom att inte tillhandahålla information i den begärda formen eller inom föreskriven tid. Bristande efterlevnad skulle kunna förklaras med avsaknad av kunskap hos myndigheterna och möjligen även med deras vertikala maktstrukturer. Dessa tendenser till trots verkar det dock som att det i Belarus har blivit lättare att få tillgång till miljöinformation på begäran under senare år. Denna trend kan inte förklaras av resultaten i studien men signalerar en positiv utveckling av rättighetens genomförande.

Abbreviations

AC	UNECE Convention on Access to Information, Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
ACCC	Aarhus Convention Compliance Committee
CIS	Commonwealth of Independent States
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIA	Environmental Impact Assessment
GMO	Genetically Modified Organisms
IACHR	Inter-American Court of Human Rights
KGB	State Security Committee of Belarus
MOP	Meeting of the Parties
NGO	Nongovernmental Organization
NIS	Newly Independent States of the Soviet Union
NPP	Nuclear Power Plant
OECD	Organisation for Economic Co-operation and Development
PRTR	Pollutant Release and Transfer Registers
SEA	Strategic Environmental Assessment
UNECE	United Nations Economic Commission for Europe
UNHCR	United Nations Human Rights Committee

1. Introduction

In 1998, Belarus signed the Aarhus Convention (AC)[2]. [3] The AC establishes public rights to access environmental information, participate in environmental decision-making and to access environmental justice. Article 4 of the AC regulates the 'passive' or 'reactive' obligations on public authorities relating to environmental information[4] and provides that an authority who receives a request for such information must, subject to the grounds for exemptions listed in the article, submit the information as soon as possible in the requested form. Furthermore, a person who requests information should not have to state an interest.

Since the adoption of the AC, the general right to access information has received more attention also within human rights law. For example, the European Court of Human Rights (ECtHR) has recognised that article 10 of the European Convention of Human Rights (ECHR), granting freedom of expression, inherently entails a right to access information held by public authorities.[5] Analogue conclusions have been made by the Inter-American Court of Human Rights (IACHR) and by the United Nations Human Rights Committee (UNHCR).[6]

As will be outlined in Chapter 5.3.1., the general legal framework of Belarus regulating public access to official records is more restrictive than the right to access environmental information enshrined in article 4 of the AC.[7] Therefore, Belarus had to make significant changes to its national law in order to implement these provisions. Most of these changes were enacted in 2007.[8] The right to access environmental information is now expressed in article 74 of the *Law on Protection of the Environment*[9] (from now on "Law on Environmental Protection").

However, the initial changes in Belarusian legislation were considered insufficient by the Arhus Convention Compliance Committee (ACCC). As will be further outlined in Chapter 5.3.2., the ACCC deemed Belarus to be in non-compliance with article 4 of the AC. ACCC

[2] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (38 ILM 517 (1999)).
[3] United Nations Economic Commission for Europe, 'Aarhus Convention. Parties to the Aarhus Convention and their dates of ratification', https://www.unece.org/env/pp/aarhus/map.html, (accessed 03 October 2018).
[4] United Nations Economic Commission for Europe, 'About the Convention. Access to Information', https://www.unece.org/env/pp/contentai.html, (accessed 03 October 2018).
[5] *Társaság a Szabadságjogokért v. Hungary* App no 37374/05, (ECtHR, 14 April 2009); *Kenedi v Hungary* App no 31475/05 (ECtHR 26 May 2009).
[6] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide'. p. 76, https://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pd f, (accessed 03 October 2018).
[7] See Constitution of the Republic of Belarus of 1994; Law of the Republic of Belarus on Information, Informatisation and Information Protection (No. 4553 of 10 November 2008), Articles 15-16.
[8] Malkina, I.V., 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', P. 44, https://www.unece.org/env/pp/reports_trc_implementation_2017.html, (accessed 02 October 2018).
[9] Law of the Republic of Belarus on Protection of the Environment (as amended) (No. 1982-XII of November 26, 1992).

concluded that there was a conflict of norms as the Law on Information, Informatisation and Information Protection (from now on "Law on Information") still required the stating of an interest in order to access information from public authorities; without referring to the special regime for environmental information, enshrined in the Law on Environmental Protection, where the stating of an interest is not required.[10] [11] Following recommendations from the ACCC, Belarus has amended the Law on Information in order to clarify that article 74 of the Law on Environmental Protection is *lex specialis* in relation to the Law on Information regarding access to environmental information.[12]

In a compliance case in 2017, the ACCC concluded that Belarus had now implemented the previous recommendations.[13] In the same year, the report *Environmental Democracy: Myth or Reality in Belarus?* was published by the Belarusian environmental public association Ecohome[14]. The report identified several problems with public access to environmental information in Belarus, in particular that state bodies can refuse access to information that is attributed for "official use", that state bodies interpret 'environmental information' narrowly and that environmental aspects in general are little integrated into different branches of Belarusian law.[15] However, the report deemed it too early to assess the effects of the recent legal changes. In 2018, Ecohome published the report *Доступ к экологической информации: вопросы реализации и защиты права* ["Access to Environmental Information: Issues of Implementation and Protection of the Law"[16]][17] (from now on "the Ecohome monitoring report"). This report evaluates the findings of a monitoring project, investigating how the right to access environmental information works in practice in Belarus. Although the report concludes that the effective implementation of this right has improved

[10] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the fourth session of the Meeting of the Parties. Decision IV/9b on compliance by Belarus with its obligations under the Convention', P. 4(a), https://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision_IV-9b_Compliance_by_Belarus_e.pdf, (accessed 02 October 2018).
[11] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the fifth session of the Meeting of the Parties. Decision V/9c on compliance by Belarus with its obligations under the Convention', P. 6(a), https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9c_Belarus/Decision_V9c.pdf, (accessed 02 October 2018).
[12] Malkina, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', P. 55; Law of the Republic of Belarus Amending and Adding to Certain Laws of the Republic of Belarus. (No. 362-3 of May 11, 2016).
[13] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the sixth session of the Meeting of the Parties. Decision VI/8c. Compliance by Belarus with its obligations under the Convention', P. 2(a), http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/Compliance_by_Belarus_VI-8c.pdf, (accessed 02 October 2018).
[14] Ecohome, 'Ecohome. English', http://ecohome-ngo.by/english/, (accessed 26 November 2018).
[15] Ecohome and Green Network, 'Environmental Democracy: Myth or Reality in Belarus? Review of the Practice of the Aarhus Convention Implementation in the Republic of Belarus', p. 5, http://english.arnika.org/publications/environmental-democracy-myth-or-reality, (accessed 03 October 2018).
[16] Unofficial English translation provided by Google translate.
[17] Magonov, S., Sinitsa, T. and Dubina, M., 'Доступ к экологической информации: вопросы реализации и защиты права ["Access to Environmental Information: Issues of Implementation and Protection of the Law"]', 2018, http://ecohome-ngo.by/dostup-k-ekologicheskoj-informatsii-voprosy-realizatsii-i-zashhity-prava/, (accessed 24 October 2018).

lately, the obtained results reveal that many Belarusian public authorities still fail to provide access to environmental information in accordance with law.[18]

The aim of the present study is to investigate, on the one hand, how the right to access environmental information has been implemented in Belarusian law, and on the other, how this right works in practice; seen from a grass-root perspective. In order to do so, it applies both doctrinal and socio-legal methods to identify nation-specific factors that seemingly affect the implementation of the public right to access environmental information in Belarus.

1.1 Purpose of study and research questions

The study assumes that international law possesses significant non-homogenous and national properties and that, consequently, comparative legal studies of its implementation are an important part of research in international law.[19] It thus researches, firstly, how the public right to access environmental information has been implemented in Belarusian law and, secondly, how the right is applied and perceived by members of the public. In a third step, it analyses these findings against the background of the nation-specific context of Belarus.

1.1.1 Research questions

With the aim of understanding how the right to access environmental information has been implemented in Belarus and what the implications of its implementation are, the following questions are asked:

1. How has the right to access environmental information according to article 4 of the AC been implemented in the legal framework of the Republic of Belarus? And more specifically;
- What is the general legal framework into which this right has been implemented?
- What can the comparative approach reveal about the scope of environmental information, obligations to provide it, possibilities to restrict access and time limits for providing environmental information in Belarus?
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2. How does the right to access environmental information work in practice in Belarus. And more specifically;
- What can statistical data reveal about the practical implications of the implementation of the right?
- How do individuals on the ‘grass-root’ level perceive the right to access environmental information?

[18] Magonov, Sinitsa and Dubina, pp. 18–19.
[19] Morgera, E., 'Global Environmental Law and Comparative Legal Methods', in Rev. Eur. Comp. Int. Environ. Law 2015/24 nr. 3, p. 259.

3. What trends and tendencies can be deduced from these experiences? How do the identified trends and tendencies correlate with legal, political and historical factors specific to Belarus?

2. Theory

2.1. Questioning the internationality of international law

The AC is a treaty created within the framework of the United Nations Economic Commission for Europe (UNECE) and thus constitutes a piece of international law. The Convention prescribes obligations for the signatory Parties in the area of public administrative law and requires that members of the public are guaranteed the right to access information, participate in decision-making and to access justice in environmental matters.[20] The national implementation processes are continuously supervised and assessed in a "non-confrontational, non-judicial and consultative nature"[21] by the ACCC in its compliance cases. The findings of the ACCC and, to some extent, the case law concerning the AC in the Court of Justice of the European Union (CJEU),[22] constitute authoritative interpretations of the AC on the international level. However, as the prescribed rights can only be implemented and enforced by national authorities, they can only be effectively materialised in the nation-specific context.

The argument that international law is not an objective concept; inherently universal and cosmopolitan; has been put forward by Roberts,[23] who assumes that what counts as international law "depends in part on how the actors concerned construct their understandings of the field and pass them on to the next generation".[24] She thereby joins a crowd of other legal scholars[25] who view international law as a social construct and emphasise the importance of analysing its fragmented and nation-specific properties. This emerging discipline has been called "comparative international law".[26] Roberts argues that the way in which international law is understood, interpreted, applied and approached depends on a range of factors such as language, shifting geopolitical powers, technological innovation and changing political preferences.[27]

[20] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Article 1.
[21] United Nations Economic Commission for Europe, 'Guide to the Aarhus Convention Compliance Committee [Fifth draft]', p. 6, https://www.unece.org/env/pp/cc.html, (accessed 10 October 2018).
[22] See Chapter 2.1.1.
[23] Roberts, A., 'Is International Law International?', 2017. pp. 2; 6.
[24] Roberts, 2017. p. 2.
[25] See Focarelli, C., 'International Law as Social Construct. The Struggle for Global Justice', 2012; Bradford, A. and Posner, E., 'Universal Exceptionalism in International Law', in Harv. Int. Law J. 2011/52 nr. 1.
[26] Roberts, 2017. p. 6; Mälksoo, 2015. p. 12.
[27] Roberts, 2017. p. 3.

The birth of comparative international law can be traced back to the study of Soviet international law by Western scholars[28],[29] but the discipline has still not gained a wide recognition.[30] Its necessity has however been called upon by contemporary prominent scholars of international law, such as Koskenniemi.[31] Koskenniemi is one of several scholars who has pointed out that the view on international law as universal and homogenous is profoundly Eurocentric and needs to be challenged.[32] Also Mälksoo observes that the attempts by Western international lawyers to analytically penetrate the non-universality of international law by combining international legal studies with normative anthropology are surprisingly few.[33] He asserts that international law is indeed different in different places and argues that not enough is known about why this is so; about the driving forces of regional fragmentation and nationally specific understandings of international law. Mälksoo argues that states perceive international law differently due to their different "history, culture and 'civilisation[s]'".[34]

The present study adopts the understanding of international law as inherently fragmented and nation-specific. Thus, in the search for answers to the research questions, it assumes that the way in which article 4 of the AC is implemented, applied and perceived in Belarus depends on a range of nation-specific factors. The highlighted factors will be of legal, political and historical nature, specific to Belarus. It must however be pointed out that the study does not aim to analyse Belarusian approaches to international environmental law in general, nor to make any conclusions in this regard. Such an analysis would require a substantially wider research approach, as well as a method including in-depth analyses of the practices of official administrative and judicial bodies.

2.2. Global environmental law

2.2.1. Distinction between global and international environmental law

The concept of global environmental law comprises international, national and transnational legal aspects all at once. According to Yang and Percival, global environmental law is construed of "a distinct set of substantive principles and procedural methods that are specifically important or unique to governance of the environment across the world".[35] These

[28] Butler, W.E., 'International Law in Comparative Perspective', Springer Science and Business Media B.V., 1980.
[29] Mälksoo, L., 'Russian Approaches to International Law', Oxford University Press, 2015. pp. 12; 15.
[30] Mälksoo, 2015, pp. 12-14.
[31] Mälksoo, 2015, p. 13; Koskenniemi, M., 'Case for Comparative International Law', in Finn. Yearb. Int. Law 2009/20 nr. 1, p. 1.
[32] Koskenniemi in Finn. Yearb. Int. Law 2009/20 nr.1, pp. 3–4.
[33] Mälksoo, L., 'Russian Approaches to International Law', 2015, p. 12.
[34] Mälksoo, 2015, p. 18.
[35] Yang, T. and Percival R.V., 'The Emergence of Global Environmental Law', in Ecol. Law Q. 2009/36 nr. 3, pp. 616-617.

methods and principles can be found in the areas of public international environmental law, national environmental law and transnational law.[36]

Morgera argues that the theorising of global environmental law is still in the making. [37] However, she considers the analysis of the practice of several different entities such as non-state actors, the international civil society, local communities and the private sector, as important to the study of global environmental law.[38] This is because in global environmental law, environmental protection is thought to be promoted through "a plurality of legal mechanisms relying on a plurality of legal orders" that constitute inter-related and mutually influencing systems. As will be further explained in Chapter 3.1., Morgera also propagates for the relevance of comparative legal methods in the study of global environmental law.[39]

Against this background, there are several reasons to study the implementation of the AC from a global instead of international environmental law perspective. Firstly, the AC attributes an important role to non-State actors and to civil society. 'The public concerned' implies any natural or legal person as well as their associations, organizations or groups affected by or likely to be affected by, or have an interest in, environmental decision-making.[40] Furthermore, the AC is an articulation of the 'access rights' enshrined in Principle 10 of the Rio Declaration[41], which in turn are closely connected[42] with the subsequently developed Sustainable Development Goals[43] and especially with Goal 16 (Peace, Justice and Strong Institutions).[44] The AC is thus a clear manifestation of the interaction between international obligations and national legal principles and norms. Against this background, Yang and Percival use the AC as an example when arguing that the process of creating legislation to implement international treaties of environmental law has "helped embed globally agreed-upon values and principles in member states' national regulatory systems".[45]

[36] Yang and Percival in Ecol. Law Q. 2009/36 nr.3, p. 617.
[37] Morgera, E., 'Global Environmental Law and Comparative Legal Methods", Rev. Eur. Comp. Int. Environ. Law 2015/24 nr.3, pp. 255-256.
[38] Morgera in Rev. Eur. Comp. Int. Environ. Law 2015/24 nr.3, p. 255.
[39] Morgera in Rev. Eur. Comp. Int. Environ. Law 2015/24 nr.3, pp. 259-263.
[40] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Article 2(4); 2(5).
[41] See Chapter 2.1.1.
[42] United Nations Economic Commission for Europe, 'The power of environmental transparency - the Aarhus Convention helps to achieve the Sustainable Development Goals', https://www.unece.org/info/media/news/environmental-transparency-the-aarhus-convention-helps-to-achieve-sustainable-development-goals/doc.html, (accessed 05 November 2018).
[43] United Nations, 'UN Sustainable Development Summit', https://www.un.org/sustainabledevelopment/summit/, (accessed 05 November 2018).
[44] United Nations Economic Commission for Europe, '2016 Aarhus week - How the Aarhus Convention Contributes to Sustainable Development', https://www.unece.org/info/media/news/environment/2016/2016-aarhus-week-how-the-aarhus-convention-contributes-to-sustainable-development/doc.html, (accessed 05 November 2018).
[45] Yang and Percival in Ecol. Law Q. 2009/36 nr.3, p. 646.

3. Method

3.1 Global environmental law and comparative methodologies

Morgera argues that the global environmental law perspective can be particularly helpful when studying international environmental legal obligations that affect human rights of indigenous peoples and local communities.[46] According to Yang and Percival, comparative legal methods are helpful in order to account for the variety of influential legal systems, such as customary laws, regional human rights regimes and their interaction with national legal frameworks since comparative methods enable the researcher to consider a wider range of factors and dynamics, which in turn can facilitate an understanding of, among other things, the grass-root perspective.[47]

However, the comparative legal methodology is not a simple undertaking. Morgera compares the work of the comparative lawyer with that of a detective; describing it as:
[…] an informal, almost intuitive, knowledge process that arises from methodologically looking for clues in the material identified, proceeding towards explanations up to the point where the different interpretative elements fit together into a thick narrative that attempts to explain differences and similarities.[48]

There are, in her view, a plurality of methodologies that can be applied for these purposes and even though this freedom of choice might be necessary, it is inherently risky. While scholars of global law have called for the importance of interdisciplinary research, a comparative legal researcher who takes on a broader, interdisciplinary approach; accounting for anthropological and sociological factors; is automatically faced with several challenges including:
linguistic and terminology problems, cultural differences between legal systems, the arbitrary selection of the object of study, the tendency to impose one's native legal conceptions and expectations on the systems compared, prejudice and the exclusion/ignorance of extra-legal rules (informal practices which operate outside the law, non-legal phenomena that ultimately influence the state of the law, and/or enforcement status and capacities).[49]

These obstacles, which are confirmed by Momirov and Fourie, will be discussed in further detail in the Chapters 3.1.1. and 3.2.

In line with global perspective on environmental law, the present study will account for a plurality of factors influencing the right to access environmental information in Belarus. In addition to a doctrinal analysis of the implementation of article 4 of the AC in Belarusian, it accounts for the practical experiences of this right, derived from quantitative and qualitative material. Consequently, it also makes use of a socio-legal methods. These methods are further described in Chapter 3.1.3.

[46] Morgera in Rev. Eur. Comp. Int. Environ. Law 2015/24 nr.3, p. 259.
[47] Morgera, p. 259.
[48] Morgera, p. 262.
[49] Morgera, p. 262.

3.1.1. Vertical comparative 'top-down' analysis

In order to investigate the research questions, a method inspired by the 'vertical top-down' comparison method described by Momirov and Fourie is applied. According to these authors, legal comparisons can be conducted using four different modes that are either horizontal or vertical. They suggest that a vertical 'top-down' comparison mode is useful when looking at the

> […] internalisation of international norms and regulations by national legal orders, whereby national law is required to incorporate international concepts into the national legal system, terminology and ideology.[50]

It should be noted, however, that Momirov and Fourie do not discuss the vertical comparative method in relation to international environmental law, nor use the concept of global environmental law in their research.

Even though the present study has a different aim than that of Momirov and Fourie, who also apply a different mode of comparison,[51] some concepts and methodological considerations outlined by these authors regarding vertical legal comparison methods still bear relevance for a 'top-down' analysis and will thus be applied. These are:

(1) formulating a hypothesis,
(2) constructing a conceptual model for objects of comparison,
(3) conducting the vertical comparison [52]

Momirov and Fourie also apply a fourth step of 'synthesising', during which the researcher should establish whether the hypothesis has been proven or disproven and decide what conclusions and/or recommendations can be formulated based on these findings.[53] This stage has been excluded from the present research and replaced by an analysis of the findings in the light of the identified nation-specific factors of Belarus.

3.1.1.1. Research hypothesis and conceptual model of comparison

The initial step of formulating a research hypothesis clarifies what aspects should be the focus of the comparative law study. Consequently, it influences the way in which the conceptual model for the objects of comparison in stage two are constructed.[54] The hypothesis should be deduced from the 'actual observation of similarities between problems and (potential) solutions at the common zone of impact'.[55] In stage two, the selected objects are arranged into an abstract and conceptual model that will serve as a basis for the vertical comparison of the national and international legal systems.[56] The conceptual model should later on be verified and refined by means of a horizontal legal comparative analysis, in other words "tested" against actual case law from the national legal system or against other

[50] Momirov, A., and Fourie, A. N., 'Vertical Comparative Law Methods: Tools for Conceptualising the International Rule of Law', Erasmus Law Rev. 2009/2 nr.3. p. 295.
[51] Momirov and Fourie in Erasmus Law Rev. 2009/2 nr.3. pp. 292-294.
[52] Momirov and Fourie, p. 300.
[53] Momirov and Fourie, p. 306.
[54] Momirov and Fourie, p. 301.
[55] Momirov and Fourie, p. 300.
[56] Momirov and Fourie, p. 302.

empirical evidence.[57] The present study does not analyse case law, but uses quantitative and qualitative material to make the horizontal legal comparison.

The research hypothesis and the conceptual model of comparison are of crucial importance to the research of Momirov and Fourie, who investigate what concepts from national law could be applied on an international level to increase the accountability of international actors. For the present research, these stages are less complex, since it has already selected article 4 of the AC as its subject of analysis. Hence, the objects of comparison have already been narrowed down to aspects of the right to access to environmental information enshrined in this article and corresponding phenomena in the national context. The thematic headlines in Chapters 7.1. - 7.3. together constitute the 'conceptual model of comparison'. Chapter 7.1. analyses the implementation of article 4 of the AC in national Belarusian law using a doctrinal method while Chapters 7.2.-7.3 apply socio-legal methods; outlining and analysing the results from the interview study and the 2018 Ecohome monitoring report (see Chapter 4.1.) against the background of the legal, political and historical factors specific to Belarus that have been outlined in Chapters 6 and 7.1. As will be further explained in the beginning of Chapter 7.2., the thematic headlines differ slightly.

The conceptual model of comparison has, in accordance with Fourie and Momorov's method for formulating a research hypothesis, been deduced from a variety of material: legal acts, the interview study, the Ecohome monitoring report and other relevant literature. Its creation has been a gradual process that has taken place during and after the field research. It has also continuously been subject to verification and refinement during the writing process. Due to practical methodological limitations (see Chapter 4.2.), the empirical evidence mainly relies on individual experiences by members of the public and non-governmental organizations. It is thus inherently biased and one-sided. However, as this perspective reflects how the right to access environmental information operates on a grass-root level, the approach is still of relevance to the study of global environmental law.

3.1.1.2. Conducting the vertical comparison

The third stage of Momirov and Fourie's method consists of conducting a vertical comparison in the conceptual model between the national and international level.[58] In their research, the international level is a complex compound of institutional design, practices and governance of international bodies. In the present study, the international level is represented by the text of the AC together with relevant content of the 2014 Aarhus Implementation Guide as well as compliance cases in the ACCC.

The comparison stage implies identifying and analysing similarities and differences between the national and the international level.[59] The analysis of similarities should, according to Momirov and Fourie, confirm the existence of the similarities that were identified at the

[57] Momirov and Fourie, p. 303.
[58] Momirov and Fourie, p. 304.
[59] Momirov and Fourie, p. 304.

beginning of the process but can also reveal additional similarities between the conceptual (national level) model and the international legal concepts.[60] The analysis of differences is crucial to the verification of the initial hypothesis and also determines the boundaries of the analogy.[61] The authors emphasise that neither similarities nor differences should be determined simply by a prima facie identification, without questioning their significance and accounting for contextual factors such as differences in language and terminology.[62]

In the present study, the identified similarities and differences between the national and international level all closely coincide with the question whether article 4 of the AC has been successfully implemented in Belarus or not. However, due to the methodological restrictions for the research and the issues of validity related to it, the present study is not a full-fledged judicial review of the implementation of the right to access environmental information in Belarus.

3.1.2. The doctrinal method

A doctrinal method is applied when analysing the implementation of article 4 of the AC in national legislation. For the purpose of doctrinal legal research, 'doctrine' has been defined as '[a] synthesis of various rules, principles, norms, interpretive guidelines and values' which are more or less abstract, binding or non-binding.[63] Doctrinal research is thus the research into law and legal concepts through the application of the 'classical tools' of a lawyer, namely analogy, discrimination and deduction.[64] The understanding of doctrinal methodology as a purely logical exercise has been challenged, but such considerations lie beyond the scope of this study. Hence, the doctrinal methodology will be regarded as a 'logical exercise' of analysing existing legislation on international and national level together with applicable norms and other interpretative material.

The application of a 'pure' doctrinal method has however been hampered by the fact that I do not understand Russian. The analysis of national legislation has thus been dependent on English translations of relevant legal acts (mostly provided by the *National Legal Internet Portal of Belarus*[65]) and guided by national reports submitted by Belarus through the ACCC reporting mechanism[66]. Sometimes it has also been guided by information provided by interview participants.

[60] Momirov and Fourie, p. 304.
[61] Momirov and Fourie, p. 305.
[62] Momirov and Fourie, pp. 304-305.
[63] Hutchinson, T. and Duncan, N., 'Defining and Describing What We Do: Doctrinal Legal Research', Deakin Law Rev. 2012/17 nr. 1. p. 84; Mann, T., and Blunden, A., 'Australian Law Dictionary', Oxford University Press, 2010, p. 197
[64] Hutchinson and Duncan in Deakin Law Rev. 2012/17 nr.1, p. 84.
[65] National Center of Legal Information of the Republic of Belarus, Pravo.by. National Legal Internet Portal of the Republic of Belarus, http://law.by/, (accessed 10 October 2018).
[66] United Nations Economic Commission for Europe, 'Reporting mechanism', https://www.unece.org/env/pp/reports.html, (accessed 12 December 2018).

Apart from the general linguistic obstacles connected with the application of the doctrinal method, a pure doctrinal methodology was inhibited by the fact that there is no general access to case-law in Belarus. The databank Etalon Online publishes judicial practice consisting of resolutions and decisions of the Supreme Court and Supreme Economic Court, as well as resolutions of the district courts and reviews of judicial practices of the Supreme Court, in Russian and Belarusian.[67] It also contains various policy documents, issued by state organs, and analyses of judicial practice in the field of crime prevention. [68] However, due to the difficulties of getting a comprehensive overview of relevant judicial practice without full access to it, and to the linguistic obstacles that I would have faced when making such attempts, I decided to exclude judicial practice from the research scope.

3.1.3. Socio-legal research

The aim of the socio-legal part of the study was to identify and analyse various nation-specific factors connected with the implementation of the right to access environmental information in Belarus. According to Banakar and Travers, socio-legal research is an interdisciplinary approach that could transcend some of the theoretical and methodological limitations of the legal discipline through the combination of legal and sociological methods.[69] The combination of law and sociology can be fruitful in developing new forms of analysis as sociology, in contrast to doctrinal law, is anti-formalist and capable of looking at underlying and rudimentary structures.[70] According to the authors, both quantitative and qualitative methods can be employed to conduct socio-legal research.[71] In the present study, the implementation of the right to access environmental information in Belarus has been investigated through analysing the results of the Ecohome monitoring project (quantitative data) and through in-depth interviews with, mainly, individuals on the grass-root level (qualitative data). This data is further described in Chapters 4.1. and 4.2.

Since the interview study implied methodological choices and issues, the following chapter outlines what considerations were made in connection to the conducted interviews.

3.1.3.1. Interview methodology

The interview study was conducted during an eight weeks stay in Belarus, financed by the scholarship Minor Field Studies[72]; issued by the Swedish development agency Sida.
Interviews were conducted in English, with the assistance of an interpreter where needed, and

[67] National Legal Internet Portal of the Republic of Belarus, 'State System of Legal Information: Databank "Judicial Practice"', http://www.law.by/state-system-of-legal-information/#6.Databank, (accessed 12 December 2018).
[68] Etalon Online, 'Информационное наполнение ["Content"]', http://www.etalonline.by/?page=contents, (accessed 26 December 2018).
[69] Banakar, R. and Travers, M., 'Law, Sociology and Method' in Banakar, R. and Nelken, D. [ed.], 'Theory and Method in Socio-Legal Research', The Oñati International Institute for the Sociology of Law, Hart Publishing, 2005, p. 5.
[70] Banakar and Travers in 'Theory and Method in Socio-Legal Research', 2005, p. 11.
[71] Banakar och Travers, 2005, pp. 17-18.
[72] Universitets- och högskolerådet, 'Minor Field Studies', MFS 2018-04-09, https://www.utbyten.se/program/minor-field-studies/, (accessed 13 December 2018).

generally lasted between one and two hours; except from one interview that lasted almost four hours. The participants were asked questions related to their experiences of the right to access environmental information and the questions were adapted to the specific area of work or involvement of the participant. All interviews were tape-recorded and later transcribed.

As the aim of the study was to identify and analyse various nation-specific factors connected with the legal implementation of access to environmental information, I initiated issues for the participants to talk about but left them a great deal of freedom to raise and elaborate on topics of their interest. The interviews were thus loosely structured; adhering to the 'romantic' interview study approach.[73] However, in all my interviews I tried to somehow cover individual experiences related to the provisions of article 4 of the AC. Consequently, the interviews were 'semi-structured'.[74] This 'loose' structure has been beneficial for the aims of the study, as it allowed me to continuously discover new aspects of the issue and apply the knowledge that I obtained along the way. Letting the interview participant guide the direction of the interview has also been a measure to mitigate the risk of skewing the analysis to fit preconceived ideas (see Chapter 3.2.3.).

However, a semi-structured interview method also implies drawbacks. According to Alvesson, it invites the interviewee to talk also about irrelevant and unproductive issues. The results obtained can be dispersed and difficult to compare; requiring a "good deal of intuition and hermeneutic readings". These obstacles were indeed encountered in the present study. Focusing on the relevant aspects was however made easier by the clear framework of the study object, namely the exercise of the right to access environmental information in accordance with article 4 of the AC.

Apart from issues with interview structure, the so called "researching there" approach, as defined by Nelken, also implied problematic aspects. According to Nelken, this approach is typically the result of that a researcher travels to a different country to conduct socio-legal research.[75] In an unfamiliar context, relying on obtained interview material can be both beneficial and deceptive. While a foreign researcher might be less biased and thus able to account for factors that a native researcher could not discover, a heavy reliance on such material is also risky, as there might be a discrepancy between what the interview participant says and does.[76] In addition, language barriers and the trust perceived by the interview subject must be considered. These factors all bore relevance for the interview study. Even though the 'risks' could not be avoided completely, measures were taken to mitigate them. Above all, the anonymization of interviews was intended to make the interview participant feel more confident in expressing themselves honestly.

[73] Alvesson, M., 'Interpreting Interviews', SAGE Publications, 2011, p. 47.
[74] Alvesson, 2011. p. 48.
[75] Nelken, D., 'Doing Research into Comparative Criminal Justice' in 'Theory and Method in Socio-Legal Research', 2005, p. 252.
[76] Nelken in 'Theory and Method in Socio-Legal Research', 2005, p. 252.

3.2. ‘Pitfalls’ in comparative legal research

Momirov and Fourie identify three major risks, or ‘pitfalls’, in comparative legal research, namely (1) failure to consider context properly, (2) the functionalist approach and (3) skewing the comparative analysis to fit one’s preconceived ideas.[77] In the following chapters, I will discuss each of these risks and elaborate on the measures taken in order to mitigate them.

3.2.1. The contextual issue

The comparative law methodology has been criticised by postmodernists who argue that it is simply not possible to account for all contextual differences in a comparison between two legal systems.[78] This standpoint is nowadays also confirmed by most legal comparativists, including Momirov and Fourie. However, Momirov and Fourie argue that even though this is a significant issue for comparative legal research, measures to mitigate it must be proportionate. They rhetorically ask whether extensive and detailed knowledge of the legal system which is to be compared, is truly necessary and point out that such a requirement would hamper a lot of comparative research.[79]

The contextual issue is highly relevant for the present research for several reasons. As mentioned previously, I do not speak Russian and have therefore not been able to study the official versions of Belarusian legislation. I have also excluded case-law from the scope of the analysis. Furthermore, I did not possess any knowledge of the Belarusian legal system prior to the study. Naturally, these limitations have affected the outcomes of the study.

To mitigate the risk of misconceiving the context, both the focus of the study and the analysed data were adapted. The analysis of the legal implementation of article 4 of the AC was conducted through the studying of authorised translations of Belarusian legal acts together with documents issued by, or submitted to, the ACCC. As interviews could not be arranged with public authorities and courts, the analysis must unavoidably rely on the experiences by members of civil society. However, to further support the analysis of the practical side of accessing environmental information in Belarus, the study also accounts for the empirical research conducted by Ecohome in 2017-2018. Secondly, Belarusian law has to the greatest possible extent been accessed in authorised English translations and the analysis of it has been guided by national implementation reports submitted to the ACCC by Belarus.

3.2.2. The functionalist approach

Comparative legal methodology has also been subject to postmodernist criticism for its emphasis on the social functioning of legal concepts instead of formal aspects of laws and institutions. This criticism is shared by Momirov and Fourie, who however suggest that the major risk to be mitigated is that of conducting a ‘one-dimensional’ comparative analysis that

[77] Momirov and Fourie in Erasmus Law Rev. 2009/2 nr.3, p. 297.
[78] Momirov and Fourie, p. 297.
[79] Momirov and Fourie, p. 297.

lacks sufficient depth.[80] According to the authors, the 'functionalist' approach should not be completely abandoned as it continues to strengthen comparative law methodology.

The present research relies heavily on a functionalist approach by focusing on practical aspects of the right to access environmental information in the Belarusian society. This approach has been deemed relevant against the background of the need, expressed by prominent scholars like Morgera, for more comparative legal research in global environmental law, focusing on the operations of NGOs and local communities. Momirov and Fourie suggest that the risk of a one-dimensional and functionalist analysis can be mitigated by considering several aspects of the legal concept of interest, looking at both substantive (such as its social function) and procedural elements of the concept.[81] Adhering to this view, the present study conducts a 'doctrinal' analysis of the legal implementation of article 4 of the AC before going into socio-legal research.

3.2.3. Skewing analysis to fit preconceived ideas

According to Momirov and Fourie, there are two types of preconceived ideas that might unconsciously skew the outcomes of the analysis to an inherently subjective one.[82] These are the researcher's ideas about international law itself and about the objective of the comparison. In other words, the researcher's understanding of international law will inevitably influence the methodology applied and this methodology will also be strongly influenced by what the researcher wants to achieve. Momirov and Fourie argue that these issues arise out of necessity and that normative development could not occur without such preconceived ideas. However, the implied risks can be mitigated by

> […] being upfront about one's own ideas about law and about the comparative objective and, secondly by understanding how they might influence the use of comparative law methodology.[83]

The understanding of international law as, to some extent, inherently nation-specific has undoubtedly influenced the use of methodology in the study. The methodology has consciously been chosen to investigate how aspects of the right to access environmental information manifest themselves in the national context. However, to mitigate the risk of skewing the analysis to fit this preconceived idea, the analysis relies on a wide range of material of doctrinal, qualitative and quantitative material against which the conceptual model has continuously been verified.

[80] Momirov and Fourie in Erasmus Law Rev. 2009/2 nr.3, p. 298.
[81] Momirov and Fourie, p. 298.
[82] Momirov and Fourie, p. 298.
[83] Momirov and Fourie, p. 299.

4. Data

4.1. Quantitative data

During the period of my field in Belarus, Ecohome published a report with conclusions from a monitoring project conducted by the organisation between October 2017 and September 2018.[84] The monitoring concerned both the 'reactive' obligations (article 4 of the AC) on public authorities to respond to requests for environmental information and the 'active' obligations to make information available (article 5 of the AC).[85] To be able to use this data, I had relevant parts of the report translated into English.

In relation to the article 4 obligations, the purpose of the monitoring was (1) to investigate the availability of environmental information about the results of public participation in significant environmental decisions from executive committees upon requests, (2) investigate the availability of environmental information in the forms of plans and programs (in particular certain waste management plans and landscape plans) from executive committees upon request and (3) investigate the practice of giving access to justice in cases where the right to access environmental information had been violated.[86]

These issues were investigated through the filing of requests to various executive committees. In total, 228 requests were sent, of which 166 were filed from the public association and 62 from individuals.[87] Regarding the information about public discussions, Ecohome initially investigated the official websites of 157 district executive committees in Belarus. Where the organisation identified a lack of published information about the results of public discussions about significant decisions, it requested this information from the committees. 61 such requests were made.[88] Regarding environmental information in the forms of plans and programs, the organisation filed 129 requests to district executive committees and administrations of city districts. In addition to these two types of environmental information, the organisation also requested information and documentation concerning the realisation of the public right to participate in significant environmental decision-making, including EIA-reports, landscape schemes in settlement areas and schemes about specially protected natural areas.[89]

[84] Magonov, Sinitsa and Dubina, 'Доступ к экологической информации: вопросы реализации и защиты права', p. 11.
[85] For a more detailed explanation of the distinction between 'reactive' and 'active' obligations, see Chapter 2.2.2.)
[86] Magonov, Sinitsa and Dubina, p. 11.
[87] Magonov, Sinitsa and Dubina, p. 13.
[88] Magonov, Sinitsa and Dubina, p. 12.
[89] Magonov, Sinitsa and Dubina, p. 13.

4.2. Qualitative data

The present study relies to a large extent on qualitative data obtained from interviews with Belarusian citizens who in different ways make use of, or facilitate, the right to access environmental information. Initially, the interview study was intended to encompass Belarusian public authorities, courts, academics, lawyers and environmental activists. However, as will be explained below, I was not able to arrange interviews neither with public authorities nor with the courts. Consequently, the scope of interview participants had to be altered. The qualitative data has thus been obtained from interviews with academics, an engineer, lawyers, scientists and – to the greatest extent – environmental activists.

In order to clarify how interview participants were sampled, I will under the following headlines explain how individuals from each group of interest were approached.

4.2.1. Public authorities and courts

Eight ministerial bodies[90] were addressed with formal requests in Russian; asking about their possibilities of participating in the study. Of the total of eight, two ministries – the Ministry of Energy and the Ministry of Forestry – replied. The Ministry of Energy declined participation due to a high workload and previously scheduled activities[91] while the Ministry of Forestry recommended that I approach the Ministry of Natural Resources and Environmental Protection instead, as this ministry pursues the unified state policy in the field of environmental protection in Belarus.[92] However, if I wished to interact further, the Ministry of Forestry recommended that I send them a list of specific questions regarding their area of competence. Due to my own unintended omission, I did not send them such a list.

Additionally, I addressed the six regional courts[93] as well as the Minsk City Court with similar requests for interviews. None of the regional courts responded. The Minsk City Court rejected my application without consideration of the merits, stating that it had not complied with the formal requirements enshrined in article 25 of the Law on Communications of Citizens and Legal Entities[94] as I had failed to provide my residential address.[95] I also sent a request to the Prosecutor General's Office. The Office initially replied and asked me to send

[90] Ministry of Natural Resources and Environmental Protection (including a special address to the Department of Information and Public Relations), Ministry of Emergency Situations and its Department of Nuclear and Radiation Safety, Ministry of Transport and Communications, Ministry of Architecture and Construction, Ministry of Agriculture and Food, Ministry of Energy, Ministry of Industry and Ministry of Forestry.
[91] O.F. Prudnikova, 'Об участи в исследовании ["About participation in the study"]', No. 01-12/Дл-490-8, 2018-10-04.
[92] A.A. Kulik, 'Об участи в исследовании ["About participation in the study"]', No. 09-2-12/5018, 2018-10-08.
[93] Brest, Homiel, Viciebsk, Hrodna, Mahilioŭ and Minsk.
[94] Law of the Republic of Belarus on Communications from Citizens and Legal Entities (No. 300-3 of 18 July 2011).
[95] B.B. Grigorovich, 'Об оставлении обращения без рассмотрения ["Rejection of appeal without consideration of the merits"]', No. 03-05-10/Б-430/1, 2018-10-16.

the interview questions on forehand for consideration.[96] However, after I had submitted my questions, I received no further replies.

4.2.2. Environmental activists and lawyers

Because of the language barrier, and sometimes because of formalities, it was difficult for me to identify and contact environmental activists with relevant experience myself. My contacts with environmental activists were therefore managed with the assistance of the public association Ecohome, which is part of the partnership organisation the Green Network in Belarus.[97] Ecohome also helped me arrange the interviews with the two lawyers, who are both affiliated with the organisation. Furthermore, Ecohome acted as my inviting organisation, enabling me to obtain a visa for my stay in Belarus.

Ecohome was established in 1996 and has, as of 2018, 82 members. The main objective of the organisation is, according to its own website, to promote an "ecological way of life and ideas of sustainable development".[98] Its activities include the provision of legal services, campaigning against nuclear power and for the promotion of renewable energy as well as building awareness about persecution of environmental activists and providing consultation.[99] Ecohome has furthermore been involved in two communications to the ACCC concerning non-compliance with the AC.[100]

4.2.3. Academics

During my stay in Belarus, I was officially enrolled at the Department of International Relations at the Belarusian State University through a research internship. This department assisted me in the contacts with two academics in the sphere of environmental law, who then took part in the research.

4.2.4. Scientists and engineers

Three engineers/scientists were interviewed for the study. Contacts with engineer/scientist 1 and 2 were facilitated through Ecohome, while engineer/scientist 3 was contacted by me directly.

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[96] The General Prosector's Office of the Republic of Belarus, '2400-42-2018, Бубенко С.Э ["2400-42-2018, Bubenko, S.E."]', 2018-10-24.
[97] Green Network, 'About us', http://greenbelarus.info/about-eng, (accessed 26 November 2018).
[98] Ecohome, 'Ecohome. English', (accessed 26 November 2018).
[99] Ecohome, 'Ecohome. English', (accessed 26 November 2018).
[100] Aarhus Convention Compliance Committee, 'Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2009/44 concerning compliance by Belarus (adopted by the Committee on 28 June 2011) [advanced unedited copy]', 2011-06-28, https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2009-44/Correspondence/C44Findings.20.07.2011.pdf (accessed 26 November 2018); Public Association "Ecohome", Belarus, Belarus Activsts Harassment and Persecution, ACCC Communication 2014-04-22, https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2014-102/Communication/Communication_Belarus_Ecohome_22.04.2014_redacted.pdf, (accessed 26 November 2018).

4.3. Anonymity

Due to incidents of harassment and persecution of environmental activists in Belarus[101], I deemed it appropriate to anonymise all my interview participants. This was done out of principle even though some participants clearly expressed that anonymity was not important to them.

To ensure that all interview participants would feel safe and confident about their participation in the study, I let each individual access the material concerning themselves during the writing process. Additionally, the conventional informed consent procedure (information about the purpose of the study, confidential storage and processing of personal data and the right to participation withdrawal) was applied.

The experiences and opinions of the interview subjects are related to factors such as their work, place of residence and how they involve in environmental issues. This information is, consequently, of relevance to the analysis of their responses. However, such information can also, if outlined in too much detail, be used to identify the interview subject. The information provided about each participant is therefore a result of a 'balancing act' between the interest of producing substantial academic research in the one scale pan and the individual interest to safe-guard their anonymity in the other.

5. Access to Environmental Information in the Aarhus Convention

5.1. About the Convention

The idea that public participation plays an important role in taking care of environmental issues is clearly expressed in Principle 10 of the 1992 Rio Declaration.[102] The principle states that:

[…] At national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

The AC, adopted in 1998 at the Fourth Ministerial Conference in the 'Environment for Europe' process, builds on the notion of environmental democracy spelled out in the Rio

[101] See United Nations Economic Commission for Europe, 'Findings and recommendations with regard to communication ACCC/C/2014/102 concerning compliance by Belarus'. PP. 21-59, https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.19.e.pdf, (accessed 5 October 2018); BELSAT TV, 'Arrests in Brest, as people protests [sic] against battery plant construction', 2018-10-27, https://belsat.eu/en/news/arrests-in-brest-as-people-protests-against-battery-plant-construction/, (accessed 27 November 2018).

[102] The Rio Declaration on Environment and Development (31 ILM 874 (1992)).

Declaration and makes environmental democratic structures into binding legal obligations for its Parties. The rights enshrined in the AC are structured into the three 'pillars' access to information, public participation in decision-making and access to justice in environmental matters. The pillars are regarded as fundamental and interconnected for the achievement of environmental democracy.[103] The Convention was for a long time the only of its kind, but in March 2018 the Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean[104] was adopted by the Economic Commission for Latin America and the Caribbean (ECLAC). At the time of writing, this regional agreement remains open for signature and has not yet entered into force.[105]

The AC entered into force on 30 October 2001 and currently has 47 Parties, including all EU countries as well as the EU itself[106].[107] The Kiev Protocol on Pollutant Release and Transfer Registers[108] was added to the Convention in 2009. Its objective is "to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers (PRTRs)".[109] Belarus is not a Party to the Kiev Protocol[110], but is undertaking preparatory measures to become one.[111] Furthermore, Belarus has not ratified the amendment to the Aarhus Convention concerning public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms (GMOs).[112] At the time of writing, this amendment has not entered into force due to an insufficient number of ratifications.[113]

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[103] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Recital 8.
[104] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (C.N.196.2018).
[105] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Article 22(1).
[106] The other Parties are the other European countries (except from Moldova and Russia) as well as Georgia, Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan.
[107] United Nations Economic Commission for Europe, Aarhus Convention. Parties to the Aarhus Convention and their dates of ratification, (accessed 03 October 2018).
[108] A Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Doc. MP.PP/2003/1).
[109] A Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Article 1.
[110] United Nations Economic Commission for Europe, 'A Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Status as at 03-10-2018', https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13-a&chapter=27&clang=_en, (accessed 03 October 2018).
[111] Aarhus Centre, Приложение к Орхусской конвенции – протокол о РВПЗ ["Annex to the Aarhus Convention - Protocol on PRTR"], http://aarhusbel.com/enclosure/, (accessed 09 October 2018).
[112] United Nations Economic Commission for Europe, 'Amendment to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (C.N.992.2005.TREATIES-1). Status as at 03-10-2018', https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13-b&chapter=27&clang=_en, (accessed 03 October 2018).
[113] United Nations Economic Commission for Europe, 'GMO amendment', https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/about-the-convention/amendments/gmo-amendment.html, (accessed 09 October 2018).

The AC establishes a link between environmental rights and human rights and between government accountability and environmental protection. By imposing obligations on governmental authorities in relation to the public and its legitimate interest in the environment, it aims to safeguard the human right to live in an environment adequate to their health and well-being for present and future generations.[114]

The Convention is a living instrument and has produced a considerable amount of both national and international case law. As it has been enacted in EU law, relevant case law of the Court of Justice of the European Union (CJEU) provides authoritative interpretations of the AC for the EU countries.[115] The provisions of the Convention are also being continuously interpreted and clarified by its own Compliance Committee (ACCC). The Compliance Committee evaluates the Parties' compliance with the Convention and reports its findings. These reports serve as recommendations for decisions on compliance taken at the Meeting of the Parties (MOP).[116] The ACCC can review compliance issues on its own initiative, but the compliance mechanism can also be triggered through submissions from the Parties, referrals from the secretariat or through communications from members of the public.[117] The compliance mechanism of the AC is one of few in international environmental law which allows that public communications are filed directly to a board of independent experts.[118]

To assist the understanding and implementation of the Convention, the UNECE has published a non-legally binding *Implementation Guide.* The latest edition of the guide was issued in 2014 and targets policymakers, legislators and public authorities as well as members of the public and environmental non-governmental organizations.[119] The guide refers to a variety of legal sources, including other international law instruments in the area of environment and human rights, decisions adopted by the MOP, findings by the ACCC, academic writings and examples from national legislation and practice; including EU law. [120] Despite its character of soft law, the Implementation Guide is an authoritative document to assist the interpretation of the AC.

[114] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; Recitals 2, 6, 7-13.
[115] Regarding access to environmental information, see for example Court of Justice of the European Union (Fifth Chamber), C-71/14, Judgment 2015-10-06 and Court of Justice of the European Union (Fifth Chamber), C-422/14, Judgment 2016-11-23.
[116] United Nations Economic Commission for Europe, 'Compliance Committee. Background', https://www.unece.org/env/pp/ccbackground.html, (accessed 03 October 2018).
[117] United Nations Economic Commission for Europe, 'Report of the First Meeting of the Parties (Addendum) Decision I/7 Review of Compliance', ECE/MP.PP/2/Add. 8, 2004-04-02 PP. 15-18, https://www.unece.org/fileadmin/DAM/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf, (accessed 03 October 2018).
[118] United Nations Economic Commission for Europe, 'Guide to the Aarhus Convention Compliance Committee [Fifth draft]', p. 6.
[119] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 9.
[120] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 9.

5.2. Access to environmental information

Access to environmental information constitutes the first pillar of the AC and is closely connected with the second pillar: participation in decision-making. If access to environmental information and public participation in decision-making are improved, the Convention deems that this will:

[…] enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.[121]

In other words, the public right to access to environmental information is seen as a prerequisite for exercising the rights expressed in the other two pillars, as well as an objective itself. The AC regulates both 'reactive' (article 4) and 'active' (article 5) obligations on public authorities in relation to environmental information. The term 'environmental information is defined in article 2. The reactive obligations enshrined in article 4 require that the authorities respond to public requests for environmental information, while article 5 requires that the same authorities actively collect and disseminate environmental information.[122] As the present research focuses on the reactive obligations contained in article 4, article 5 will not be further discussed.

Article 4 prescribes that public authorities must respond to requests about environmental information from the public in a timely manner and, as a main rule, provide the information in the requested form unless this information can be refused or restricted. The article contains an extensive list of reasons to refuse access to environmental information or to make it subject to restrictions. Furthermore, it provides that the applicant should not have to state an interest to obtain the information. Article 4 will be outlined in more detail in the comparative analysis conducted in Chapter 7.1.

5.3. Implementation of the right to access environmental information in Belarus

5.3.1. General legal framework for public access to information

There is no general right to access official records enshrined in Belarusian law. According to article 34 of the Constitution, citizens are guaranteed the right to "receive, store and disseminate complete, reliable and timely information on the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment". However, this right can be restricted through legislation "with the purpose to safeguard honour, dignity, personal and family life of the citizens and the full exercise of

[121] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Recital 9.
[122] United Nations Economic Commission for Europe, 'About the Convention. Access to Information', (accessed 03 October 2018).

their rights".[123] The *Law on Information, Informatisation and Information Protection*[124] (from now on "Law on Information") specifies the content of the right to access information further; prescribing that a citizen is entitled to receive information from state bodies "about himself, as well as information that touches directly upon his rights, freedoms, legal interests and obligations".[125] In other words, a stated interest is required to receive official information from public authorities. Citizens also have a right to "get acquainted with information" about work and activities of state bodies within the boundaries and norms specified by law, but the law does not prescribe a general right for the public to access official records.[126] Furthermore, other provisions prescribe that the right to access information cannot be used for wide range of "abusive" purposes, including a violent change of a constitutional system, violation of territorial integrity of the state, propaganda of war, raising social, national, religious or racial hostility or discord, or to conduct activities aimed at humiliation of national honour and dignity.[127]

5.3.2. Implementation process

Formally, the AC was incorporated into Belarusian law when approved by a presidential decree[128] in 1999.[129] Since then, its provisions have gradually been implemented above all through the Law on Environmental Protection[130]. The main amendments to this law were enacted in 2007.[131] The Law on Environmental Protection now contains the core obligations on public authorities concerning access to environmental information, as well as the other obligations following from the AC. Most of the procedural and substantive rules about access to environmental information are contained in article 74 of the Law on Environmental Protection, which has seven sub-articles in addition to it (article 74^1 – 74^7).

The initial implementation of the right to access environmental information in Belarus was deemed insufficient by the ACCC. Above all, the ACCC was concerned about that Belarusian legislation still enabled public authorities to require the requesting party to state

[123] Constitution of the Republic of Belarus of 1994, article 34.
[124] Law of the Republic of Belarus on Information, Informatisation and Information Protection (No. 4553 of 10 November 2008).
[125] Law of the Republic of Belarus on Information, Informatisation and Information Protection, article 15(2).
[126] Law of the Republic of Belarus on Information, Informatisation and Information Protection, article 15(3).
[127] Law of the Republic of Belarus on Information, Informatisation and Information Protection, article 16.
[128] Decree of the President of the Republic of Belarus on the Approval of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (No. 726 of 14 December 1999).
[129] United Nations Economic Commission for Europe, 'National Implementation Reports 2005. Belarus', ECE/MP.PP/2005/18Add. 3, 2005-04-08, P. 2(4), https://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2005&wf_Countries=BY&Quer_ID=&LngIDg=EN&YearIDg=2017, (accessed 10 December 2018).
[130] Law of the Republic of Belarus on Protection of the Environment [as amended] (No. 1982-XII of 26 November 1992.
[131] Malkina, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', P. 44.

an interest to access environmental information.[132] In the compliance decision IV/9b from 2011, the Committee recommended that Belarus make changes to the Law on Information, in which a stated interest is required to access official information, to make it refer specifically to the Law on Environmental Protection in cases when environmental information is requested.[133] In the compliance decision V/9c from 2014, the ACCC reiterated its recommendation.[134] The latter decision, which mainly concerned the public right to participate in environmental decision-making[135], also concluded that Belarus had failed to comply with the requirement that environmental information is provided in the requested form, since members of the public had not been given full access to the EIA report of the nuclear power plant (NPP) in Astraviec (see Chapter 5.4.1.1.).[136]

Following the recommendations issued by the ACCC, article 2 of the Law on Information has been amended to clarify that the provisions of the Law on Environmental Protection about access to environmental information are *lex specialis* in relation to the Law on Information.[137] The ACCC has also recommended Belarus to amend the Law on Information so that it explicitly refers to the Law on Environmental Protection regarding requests for environmental information, but accepted the chosen technique of implementation "without precluding possible further scrutiny of this issue in a future case if the above provisions prove not to meet the requirements of Convention when applied in practice […]".[138]

Thus, in the compliance case VI/8c in 2017, the ACCC concluded that Belarus has now successfully implemented the earlier recommendations concerning access to environmental information.[139] However, the Law on Information still contains provisions that can be applied

[132] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the fourth session of the Meeting of the Parties'. Decision IV/9b on compliance by Belarus with its obligations under the Convention, P. 2(A)
[133] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the fourth session of the Meeting of the Parties. Decision IV/9b on compliance by Belarus with its obligations under the Convention', P. 4 (a).
[134] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the fifth session of the Meeting of the Parties. Decision V/9c on compliance by Belarus with its obligations under the Convention', P. 6 (a).
[135] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the fifth session of the Meeting of the Parties. Decision V/9c on compliance by Belarus with its obligations under the Convention', P. 1 (b)(i)
[136] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the fifth session of the Meeting of the Parties. Decision V/9c on compliance by Belarus with its obligations under the Convention', P. 1 (b)(i); United Nations Economic Commission for Europe, 'Report of the Compliance Committee on its thirty-third meeting', ECE/MP.PP/C.1/2011/6/Add.1, PP. 19, 68-69, https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-33/ece.mp.pp.c.1.2011.6.add.1.e.pdf, (accessed 12 October 2018).
[137] Magonov, Sinitsa and Dubina, 'Доступ к экологической информации: вопросы реализации и защиты права', p. 9.
[138] United Nations Economic Commission for Europe, 'Report of the Compliance Committee. Compliance by Belarus with its Obligations Under the Convention', ECE/MP.PP/2017/35, 2017-07-31, P. 26, https://www.unece.org/fileadmin/DAM/env/pp/mop6/English/ECE_MP.PP_2017_35_E.pdf, (accessed 12 October 2018).
[139] United Nations Economic Commission for Europe, 'Excerpt from the addendum to the report of the sixth session of the Meeting of the Parties. Decision VI/8c. Compliance by Belarus with its obligations under the

to classify environmental information as "official information for limited distribution", which will be further explained in Chapter 5.3.2.3.2.

Apart from the Law on Environmental Protection, the Constitution and the *Citizens' and Legal Entities Communications Act*[140] ("Communication Act") contain provisions of relevance for the access to environmental information. Article 34 of the Constitution prescribes a general duty on public authorities to supply information that "effects the rights and legal interests of citizens"[141] (see Chapter 5.3.1.) and the Communication Act obliges public authorities to comply with legislation on citizens' communications; in particular provisions about environmental information.[142]

The term "citizen" is used consistently also in the Law on Environmental Protection to denote members of the public who have a right to access environmental information, participate in environmental decision-making and access justice in environmental matters. In the proceedings after the compliance case V/9c, the ACCC expressed concerns about that the legislation appears only to provide these rights to Belarusian citizens, which would narrow the scope of subjects intended in the AC where the term "the public" is used. However, Belarus argued that foreign nationals enjoy the same rights and liberties on the same terms as Belarusian citizens according to article 11 of the Constitution and article 4 of the Law on Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus[143]. Based on this argument, the ACCC concluded that the choice of the term "citizen" does not pose an obstacle to implementation of the AC.[144]

6. Nation-specific legal, political and historical aspects

The present chapter outlines some nation-specific factors of Belarus that will serve as a background for the socio-legal analysis of the implementation of the right to access environmental information in Chapter 7.3. The identified aspects are related to the legal and political system of Belarus as well as to its environmental law, seen from a historical perspective.

Convention'. *Recital*; and United Nations Economic Commission for Europe, 'Findings and recommendations with regard to communication ACCC/C/2014/102 concerning compliance by Belarus', p. 4.

[140] Law of the Republic of Belarus on Communications from Citizens and Legal Entities (No. 300-3 of 18 July 2011).

[141] Malkina, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', P. 48.

[142] Malkina, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', P. 46.

[143] Law of the Republic of Belarus on Status of Foreign Citizens and Stateless Persons in the Republic of Belarus (No. 105-Z of 4 January 2010).

[144] United Nations Economic Commission for Europe, 'Report of the Compliance Committee. Compliance by Belarus with its obligations under the Convention', PP. 27-28.

6.1. Constitutional framework

Following the collapse of the Soviet Union, the Republic of Belarus regained independence in 1990. The Constitution was adopted in 1994 and renewed in 1996, when the presidential powers were extended significantly.[145] The legislative power of Belarus is exercised by a bicameral parliament – the National Assembly (*Natsionalnoye Sobranie*), which consists of the House of Representatives (*Palata Predstaviteley*) and the Council of the Republic (*Soviet Respublici*). Legislative initiative can be taken by the President, members of the National Assembly, the Government (*Soviet Ministrov*) or by citizens eligible to vote if they are more than 50 000 in number. The Council of Ministers (*Soviet Ministrov*) exercises the executive powers of the Republic and is headed by the Prime Minister, who is appointed by the President with the consent of the House of Representatives. Acts issued by the Government have binding force.[146]

The political powers of the president of Belarus, Aleksandr Lukashenko, are among the widest reaching in the world; including constitutional rights to declare referendums, extraordinary elections, dismiss chambers of parliament, the General Prosecutor and the chairman of the National Bank as well as to appoint the judges and chairmen of the Supreme Constitutional and Economic Courts and all the judges of the Republic.[147] The political and economic system that has been built up or preserved, respectively, by Lukashenko has been termed 'neo-Soviet' and has a strong personalistic component.[148] The economy of the country is dominated by the state sector, even though there has been an opening up to privatization in later years.[149] However, the state still imposes rigid regulation and supervises all private enterprise.[150]

The Belarusian state exercises control over national media in several aspects, requiring; among other things; state registration for all media actors.[151] A large part of media in Belarus is state-owned but there are also several independent media actors. However, to avoid government pressure, many independent media exercise self-censorship.[152] The Constitution of Belarus establishes freedom of association for everyone,[153] but the Law on Public

[145] Khodosevich, Tatyana and Shalygina, Nadia, 'Introduction' in GlobaLex 'UPDATE: Guide to Legal Research in Belarus', http://www.nyulawglobal.org/globalex/Belarus1.html, (accessed 18 September 2018).
[146] Khodosevich, Tatyana and Shalygina, Nadia, 'The Parliament and the Government' in GlobaLex 'UPDATE: Guide to Legal Research in Belarus', http://www.nyulawglobal.org/globalex/Belarus1.html), (accessed 18 September 2018).
[147] Khodosevich, Tatyana and Shalygina, Nadia, 'The Presidency' in GlobaLex, (accessed 18 September 2018), http://www.nyulawglobal.org/globalex/Belarus1.html), UPDATE: Guide to Legal Research in Belarus.
[148] Fritz, V., 'State Building. A Comparative Study of Ukraine, Lithuania, Belarus and Russia', Central European University Press, 2007, p. 216.
[149] Veselova, E. Sh., 'The Market-Socialist Country', Probl. Econ. Transit. 2016/58 nr. 6, pp. 551-553.
[150] Veselova, 'The Market-Socialist Country', in Probl. Econ. Transit. 2016/58 nr. 6, pp. 547-548.
[151] Law of the Republic of Belarus on Mass Media (No. 437-Z of July 17, 2008 [as amended of December 20, 2014]), article 11.
[152] Kazakevich, Andrei, 'Belarus', Nations in Transit 2018, Freedom House, 2018, p. 7, https://freedomhouse.org/sites/default/files/NiT2018_Belarus.pdf, (accessed 11 December 2018).
[153] Constitution of the Republic of Belarus of 1994, article 36.

Associations still requires that non-governmental organizations undergo a state registration procedure and makes refusal registration possible.[154]

A major contributor to the stability of president Lukashenko's leadership is the loyalty of the 'force structures'; in other words, the army, security apparatus, intelligence services and other institutions, to the regime [155] These institutions are characterised by militarisation and centralisation[156] and their structures resemble those of Soviet Union times. As an example, the State Security Committee (KGB) of Belarus has not changed its name.[157] The actual size and strength of the Belarusian security apparatus is unknown, but experts have estimated it to be the largest among all countries of the Commonwealth of Independent States (CIS)[158].[159]

6.2. Legal system

When Belarus gained independence from the Soviet Union in 1990, it segregated from the socialist law family. However, the legal system is still influenced by structures that were formed during the Soviet era. According to the National Legal Internet Portal of Belarus[160], this influence is noticeable in the normative aspects of Belarusian law – in other words in the legal norms, principles and institutes of the country. Belarusian law now belongs to the Roman-Germanic family, which means that normative legal acts are the main sources of law.[161] The fundamental legal act is the Constitution, which is supreme to all other acts. Other primary legislative acts are laws, which are enacted by the National Assembly, as well as codes and decrees, which can be enacted either by the National Assembly or the President. Secondary legislation can be enacted by the President in the form of edicts, orders, directives or decrees. Decisions taken by the Government, ministries, state committees and local councils and executive committees are also considered to be secondary legislation.[162]

The court system is based on the principles of territory and specialisation. The town courts, oblast (regional) courts, the Minsk city court and the Supreme Court all have universal

[154] Law of the Republic of Belarus on Public Associations (No. 3254-XII of October 4, 1994 [as amended of November 4, 2013]), article 13-15.
[155] Neliupšienė, J. and Beržiūnas, V., 'The Impact of Force Structures and the Army on Maintaining the Regime in Belarus', in Lith. Annu. Strateg. Rev. 2013/12 nr. 1. p. 192.
[156] Neliupšienė and Beržiūnas in Lith. Annu. Strateg. Rev. 2013/12 nr.1. p. 218.
[157] Neliupšienė and Beržiūnas, pp. 193; 197.
[158] CIS is a union of currently eleven former Soviet Union republics. The CIS states are Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan (associate member), Ukraine and Uzbekistan; see Государства - участники СНГ ["CIS member states"], http://www.cis.minsk.by/, (accessed 25 December 2018)
[159] Neliupšienė and Beržiūnas, p. 197.
[160] National Center of Legal Information of the Republic of Belarus, Pravo.by. National Legal Internet Portal of the Republic of Belarus, (accessed 10 October 2018).
[161] Pravo.by, Legal System. 'General Information', http://law.by/legal-system/general-information/, (accessed 04 October 2018).
[162] Khodosevich, Tatyana and Shalygina, Nadia, 'Legal System' in UPDATE: Guide to Legal Research in Belarus, (accessed 18 September 2018)..

jurisdiction and deal with cases under civil, criminal and administrative law.[163] There are also special economic courts for Minsk as well as for the individual regions and a Supreme Economic Court. The Supreme Court is the highest judicial body and is responsible for supervising the judicial activity of the general courts.[164] Even though judicial precedent is not considered a source of law; the explanations of plenums of the Supreme Court and Supreme Economic Court must be followed by the other courts and authorities.[165] The highest law-enforcement body in Belarus is the Prosecutor General's Office, which supervises the implementation of primary and secondary legislation on all levels.[166]

According to information from the National Legal Internet Portal, the Belarusian legal system still experiences a transformation period. The Portal states that this transformation has been hampered by several factors, including "the prolonged domination of an anti-democratic regime, the uniqueness of the character of Belarusian society and the breach of former economic relations that were formed during the Soviet period". It identifies the insufficient separation of legislative, executive and judicial powers as a deficiency in the system of legal institutions.[167] According to the National Legal Internet Portal, there is also no clear hierarchy among legal rules in Belarusian legislation; including constitutional norms.[168]

Recent international reviews of the Belarusian judicial system have also concluded that the insufficient separation of powers undermines a democratic development.[169] Furthermore, they have deemed that the Belarusian judicial system does not operate independently and impartially. With his extensive legislative and executive powers, the president exercises a strong 'vertical' influence on all public institutions.[170]

The National Legal Internet Portal alleges that another deficiency in the Belarusian legal system is a 'legal nihilism' among Belarusian citizens; in other words that there is a low sense of justice in the society.[171]

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[163] Belarus.by, 'The Court System in Belarus', http://www.belarus.by/en/government/courts, (accessed 04 October 2018).
[164] Khodosevich, Tatyana and Shalygina, Nadia, 'Judicial System' in UPDATE: Guide to Legal Research in Belarus, (accessed 18 September 2018).
[165] Khodosevich, Tatyana and Shalygina, Nadia, 'Legal System' in UPDATE: Guide to Legal Research in Belarus, (accessed 18 September 2018).
[166] Khodosevich, Tatyana and Shalygina, Nadia, 'Judicial System' in UPDATE: Guide to Legal Research in Belarus, (accessed 18 September 2018).
[167] Pravo.by, 'Legal System. General Information', http://law.by/legal-system/general-information/, (accessed 04 October 2018).
[168] Pravo.by, 'Legal System. General Information', (accessed 04 October 2018).
[169] Kazakevich, 'Belarus', Nations in Transit 2017, Freedom House, 2017, p. 4, https://freedomhouse.org/report/nations-transit/2017/belarus (accessed 11 December 2018).
[170] Bureau of Democracy (Human Rights and Labor), 'Belarus 2017 Human Rights Report' in Country Reports on Human Rights Practices for 2017, United States Department of State, p. 9, https://www.state.gov/documents/organization/277387.pdf, (accessed 11 December 2018) ; Kazakevich, 'Belarus. 2017', p. 10.
[171] Pravo.by, 'Legal System. General Information', (accessed 04 October 2018).

6.2.1. Local governments

In addition to the national government, Belarus has regional and local governments with both executive and administrative branches. The heads of the local executive and administrative bodies are appointed and dismissed by the president. Formally, the local authorities manage local development, budgets and taxes and are responsible for the management and disposal of municipal property. Hence it is most often the local executive committees that make first-level decisions about planning permissions and other issues related to development.[172] However, due to the consolidated power structure of the country, the local authorities are strongly subordinated to the central authorities and have limited executive powers. According to Freedom House, it is usually the case that the local authorities simply approve decisions prepared by the national and, sometimes, regional executive bodies.[173] Despite of this fact, Freedom House's most recent review of Belarus concluded that local Belarusian authorities have become somewhat more open to cooperation with NGOs and grass root civil initiatives.[174]

6.3. Environmental law in history

This section outlines significant aspects of environmental law and policy of the Soviet Union as well as significant developments that took place after Belarus became independent.

6.3.1. Environment and law in the Soviet Union

The Soviet Union era was characterised by a significant deterioration of the state of the environment. The Soviet leaders regarded a vast exploitation of natural resources as a virtue[175] and a necessity for the development of the socialist economy.[176] As a result of the rapid industrial development, careless treatment of natural resources and general disregard of human health and ecology issues[177], the Union faced disastrous environmental problems. In 1989, Yablokov[178] stated that 20 % of the Soviet Union population lived in ecological disaster zones and another 35-40 % under ecologically unfavourable conditions.[179] Major environmental problems were air pollution, pollutions of rivers, agricultural mismanagement and a considerable destruction of species and their habitats with the shrinking of the Aral Sea

[172] Khodosevich, Tatyana and Shalygina, Nadia, 'Local Government and Self-Government' in UPDATE: Guide to Legal Research in Belarus, (accessed 18 September 2018).
[173] Kazakevich, 'Belarus', Nations in Transit 2018, p. 8, https://freedomhouse.org/sites/default/files/NiT2018_Belarus.pdf, (accessed 11 December 2018).
[174] Kazakevich, 'Belarus', Nations in Transit 2018, p. 8.
[175] Harman-Stokes, K.M., 'Community Right-to-Know in the Newly Independent States of the Former Soviet Union: Ending the Culture of Secrecy Surrounding the Environmental Crisis', Va. Environ. Law J. 1995/15 nr.1, p. 84.
[176] Zaharchenko in Ecol. Law Q. 1990/17 nr.3, p. 468.
[177] Zaharchenko, pp. 456-459.
[178] Dr. Aleksei Yablokov, later the head of the Interagency Ecological Security Committee of the Russian Federation's Security Council community – see Harman-Stokes in Va. Environ. Law J. 1999/ 15 nr. 1, *supra* note 3.
[179] Zaharchenko, p. 458.

and pollution of the Baikal Sea as clear examples.[180] Disastrous for the environment and human health was also the contamination resulting from the nuclear energy industry and the production and testing of nuclear weapons. In this regard, the accident in Chernobyl 1986 is most well-known. Following the explosion of the Chernobyl nuclear reactor, radionuclides spread over large areas of what is now Ukraine, Belarus and Russia, and caused a significant number of deaths[181] as well as contamination of prime farmland and drinking water sources.[182]

Despite the dismal environmental situation, Soviet Union law contained a framework for environmental protection that was "remarkably complete".[183] These laws did however not contain policies for the overall protection of the environment but were designed to govern the rational use and protection of the environment and natural resources.[184] In addition, the effectiveness of the environmental laws was hampered by enforcement problems. Until the final years of the Union's existence, there were no effective judicial mechanisms to force government bodies and enterprises to comply with existing environmental laws.[185]

Another factor greatly inhibiting environmental protection initiatives in the Soviet Union was the totalitarian culture of secrecy and rule based on fear.[186] Official bodies tended to withhold accurate environmental information from the public and from other bureaucrats. Because of fear of punishment for not reaching the centralised production goals, a practice of falsifying data and disguising failures developed among mangers in industry.[187] This widespread tradition of misinformation, penetrating all levels government and bureaucracy, created a general distrust among people for official information sources.[188] Even though environmental data was subject to heavy censorship, the Soviet authorities started disclosing some information during the 1970's. However, due to its incompleteness, the information was difficult to interpret and to draw conclusions from.[189]

6.3.1.1. Effects of perestroika

In the last years of its existence, the Soviet Union, under the rule of Mikhail Gorbachev, underwent an epoch of structural and ideological change, known as *perestroika*, which means "restructuring" or "reconstruction" in Russian.[190] Apart from being an administrative and economic reconstruction, perestroika also had implications for individual rights and liberties.

[180] Zaharchenko, pp. 457-458.
[181] The number of estimated deaths in 1995 ranged from 31 (official Soviet record) to 50 000, see Harman-Stokes in Va. Environ. Law J. 1995/15 nr.1, p. 89.
[182] Harman-Stokes, pp. 89-90.
[183] Jancar, B., 'Democracy and the Environment in Eastern Europe and the Soviet Union', in Harv. Int. Rev. 1990/12 nr. 4, p. 17.
[184] Zaharchenko in Ecol. Law Q. 1990/17 nr.3, p. 466.
[185] Zaharchenko, pp. 470 - 471.
[186] Harman-Stokes, p. 81.
[187] Harman-Stokes, p. 81.
[188] Harman-Stokes, p. 81.
[189] Jancar, p. 18.
[190] Petrov, K., 'Construction, reconstruction and deconstruction: The fall of the Soviet Union from the point of view of conceptual history', in Stud. East. Eur. Thought 2008/60, pp. 182-183.

Closely connected with this epoch is the concept of *glasnost'*, which means "openness" or "publicity".[191] To facilitate the necessary changes of the political system, Gorbachev deemed it necessary that people could tell the truth about the past and reveal historical wrongdoing.[192] Perestroika and glasnost' brought about significant changes to Soviet Union environmental law. The State attempted to enforce the principle of rule of law and this process also came to alter the relationship between natural resources and their users.[193] In addition, administrative procedures for the enforcement of environmental law were altered.[194] In 1990, Zaharchenko deemed that the changes taking place in the Soviet legal system could "eventually create an opportunity for Soviet citizens to use the courts for the purpose of protecting the environment".[195] In line with the policy of glasnost', the possibility of involving in environmental issues started opening up for Soviet citizens. This development was also a result of the Chernobyl disaster in 1986,[196] during which the authorities initially did not disclose any information about the accident. This manifest negligence of public health and safety as well as environmental concerns spurred strong protests over the entire Union.[197] These protests resulted, among other things, in the cancellation of several planned nuclear stations.[198]

In 1989, a Decree "On the Urgent Measures for the Country's Ecological Recovery"[199] was issued by the Supreme Soviet. It obliged public authorities to provide information about the environmental situation in their areas, including information regarding all local sources of pollution and any accidents with ecological consequences for the public. According to Zaharchenko, the decree was a "serious step towards establishing freedom of information in the environmental area". Zaharchenko did however also deem there to be no true legal basis for guaranteeing the public access to environmental information from government officials.[200]

6.3.2. Development after independence

An OECD report from 1994, assessing the adequacy of existing environmental information systems in Belarus,[201] concluded that these constituted a good base for further progress since data was available for several important environmental areas and as there were bodies of scientific knowledge and experience in research institutes and administration.[202] However, the report identified deficiencies in public access to environmental information and

[191] Petrov, p. 192.
[192] Petrov, p. 192.
[193] Zaharchenko in Ecol. Law Q. 1990/17 nr.3, p. 456.
[194] Zaharchenko, pp. 469-470.
[195] Zaharchenko, p. 464.
[196] Zaharchenko, pp. 459-460.
[197] Harman-Stokes in Va. Environ. Law J. 1995/15 nr.1, p. 99.
[198] Jancar in Harv. Int. Rev. 1990/12 nr.4, p. 16.
[199] Decree of the U.S.S.R. Supreme Soviet on the Urgent Measures for the Country's Ecological Recovery (No. 25, item 487 of 27 November 1989).
[200] Zaharchenko in Ecol. Law Q. 1990/17 nr.3, p. 474.
[201] Zecchini, S., 'Environmental Information Systems in Belarus. An OECD Assessment', OCDE/GD(94)38, p. 2, http://www.oecd.org/environment/bycountry/belarus/, (accessed 24 October 2018).
[202] Zecchini, 'Environmental Information Systems in Belarus. An OECD Assessment', p. 5.

concluded that public awareness and understanding of environmental issues was limited and that strategies for disseminating information to the public were inadequate to improve this situation. Among other things, the report recommended Belarus to establish a clearer institutional framework for co-ordination and integration of environmental information and to improve the quality and reliability of environmental information.[203]

In 1995, Harman Stokes identified a general trend of unprecedented disclosure of environmental information in the Newly Independent States (NIS) of the former Soviet Union but deemed that problems with its accuracy still prevailed.[204] Harman-Stokes also noted that public protests over environmental conditions were vanishing while the number of professional environmental groups, gaining public respect and taking on fights within the bureaucracy, were increasing.[205] Discussing potential future models for public access to environmental information and citing another legal scholar, Harman-Stokes concluded that […] any information disclosure laws enacted in the former Soviet Union "must be twice as good to get past the cultural bias" against providing information.[206]

6.4. Contemporary environmental law in Belarus

The 1992 Law on Environmental Protection[207] is the main act of environmental law in Belarus. In addition to the Law on Environmental Protection, Belarusian environmental law comprises legislation on a variety of topics such as protection of wildlife, waste management, safety of genetic engineering and nuclear safety.[208] According to the 2016 UNECE environmental performance review of Belarus, the enforcement of environmental law in Belarus has developed significantly in later years due to the adoption of presidential decrees concerning environmental controlling and permitting.[209] The review also identifies a progress in the integration of environmental considerations into sectoral legislation.[210]

Belarus participates in several international treaties and agreements in the environmental sphere, of which a large number are however still to be ratified.[211] The 2016 UNECE review recommended Belarus to continue to develop and revise existing legislation in order to comply with its international obligations.[212] Another problematic aspect of environmental law in Belarus, as identified by the AC Task Force on Access to Justice, is the poor awareness

[203] Zecchini, pp. 5-6.
[204] Harman-Stokes in Va. Environ. Law J. 1995/15 nr.1, p. 111.
[205] Harman-Stokes, p. 93.
[206] Harman-Stokes i Va. Environ. Law J. 1995/15 nr.1, p. 124. The citation comes from an interview with Professor Nicholas Robinson, see Harman-Stokes, *supra* note 180.
[207] Law of the Republic of Belarus on Protection of the Environment [as amended] (No. 1982-XII of 26 November 1992).
[208] United Nations Economic Commission for Europe, 'Belarus. Third Review'. 2016, p. 18.
[209] United Nations Economic Commission for Europe, 'Belarus. Third Review'. 2016, p. 19.
[210] United Nations Economic Commission for Europe, 'Belarus. Third Review'. 2016, p. 19.
[211] United Nations Economic Commission for Europe, 'Belarus. Third Review'. Annex II.
[212] United Nations Economic Commission for Europe, 'Belarus. Third Review', p. 311.

and capacity of judges and prosecutors to handle environmental cases initiated by citizens and public associations.[213]

6.4.1. Environmental assessments

Environmental assessments are compulsory in Belarus for several types of projects. The duty to conduct them follows from the *Law On State Environmental Impact Assessment, Strategic Environmental Assessment and Environmental Impact Assessment*[214] (from now on "Law on Environmental Assessments"), which was enacted in 2017 as a step to implement the Espoo Convention.[215] Belarus is not yet party to the Kiev Protocol[216],[217] but has through the new law implemented some procedures for strategic environmental assessments as well. As there is no English translation of the Law on Environmental Assessments, the following outline of the law is based on translation through Google translate and verified by related material[218] which is available in English.

The Law on Environmental Assessments prescribes that certain projects and objects are subject to a 'state environmental review'.[219] This state environmental review should determine the compliance or non-compliance of a planned project, ongoing project or other types of planning documentation with the legal requirements about environmental protection and rational use of natural resources.[220] The review should be carried out by the state ecological expertise; an organisation subordinate to the Ministry of Environmental Protection and Natural Resources of Belarus.[221] The state environmental review must also account for

[213] Skrylnikov, 'Study on Standing for Individuals, Groups and Environmental Non-governmental Organizations Before Courts in Cases in Environmental Matters in Armenia, Azerbaijan, Belarus, Kazakhstan, Republic of Moldova and Tajikistan [unedited version]', United Nations Economic Commission for Europe Task Force on Access to Justice, p. 24, https://www.unece.org/fileadmin/DAM/env/pp/a.to.j/AnalyticalStudies/2013_EECCA_Standing/2014_EECCA_standing_Eng__062014_final.pdf, (accessed 11 December 2018)..

[214] Law of the Republic of Belarus No. 399-3 of 18 July 2016 on State Environmental Review, Strategic Environmental Assessment and Environmental Impact Assessment.

[215] Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).

[216] Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Kiev Protocol).

[217] United Nations Treaty Collection, Chapter XXVII 4.b. Environment. Status as at 03-12-2018, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-4-b&chapter=27&clang=_en, (accessed 03 December 2018).

[218] Ministry of Transport and Communications (MoT) of Belarus and State Company "BELGIPRODOR", 'P-80 road section Sloboda-Papernya (km 0.00-km 14.77), Minsk region, Belarus. Environmental Impact Assessment Report', 2017, https://www.ebrd.com/documents/admin/esia-49312-english-1.pdf, (accessed 2018-12-30); United Nations Economic Commission for Europe, Law of the Republic of Belarus of 18 July 2016 No. 399-3 On State Environmental Review, Strategic Environmental Assessment and Environmental Impact Assessment [extract] 2017-07-19, http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9c_Belarus/extracts_from_EIA_Law_EN.pdf, (accessed 30 December 2018).

[219] Law on State Environmental Review, Strategic Environmental Assessment and Environmental Impact Assessment, article 5; Ministry of Transport and Communications (MoT) of Belarus and State Company "BELGIPRODOR", P-80 road section Sloboda-Papernya (km 0.00-km 14.77), Minsk region, Belarus. Environmental Impact Assessment Report, p. 5.

[220] Law on State Environmental Review […], article 1(1).

[221] Law on State Environmental Review […], article 13.

conclusions resulting from any public environmental review procedure.[222] Such conclusions can be presented by the public during public discussions of environmental and strategic impact assessments.[223] The conclusion of the state environmental review can be either positive or negative. A positive conclusion can also contain special conditions for the implementation of the project.[224] The implementation of a project without a positive conclusion is however prohibited unless the project is granted permission by the president.[225]

The law lists the types of objects that must undergo a strategic environmental assessment[226] as well as objects that are subject to environmental impact assessment.[227] Such reviews can be carried out by "customers and project organisations" who have received specialist trainings in compliance with procedures established by the Council of Ministers.[228] Consequently, the conductor of an environmental assessment procedure can be either a state-owned or private enterprise. In January 2017, a resolution[229] was issued by the Council of Ministers according to which all conductors of environmental impact assessments and strategic impact assessments must be certified by the *Republican Centre for State Ecological Expertise and Advanced Training of Executive Personnel and Specialists under the Ministry of Environmental Protection and Natural Resources*.[230]

7. Analysis

In order to answer the research questions, this chapter analyses the implementation of the right to access environmental information in Belarus from the different perspectives outlined in the introduction. Firstly, the first research question is investigated in Chapter 7.1. through a doctrinal comparative analysis of the implementation of the right into the Belarusian legal framework. Secondly, the findings from the interview study and from Ecohome's monitoring report are outlined in Chapter 7.2. to give answers to the second research question. Finally, Chapter 7.3. investigates the third research question by connecting the findings in Chapter

[222] Law on State Environmental Review […], article 13(3).
[223] Law on State Environmental Review […], article 12(1)(2).
[224] Law on State Environmental Review […], article 15(2); United Nations Economic Commission for Europe, Law of the Republic of Belarus of 18 July 2016 No. 399-3 On State Environmental Review, Strategic Environmental Assessment and Environmental Impact Assessment [extract] 2017-07-19, article 15(2).
[225] Law on State Environmental Review […]. article 15(3); United Nations Economic Commission for Europe, Law of the Republic of Belarus of 18 July 2016 No. 399-3 On State Environmental Review, Strategic Environmental Assessment and Environmental Impact Assessment [extract] 2017-07-19, Article 15(3).
[226] Law on State Environmental Review […], article 6.
[227] Law on State Environmental Review […], article 7; Ministry of Transport and Communications (MoT) of Belarus and State Company "BELGIPRODOR", P-80 road section Sloboda-Papernya (km 0.00-km 14.77), Minsk region, Belarus. Environmental Impact Assessment Report, p. 4.
[228] Law on State Environmental Review […], articles 18-19.
[229] Resolution by the Council of Ministers of Belarus on Some Measures to Implement the Law of the Republic of Belarus of 18 July 2016 "On State Ecological Expertise, Strategic Environmental Assessment and Environmental Impact Assessment"] (No. 47 of 19 January 2017).
[230] Resolution by the Council of Ministers of Belarus on Some Measures to Implement the Law of the Republic of Belarus of 18 July 2016 "On State Ecological Expertise, Strategic Environmental Assessment and Environmental Impact Assessment". First part: Chapter 5, P. 40 and second part: Chapter 5, P. 23.

7.2. with the factors specific to Belarus that have been outlined in Chapter 6 as well as the findings of the doctrinal analysis in Chapter 7.1..

7.1. Comparative analysis of the implementation of the right to access environmental information in Belarus

As briefly explained in Chapter 5.3.2., the right to access environmental information is mainly expressed by articles 74 - 74[7] of the Law on Environmental Protection. However, these articles are extensive and can hence not be cited in full. Thus, to make the comparative analysis, the section will compare the provisions of the AC with national Belarusian law under four thematic headlines, namely (1) the scope of environmental information; (2) obligations to provide access; (3) restrictions on access and (4) time limits.

The outline of Belarusian law is based on unofficial English translations, provided by the National Legal Internet Portal[231]. The translation contains some grammatical mistakes and sentences that are formulated in a bulky manner. This has been considered as a deficiency of language and has not been accounted for in the analysis.

7.1.1. Scope of environmental information

7.1.1.1. Aarhus Convention

Article 2(3) of the AC defines the term ‘environmental information’ in the following manner:

“Environmental information” means any information in written, visual, aural, electronic or any other material form on:
(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above,
and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

According to the Aarhus Implementation Guide, the list in article 2(3) should be seen as illustrative and not an exhaustive definition of “environmental information”. The listed types of data constitute the minimum requirement of what the term must encompass.[232] The Guide

[231] National Center of Legal Information of the Republic of Belarus, Pravo.by. National Legal Internet Portal of the Republic of Belarus, (accessed 10 October 2018).
[232] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 50.

also emphasises that information in "material form" not only entails ready documents, but also information in raw and unprocessed form ("raw data").[233]

7.1.1.2. National law

The Law on Environmental Protection uses the term 'ecological information'; in line with the official Russian text of the Aarhus Convention. This analysis assumes that the difference between 'environmental' and 'ecological' is purely linguistic and uses the first term, apart from when direct references to the Law on Environmental Protection are made.

Article 1 of the Law defines the term 'ecological information' as:

> […] recorded information that contains data about the condition of the environment, influence on it and measures on its protection, as well as about the influence of the environment on a human being, and the content of which is specified by the present law, other legislative acts of the Republic of Belarus and international treaties of the Republic of Belarus.

This concisely formulated definition is supplemented by an extensive list in article 74 of the Law on Environmental Protection of data that should always be classified as environmental information. In 2003, the Law on Environmental Protection was supplemented with a decree listing items of environmental information[234].[235] The list was intended to give a concrete expression to the term. However, due to difficulties with its practical application[236], it was subsequently removed.[237]

7.1.1.3. Comparison

Subject to some differences in wording, this list corresponds with the definition of environmental information in article 2(3) of the AC. There are however two notable differences compared with the AC.

Firstly, article 74 states that environmental information includes data on the state of health and security of citizens and their living conditions whilst article 4(3)(c) AC talks about the state of human health and safety and the conditions of human life. Article 74 has in other words narrowed the scope of the definition from humans to citizens. However, as the list is not exhaustive and should only serve as a supplement to the definition in article 1 of the Law on Environmental Protection, where the term "human being" is used, it can be argued that the state of health and security of non-Belarusian citizens are in fact not excluded from the scope. Furthermore, Belarusian law arguably grants equal rights to non-citizens (see Chapter 5.3.2.).

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[233] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 51.
[234] Decree of the Ministry of Natural Resources and Environmental Protection (No. 22 of 29 May 2003).
[235] United Nations Economic Commission for Europe, 'National Implementation Reports 2005. Belarus', P. 3(a).
[236] Kulik, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', ECE/MP.PP/WG.1/2011/L.4, National Implementation Reports 2014, P. 9, https://www.unece.org/env/pp/reports_trc_implementation_2014.html (accessed 10 December 2018).
[237] Compare Malkina, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', Chapter VII.

Secondly, while article 4(3)(b) includes "cost-benefit and other economic analyses and assumptions used in environmental decision-making" in the definition of environmental information, article 74 prescribes that the "justification" of the necessity of the adoption of legal acts, programs, protection measures, schemes, plans etc., including "financial and economic reasoning" should be considered as environmental information. Most likely, these differences in wordings are of little relevance to the substantive interpretation of the provisions.

7.1.2. Obligations to provide access

7.1.2.1. Aarhus Convention

Article 4(1) of the AC demands that each Party ensures:

[…] that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation or comprising such information:

(a) Without an interest having to be stated
(b) In the form requested unless:
    (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
    (ii) The information is already publicly available in another form.

"Public authority", in other words the entity responsible for providing access, is defined in article 2(2), stating that this term implies (a) the government at different levels, (b) natural or legal persons performing public administrative functions, (c) "any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b)" as well as (d) institutions of economic integration organisation.

According to article 4(8), Parties may allow their public authorities to make the provision of environmental information subject to a charge, but that this charge "shall not exceed a reasonable amount".

As the AC does not specify the form of the request and thus both oral and written requests are encompassed by the article.[238] The Implementation Guide explains that, even though the AC does not require that the requesting party makes any explicit legal references to the AC, its implementing national legislation or the fact that the requested information is environmental; such references are considered 'good practice' as they facilitate the work of the public authority.[239]

[238] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 79.
[239] United Nations Economic Commission for Europe, 'An implementation guide', p. 80.

The obligation to provide information in the requested form is important for several reasons, according to the Implementation Guide. Among other things, it deems that information is provided faster and more efficient in this way. The obligation also implies that the authority must provide copies of the information, when requested to do so.[240] That the requested information is already "publicly available in another form" means, according to the Guide, that this other information is a "functional equivalent" of the form requested.[241]

7.1.2.2. National law

Environmental information should, according to article 74 of the Law on Environmental Protection, be provided and disseminated in oral, written, electronic, audio-visual or other forms. It should furthermore be separated into 'ecological information of general purpose' and 'specialized ecological information'. These terms are further defined in article 1 of the law.

The unofficial English translation contains some grammatical mistakes and the law does not provide a clear matrix on how to distinguish the two types of environmental information. However, it is possible to deduce that ecological information of general purpose means environmental information intended for public use which is provided by its holders in accordance with national legislation. Article 74^1 prescribes that access to ecological information of general purpose is guaranteed for state bodies, other state organizations, legal persons and citizens through the provision or dissemination of this information by its owners. It should, according to article 74^4, be provided free of charge and as a main rule within ten working days. An official authority who receives a request for information of general purpose is also obliged to enquire this information from legal persons other than state bodies and from individual entrepreneurs, if they hold the information. The latter must provide the requested information within ten working days to the state body, unless there are grounds for denying access. A competent authority who receives a request for ecological information of general purpose, which it does not hold, must, according to article $74^{4,}$ refer the request to another state body or organization that can deal with the request. This must be done within five working days.

Based on the definitions in article 1 and on the provisions on collection and dissemination of ecological information in article 74,[242] one can conclude that specialized ecological information consists of information of which no preliminary preparation is required in national legislation and which has not been included into the *State Data Fund on the State of the Environment and Influence on It*. According to article 73, all environmental information subject to mandatory collection in accordance with article 74 should be included in this fund.

[240] United Nations Economic Commission for Europe, 'An implementation guide', p. 80.
[241] United Nations Economic Commission for Europe, 'An implementation guide', p. 81.
[242] Article 74 also sets forth situations when ecological data must be collected. These are, inter alia, when (1) environmental monitoring or measuring takes place; (2) state registration in the sphere of environmental protection and natural resources takes place; (3) special permissions for the carrying out of activities that influence the environment are issued; (4) influence on the environment is measured; (5) ecological examination takes place.

Hence, only data which is not subject to mandatory collection and preparation can be classified as specialized ecological information. Specialized ecological information is guaranteed on the basis of a contract between its owner and the above-mentioned parties and can, according to article 74^3, only be provided free of charge to state bodies. Article 74^5 prescribes that other organizations, legal persons other than state bodies and citizens must pay a charge to access specialized ecological information. An authority who receives a request for specialized ecological information must within five working days offer the applicant to conclude a contract on this matter and submit the terms and conditions of such a contract.

Article 74^4 prescribes that if the state body or other state organization that owns the ecological information, whether it is information of general purpose or specialized ecological information, has reasons to deny its disclosure in accordance with law, they must inform the applicant about this in writing within three working days, specify the reasons for denial and also explain the terms and the order for appealing the decision.

Article 74^4 also regulates the situation when another legal person than the state, or an individual entrepreneur, receives an enquiry from a state body to disclose ecological information and refuses to do so. The legal person or entrepreneur is in this case required to inform the state body about denial of disclosure and specify the legal reasons for the denial.

According to article 74^6 of the Law on Environmental Protection, a request for environmental information must include information about the applicant and a specification about the enquired environmental information as well as and information about the owner of the information and about the form in which the information should be provided. Thus, Belarusian law does not require that the requesting party explicitly states that the requested information is environmental.

Article 74^4 prescribes that ecological information of general purpose should be provided according to the specified "form, amount and content", unless the owner has no technical facilities to do so, in which case it should be provided in the "available form and amount"; indicating the relevant reasons.

7.1.2.3. Comparison

There is no corresponding separation of environmental information into information for general purpose and specialized information in the AC, but article 4(8) allows that access to environmental information is made subject to a charge. The separation of ecological information into two categories in the Law on Environmental Protection can thus be regarded as a measure aimed at implementing a charge system, which is permissible under the AC. Article 4(8) of the AC states that the imposed charge shall not "exceed a reasonable amount". This provision has been further elaborated in article 74^5, which only applies to specialized ecological information and prescribes that the applied charge shall not exceed "economically reasoned costs related to the collection, processing and analysing of the specialized ecological information".

Furthermore, the AC does not contain provisions explicitly obliging private entrepreneurs to disclose environmental information. However, a private entrepreneur can under certain circumstances be classified as a "public authority" according to the definition enshrined in article 2(2)(c) of the AC.

Whilst Article 4(1) of the AC requires the provision of environmental information in the requested form unless it is "reasonable" for the public authority to provide it in a different form, or the information is already publicly available in another form, Article 74 makes the provision of information in a different form subject to technical facilities of the authorities. This is a more specific formulation than in the AC, which could arguably narrow down the possibilities of providing environmental information in a different form than the requested one.

7.1.3. Restrictions on access

7.1.3.1. Aarhus Convention

Articles 4(3) and 4(4) of the AC provide exhaustive lists of circumstances under which a request for environmental information may be refused - the allowed exemptions. These exemptions are implemented in national law at the discretion of the individual Parties and can hence be applied fully, partly or not at all.

Paragraph 3 concerns procedural reasons for refusal and states that a request can be refused if:

(a) The public authority to which the request is addressed does not hold the information requested;
(b) The request is manifestly unreasonable or formulated in too general a manner; or
(c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law and customary practice, taking into account the public interest served by disclosure.

According to the Implementation Guide, an authority who does not hold the requested information is not required to secure it. However, failure to possess environmental information can be a violation of article 5 of the AC.[243] Concerning requests that are "manifestly unreasonable", the Guide concludes, based on existing case law, that the volume of the requested information cannot in itself make the request manifestly unreasonable. The term "too general" has no clear definition and hence a discretion is left to the national parties. Seemingly, the definition of the term depends on individual properties of the requested information.[244] When it comes to information consisting of "material in the course of completion", the Implementation Guide makes it clear that the public authorities must account for public interest (see below) when applying this ground for refusal. In a compliance case concerning the United Kingdom, the ACCC concluded that the public authorities should

[243] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 83.
[244] United Nations Economic Commission for Europe, 'An implementation guide', p. 84.

have disclosed unprocessed raw air pollution data from a monitoring station even though it had not yet been processed. The raw data can in such cases be provided together with an explanation that it has not yet been processed accordingly.[245]

Paragraph 4 concerns substantive reasons for refusal. It applies a direct damage requirement and allows that requests for environmental information are refused if the disclosure would adversely affect:

(a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
(b) International relations, national defence and public security;
(c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
(d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;
(e) Intellectual property rights;
(f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;
(g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or
(h) The environment to which the information relates, such as the breeding sites of rare species.

However, paragraph 4 also requires that these grounds for refusal are interpreted

[…] in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions in the environment.

This is an example of a so called "public interest test", which have in later years been increasingly applied in legislations where public access to official records is limited, for example in the United Kingdom, Australia, Canada, New Zealand and Ireland.[246] The Implementation Guide states that, as there is no clear guidance on how to conduct this "public interest test";

[…] Parties may choose to consider the public interest (a) categorically across an entire issue; (b) case by case in each decision on whether to release information; or (c) may provide some latitude for case-by case determinations within the framework of policies and guidelines.[247]

However, the 1995 Sofia Guidelines, which are endorsed in the preamble of the AC, state that "the aforementioned grounds for refusal are to be interpreted in a restrictive way with the public interest served by disclosure weighed against the interests of non-disclosure *in each*

[245] Aarhus Convention Compliance Committee, 'Findings and recommendations with regard to communication ACCC/C/2010/53 concerning compliance by the United Kingdom of Great Britain and Northern Ireland', ECE/MP.PP/C.1/2013/3, 2012-09-28, P. 77, https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-53/Findings/ece.mp.pp.c.1.2013.3.e.pdf, (accessed 14 December 2018).
[246] Turle, M., 'Freedom of information and the public interest test', in Computer Law Security Report. 2007/23 nr. 2, p. 170.
[247] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 85.

case"[248] and the ECJ has found that authorities in the EU are, according to implementing EU law, required to carry out the public interest test in each individual case.[249] Furthermore, in a compliance case concerning the EU, the ACCC stated that:

[…] in situations where there is a significant public interest in disclosure of certain environmental information and a relatively small amount of harm to the interests involved, the Convention would require disclosure.[250]

Paragraph 5, 6 and 7 regulate the procedural aspects of refusing requests for environmental information. Paragraph 5 provides that a public authority that does not hold the requested information must inform the applicant about the public authority to which it believes it is possible to apply for the requested information or itself transfer the applicant's request to this authority. A compliance case concerning Belarus has clarified how such a referral must be made. In the case, the ACCC stated that two conditions must be met.[251] Firstly, the request must be referred to another public authority. However, according to the definition of public authority in article 2(2) of the AC (see Chapter 7.1.2.1.), private entities sometimes fall under this definition. Secondly, the referral must not compromise the Party's obligations according to article 5 of the AC.[252]

According to paragraph 6, if information that is exempted from disclosure according to paragraphs 3 (c) and 4 can be separated without prejudice to the confidentiality of the exempted information, the remainder or the information must be made publicly available. Paragraph 7 requires that a refusal to a request be made in writing if the request was in writing or the applicant requests this. The authority must also state the reasons for the refusal and provide information about access to the judicial review procedure. Furthermore, the same time limits as for providing access to information apply. Finally, paragraph 8 allows that the public authorities issue charges for supplying information but states that such charges "shall not exceed a reasonable amount".

The right to access environmental information is further protected by article 9(1) of the AC, which prescribes that a person who considers that

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[248] ECE Working Group of Senior Governmental Officials "Environment for Europe", 'Draft Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making', P. 6.

[249] See Case 266/09, Stichting Natuur en Milieu and Others v. College voor de toelating van gewasbeschermingsmeddelen en biociden, 16 December 2010; United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 85.

[250] Aarhus Convention Compliance Committee, 'Report of the Compliance Committee on its Twenty-third meeting (Addendum) Findings with regard to communication ACCC/C/2007/21 concerning compliance by the European Community', P. 30(c); United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 90

[251] Aarhus Convention Compliance Committee, Report of the Compliance Committee (Addendum) Findings and recommendations with regard to communication ACCC/C/2009/37 concerning compliance by Belarus, ECE/MP.PP/2011/11/Add.2, s. 37, PP. 65-70, https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2009-37/Findings/ece_mp.pp_2011_11_eng_add2.pdf, (accessed 14 December 2018).

[252] Aarhus Convention Compliance Committee, 'Report of the Compliance Committee (Addendum) Findings and recommendations with regard to communication ACCC/C/2009/37 concerning compliance by Belarus', P. 69; United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 91.

[…] his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

7.1.3.2. National law

Grounds for refusing access to environmental information are listed in article 74^2 of the Law on Environmental Protection. The article provides that disclosure of information should be refused if:

- the information is classified as a state secret (further defined in The Law on State Secrets[253])[254];
- disclosure will lead to the infringement of the rules of judicial procedure, preliminary investigation or administrative process;
- disclosure will cause damage to the environment or threaten to cause such damage;
- there are provisions in other legislative acts and international treaties in the interests of national security, protection of rights and freedoms of citizens and rights of legal persons

In line with article 4(6) of the AC, article 74^2 further sets forth that the owner of the information must, if possible, extract and provide the parts of it that can be given out without prejudice to confidentiality.

The list in article 74^2 refers to the Law on State Secrets, which is not available in English. A secondary Internet source provides that information about political, economic and financial, scientific and technical, intelligence service and military aspects relating to national security and military activities can be classified as state secrets in accordance with this law. [255]
The fourth ground for refusal in the list enables the application of a range of other legislation. One legal provision applicable through this ground is article 18^1 of the Law on Information, which contains provisions about "official information of limited distribution".[256] This means information that cannot be classified as a state secret but concerns the activities of a state body or a legal entity and (or) the provision of which may harm the national security, public order, morality as well as the rights, freedoms and legitimate interests of individuals - including their honour and dignity, personal and family life – or the interests of legal entities.[257]

[253] Law of the Republic of Belarus on State Secrets (No. 170-3 of 19 July 2010).
[254] Malkina, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', P. 55.
[255] Karpekina, U. and Golubeva, A., 'Cyber Security and Data Protection in Republic of Belarus', TerraLex, https://www.terralex.org/publication/p9edced3e71/cyber-security-and-data-protection-in-republic-of-belarus, (accessed 11 October 2018).
[256] Ecohome and Green Network, 'Environmental Democracy: Myth or Reality in Belarus? Review of the practice of the Aarhus Convention implementation in the Republic of Belarus', p. 6.
[257] There is no available English translation of Article 18^1 as it has been enacted through an amendment to the Law on Information. The Article has been interpreted using Google translate and the interpretation has been confirmed by an English-speaking Belarusian lawyer.

According to the report *Environmental Democracy: Myth or Reality in Belarus?*, information that is being restricted in accordance with article 18^1 receives a stamp saying "for official use".[258] There is also a decree - Decree on the Service Information of Limited Access[259] - supplementing the article. The decree describes the procedure for attributing data to information for official use and contains a list of data that should always be classified in this way. However, there is no open access to the decree and its enclosed list, which means that members of the public cannot familiarise themselves with the procedure of attributing information to official information of restricted distribution.[260]

Article 74^2 also contains a list of environmental information for which access may not be restricted. This information consists, in short, of data about:

- the state of the environment
- emissions of contaminating substances into atmospheric air or effluents into water objects if these exceed the standards, or if their determination is required in legislation
- emissions into water objects of chemicals and other substances, their compositions and of items or waste products
- application of chemicals and other substances to the ground/soil which has caused a deterioration of its quality or the quality of subsurface waters
- ionizing and electromagnetic radiation, noise or other physical influence if these exceed the standards, or if their determination is required in legislation

The grounds for optional restriction are listed in article 74^2, stating that an authority may choose to restrict access to ecological information if:

- it does not hold the requested information and cannot obtain it from other owners of ecological information
- another legal person, or an individual entrepreneur, does not hold the information or
- a request to provide information concerns documents that are related to the internal document management of the owner of ecological information

A refusal to provide environmental information can according to article 74^4 be appealed to the superior state body or organisation (superior official) and/or to the court.

7.1.3.3. Comparison

The listed conditions for mandatory restrictions correspond with the allowed optional restrictions set out in article 4(4) subparagraphs a, b, c, and h of the AC. Furthermore, as the wording of article 74^2 concerning legislation or international treaties is broadly formulated; encompassing all legislation "in the interests of national security, rights and freedoms of citizens and rights of legal persons"; it implicitly includes the optional grounds for refusal in

[258] Ecohome and Green Network, 'Environmental Democracy: Myth or Reality in Belarus? Review of the practice of the Aarhus Convention implementation in the Republic of Belarus', p. 4.
[259] Decree by the Council of Ministers on the Service Information of Limited Access (No. 783 of 12 August 2014).
[260] Ecohome and Green Network, p. 4.

article 4(4)(d) – (f) of the AC, namely that the information is subject to commercial and industrial confidentiality in national legislation, intellectual property rights or to confidential personal data. As an example, information that can be classified as 'trade secrets' in other legislation[261] will be defined as information subject to mandatory restriction according to article 74^4.[262]

Unlike article 74^2 of the Law on Environmental Protection, article 4 of AC does not prescribe any types of environmental data to which access must always be granted. However, article 4(4) contains a public interest test, which has no correspondence in The Law on Environmental Protection, nor in any other national legislation.[263] The listed grounds for mandatory disclosure can hence be regarded as a measure to implement a balancing of public interests by providing for the 'outcomes' of such a balancing act already in legislation; thus, leaving little space for discretional decision-making on a case-to-case basis.

However, the possibility of applying the fourth mandatory ground for refusal in article 74^2 of the Law on Environmental Protection in order to classify environmental information as information for "official use" according to article 18^1 of the Law on Information is inherently problematic. Since the Decree on the Service Information of Limited Access is not accessible to the general public, it becomes impossible to assess whether the attribution procedure is aligned with the provisions of article 74^2 of the Law on Environmental Protection and Article 4 of the AC. This is especially problematic in relation to the list in article 74^2 of environmental data to which access must always be granted, as there is no way of proving that environmental information classified as official information for limited distribution is in fact not enshrined in this list. As the application of the list in article 74^2 is a substitute for the public interest test enshrined in article 4(4) of the AC, this legal construction raises the question if article 4(4) has been properly implemented in Belarusian law. Furthermore, the Decree on the Service Information of Limited Access causes confusion about the normative status of article 74^2 of the Law on Environmental Protection.

The listed optional grounds for refusing access to environmental information in article 74^2 of the Law on Environmental Protection largely correspond with article 4(4) of the AC. Article 74^2 does however not explicitly make deficiencies in the request itself an optional ground for refusal. This possibility is however implicitly stated in article 74^4, which provides that an applicant must be notified in writing about information that cannot be made available because the request does not fulfil the requirements of article 74^6, which sets out the formal requirements for requesting ecological information (see Chapter 7.1.2.2.).

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[261] See Civil Code of the Republic of Belarus (No 218-Z of 7 December 1998). Article 140; Law of the Republic of Belarus on Trade Secrets (No. 16-3 of 5 January 2013); Law of the Republic of Belarus on Copyright and Allied Rights Act (No. 262-3 of 17 May 2011); Law of the Republic of Belarus on Communications from Citizens and Legal Entities (No. 300-3 of 18 July 2011).

[262] Malkina, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', P. 56.

[263] Malkina, 'Implementation Report of the Republic of Belarus in accordance with decisions I/8 and II/10', P. 57.

The provisions in article 74^4 about appealing refusals of access to environmental information formally correspond with the requirements of article 9(1) of the AC. However, as has been noted in Chapter 6.2., the impartiality and independence of the Belarusian judicial system has been questioned.

7.1.4. Time limits

7.1.4.1. Aarhus Convention

Article 4(2) of the AC provides that requested environmental information should be made available as soon as possible and imposes a time limit of a maximum of one month, or – if the volume and complexity of the information justifies an extension – two months. If the time limit is extended in this way, the applicant must be informed about this and about the reasons behind the extension. According to article 4(7), the same time limits apply for refusals of information.

According to the Implementation Guide, compliance with time limits is critical to the functioning of the regime as time frames are closely linked with other processes, like participation in environmental decision-making.[264]

7.1.4.2. National law

The provisions in national Belarusian law on time limits for granting, denying and also referring requests about access to ecological information impose stricter time limits than the AC. Instead of the main rule of access within one month, article 74^4 of the Law on Environmental Protection prescribes that access to environmental information should be provided within ten working days. If the information must be enquired from a legal person that is not the state or from an individual entrepreneur, the time limit is however one month. If the state authority decides to refuse access, article 74^4 obliges the authority to inform the applicant about this within three working days.

7.2. Experiences of accessing environmental information in Belarus

Moving on from the first research question about the implementation of the right to access environmental information into Belarusian law, this chapter investigates the second research question; namely how the right works in practice by outlining and comparing the findings of the 2018 Ecohome monitoring report and of the interview study. The thematic headlines largely correspond with those of the doctrinal analysis in Chapter 7.1. However, it contains some additional thematic headlines intended to reflect issues of special relevance in the national context for the exercise of the right to access environmental information. These issues have all been derived from the interview study. Hence, while the thematic headlines in

[264] United Nations Economic Commission for Europe, 'The Aarhus Convention: An implementation guide', p. 82.

Chapter 7.1. are all directly related to the legal provision about access to environmental information, the following headlines are either directly or indirectly connected with the same provisions. For example, the issue of quality and validity of environmental information (Chapter 7.2.3.2.) is not explicitly mentioned in the article but can be regarded as a prerequisite for a meaningful implementation of the right to access environmental information. Furthermore, the headline "alternative strategies of accessing environmental information" (Chapter 7.2.5.), has been added as such strategies turned out to be an issue of practical relevance in the national context.

7.2.1. The mentioned cases

Some responses from the interview participants can only be properly understood in their specific context. Therefore, a short description of relevant and contemporary cases of environmental activism in Belarus are outlined before the obtained material is discussed.

7.2.1.1. Nuclear power plant in Astraviec

A nuclear power plant (NPP) is currently under construction outside the town Astraviec in the Hrodna region; almost on the border to Lithuania. The plant is built by the Russian company *Atomstroyexport* and Russian state corporation *Rosatom* in collaboration with the Belarusian NPP Directorate, which is a sub-organ under the Ministry of Energy.[265] Construction works commenced in 2013. The supervisor of the construction and future operator of the plant is the Belarusian NPP Directorate, but several international enterprises have been contracted for the actual construction of the plant.[266]

The NPP in Astraviec has awakened concern and opposition both inside and outside Belarus. In July 2018, the EU Commission called on Belarus to develop an action plan for timely implementation of necessary safety improving measures.[267] In Belarus, members of the public and organisations like Ecohome and the Green Network have actively campaigned against the construction of the plant.[268]

The response from the Belarusian authorities to the attempts from civil society to access information about the NPP and participate in the decision-making about it has resulted in two non-compliance cases in the ACCC. In the first case, the ACCC concluded that Belarus had failed to comply with the AC by (1) restricting access to the full version of the EIA report to

[265] Nuclear Engineering International, 'Russia signs up to build NPP in Belarus', 2011-10-20, https://web.archive.org/web/20120402182924/http://www.neimagazine.com/story.asp?storyCode=2060964, (accessed 27 November 2018).
[266] Power Technology, 'Belarusian Nuclear Power Plant, Ostrovets', https://www.power-technology.com/projects/belarusian-nuclear-power-plant-ostrovets/, (26 November 2018).
[267] European Commission, 'Comprehensive risk and safety assessments of the Belarus nuclear power plant completed [press release]', 2018-07-03, http://europa.eu/rapid/press-release_IP-18-4347_en.htm, (accessed 26 November 2018).
[268] Green Network, 'Островец. Грустная атомная фантазия. ["Ostrovets. Sad atomic fantasy"]', http://project.greenbelarus.info/aes, (accessed 26 November 2018); Ecohome, 'Антиядернау кампания и возобновляемая энергетика ["Anti-nuclear campaign and renewable energy"]', http://ecohome-ngo.by/energy/, (accessed 26 November 2018).

the premises of the NPP Directorate in Minsk without allowing copies to be made; (2) not informing the public about the existence of a more extensive version of an EIA report; (3) not providing for sufficient public participation in the decision-making.[269] In the second case, following a communication to the Committee from Ecohome, the ACCC concluded that Belarus had violated article 3(8) of the AC, which prohibits penalisation, persecution and harassment of persons exercising their rights under the Convention. This conclusion resulted from events that took place in 2012 when activists who were participating in a street action against the plant were arrested and detained for "using obscene language in the street".[270]

7.2.1.2. Car accumulator factory in Brest

In Brest, a city adjacent to the Polish border, a factory for lead-acid containing car batteries is currently under construction. The constructor and owner of the future plant (*1AK-IPOWER*) is the private company iPower Ltd, which is part of the vertically integrated group of companies called *1AK-GROUP*.[271] Another company in the group, *Belinvesttorg-Splav Ltd*, operates a factory in the city of Pinsk producing lead and lead alloys for the manufacturing of batteries.[272] 1AK-GROUP also operates a metallurgical recovery of lead in the town Belaaziorsk.[273]

The construction of the factory in Brest has since January 2018 been openly opposed by residents of Brest due to concerns about environmental hazards connected with the construction and especially the handling of lead. In February 2018, a demand to stop the construction was signed by 36 000 people and filed to the President's Administration.[274] Following the public protests, protesters have on several occasions been arrested and fined by the local police.[275]

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[269] Aarhus Convention Compliance Committee, 'Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2009/44 concerning compliance by Belarus (adopted by the Committee on 28 June 2011) [advanced unedited copy]', PP. 88-89.
[270] United Nations Economic Commission for Europe, 'Findings and recommendations with regard to communication ACCC/C/2014/102 concerning compliance by Belarus', P. 112.
[271] 1AK GROUP, 'Building the battery factory, the businessman in an interview TUT.BY told about the business, "goat" and science', 2018-02-13, https://1ak-group.com/en/novosti/stroyashhij-akkumulyatornyij-zavod-biznesmen-v-intervyu-tutby-rasskaz.html, (accessed 27 November 2018).
[272] 1AK GROUP, 'Production', https://1ak-group.com/en/proizvodstvo.html, (accessed 27 November 2018).
[273] 1AK GROUP, 'Building the battery factory, the businessman in an interview TUT.BY told about the business, "goat" and science', (accessed 27 November 2018).
[274] Unity Democracy Freedom, 'Brest residents protest against battery plant construction', 2018-02-26, https://udf.by/english/main-story/169892-brest-residents-protest-against-battery-plant-construction.html, (accessed 27 November 2018).
[275] BELSAT TV, 'Brest: Politician, bloggers detained over protest against hazardous plant', 2018-10-15, https://belsat.eu/en/news/brest-politician-bloggers-detained-over-protest-against-hazardous-plant/, (accessed 27 November 2018); BELSAT TV, 'Arrests in Brest, as people protests [sic] against battery plant construction', 2018-10-27, https://belsat.eu/en/news/arrests-in-brest-as-people-protests-against-battery-plant-construction/, (accessed 27 November 2018).

7.2.1.3. The Amkodor factory in Kalodziščy

In March 2018, the construction of a factory producing agricultural machinery and other heavy equipment[276] commenced in the village Kalodziščy, located about ten kilometres outside of Minsk.[277] The constructor and operator of the factory is the Belarusian company *Amkodor*, which has outsourced the construction work to the Chinese entrepreneur CITIC Construction.[278] The initial plan for the factory and surrounding infrastructure implied a production of 500 wheel loaders per month and the constructions of a four-lane transport road and an evaporation pond in the forest.[279]

Residents of Kalodziščy have raised concerns about the location of the factory and opposed the way in which the decision was taken; claiming that they have not been given an actual opportunity to participate in public discussions about the project.[280] Following their protests, some aspects of the initial plan concerning the evaporation ponds and the location of the site of the plant were altered.[281] Local residents are however still concerned that the factory will not comply with compulsory environmental standards and they claim that they have not received sufficient information about its environmental consequences.[282]

7.2.2. Interview participants

- **Academic 1 (AC 1)** is a specialist in environmental law.
- **Academic 2 (AC 2)** is a specialist in environmental law.
- **Activist 1 (A1)** is affiliated with Ecohome.
- **Activist 2 (A2)** is affiliated with Ecohome
- **Activist 3 (A3)** is an urban activist in Minsk.
- **Activist 4 (A4)** is an urban activist in Minsk.
- **Activist 5 (A5)** is a local activist in Belarus.
- **Activist 6 (A6)** is a local activist in Belarus.
- **Activist 7 (A7)** is affiliated with Ecohome.
- **Activist 8 (A8)** is affiliated with the Brest protests.

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[276] Amkodor, 'Holding', http://amkodor.by/en/holding/, (accessed 27 November 2018).
[277] Melechovets, D., 'В Колодищах начали строить завод «Амкодор». Проект изменили благодаря местным жителям ["Construction of the Amkodor plant began in Kalodziščy. The project was changed thanks to the locals"]', Onliner, 2018-03-08, https://realt.onliner.by/2018/05/08/amkodor-2, (accessed 27 November 2018).
[278] Levkevich, 'В поселке Колодищи началось строительство завода «Амкодор-Маш» ["The construction of the Amkodor-Mash plant commenced in the settlement of Kalodziščy"]', Minsk News, 2018-05-08, https://minsknews.by/v-poselke-kolodishhi-nachalos-stroitelstvo-zavoda-amkodor-mash/, (accessed 27 November 2018).
[279] Kolodischi Info, 'Жители Колодищ: завод ”Амкодор” нам обеспечит экологический Армагеддон" ["Residents of Kalodziščy: the Amkodor plant will cause an environmental Armageddon"]', 2017-10-25, https://kolodischi.by/news/2709, (accessed27 November 2018).
[280] Kolodischi Info, 'Жители Колодищ: завод ”Амкодор” нам обеспечит экологический Армагеддон"', (accessed 27 November 2018).
[281] Melechovets, 'В Колодищах начали строить завод «Амкодор». Проект изменили благодаря местным жителям.', (accessed 27 November 2018).
[282] Kolodischi Info, 'Жители Колодищ: завод ”Амкодор” нам обеспечит экологический Армагеддон"', (accessed 27 November 2018).

- **Activist 9 (A9)** is affiliated with the Brest protests.
- **Activist 10 (A10)** is affiliated with the Brest protests.
- **Activist 11 (A11)** is affiliated with the Brest protests.
- **Activist 12 (A12)** is affiliated with Ecohome.
- **Activist 13 (A13)** is a local activist in Belarus.
- **Activist 14 (A14)** is affiliated with the protests in Kalodziščy.
- **Engineer/Scientist 1 (E/S1)** works for a private company providing environmental impact assessments.
- **Engineer/Scientist 2 (E/S2)** works with an NGO of environmental experts.
- **Engineer/Scientist 3 (E/S3)** works in an academic institution.
- **Lawyer 1 (L1)** is affiliated with Ecohome.
- **Lawyer 2 (L2)** is affiliated with Ecohome.

7.2.3. Obligations to provide environmental information

7.2.3.1. Making the request

Issues connected with making the request for environmental information were discussed with most interview participants. Even though a majority believed it important that the requesting party is familiar with the applicable law and complies with it, the views on how crucial the drafting of the request is differed among the participants.

7.2.3.1.1. Monitoring by Ecohome

In Ecohome's monitoring, the requests for information were submitted by lawyers well acquainted with the applicable law. It can hence be assumed that they were well-motivated and in accordance with law. In the report, there is no analysis of received responses against the background of how the requests were drafted. However, the report provides an example of a refusal to provide environmental information, which was motivated by that the requesting party had no interest in the matter. This reply, which referred to the Law on Information, came from the Rogachev regional executive committee upon a request for public comments to an EIA report.[284]

7.2.3.1.2. The activists

A wide spread view among the activists was that requesting environmental information is a complicated matter; requiring special knowledge.

[284] Magonov, Sinitsa and Dubina, 'Доступ к экологической информации: вопросы реализации и защиты права', p. 12.

A1 and A2 said that a lot of people lack knowledge about how to request environmental information and need assistance when doing so. According to A2, drafting a request can, despite previous experience as an activist, be complicated. Therefore, A2 usually consults a lawyer before submitting a request for environmental information. However, the fact that a request is correctly drafted and contains legal references does not matter if the authorities want to conceal the information, according to A2.

A3 said that engaging in environmental decision-making is not an easy thing for ordinary citizens, as it implies drafting very specific requests for information that are understandable for the public authorities and written in 'their language'. According to A4, it is good to be 'legally literate' as it helps you to understand your rights and how you can enforce them. However, being knowledge does not automatically imply success as it is difficult to predict how the authorities will respond. A4 said that authorities sometimes provide completely different information than the requested one anyway, which makes it hard to predict when and how you will obtain the desired information. Instead of trying to seem like a legal expert, A4 therefore tends to use an emotive and 'human' language when requesting environmental information. A10 said that being familiar with the legal requirements concerning requests is good and that it is necessary to formulate a request in a concrete and specific manner, as this makes it more difficult for the authorities to withhold the information. At the same time, A10 did not deem the drafting of the request to be of crucial importance as it is possible to file request repeatedly and adjust the formulation over time. A12 deemed it important to have legal assistance when requesting environmental information, as Belarusian legislation changes so frequently. According to A12, a person without legal knowledge has little insight into the legislative processes and thus needs assistance from a professional lawyer.

Partly contrasting to the views of the other activists, A7 deemed it possible to successfully request environmental information without legal assistance. According to A7, it is a preconceived idea that requesting environmental information is so complicated that it requires assistance from a lawyer. In addition, A7 said that a lot of people still believe that they must explain to the authorities why they request information and that this belief can prevent them from making a request in the first place. According to A7, there are also authorities who still believe that the stating of interest is a prerequisite for accessing environmental information and thus ask the requesting party to state their interest.

7.2.3.1.2.1. Personal issues

Some activist said that ordinary citizens can be reluctant to request environmental information. According to, A1 and A2 a lot of people do not want to appear to involve in issues that "nobody else" cares about. Adding to this perspective, A13 said that many local residents hesitate to file requests for environmental information since they do not want to appear as being critical towards the public authorities or being too curious.

A14 said that it was initially uncomfortable to request environmental information, as A14 felt that such requests could be perceived as criticism of the public authorities. However, the practical experience of submitting such requests had changed A14's view:

Now – after one year – I am not afraid. Because we tested the situation. What can they do? Arrest me? For what? We just write. We ask - they respond.

The activists in Brest had been subjected to reprisals from the authorities following their campaigning. These reprisals included detentions, arrests and dismissals from work places. However, the activists could not assess whether the reprisals resulted directly from requesting environmental information or from the compound of activities that they were engaged in, including demonstrations against the factory.

Among the rest of the activists, the general opinion appeared to be that only requesting environmental information does not imply issues for personal safety, but that trying to participate in environmental decision-making could do, if the issue is politically sensitive.

7.2.3.1.3. The lawyers and one engineer/scientist

According to L1, the need for legal assistance only becomes actual when a request for environmental information is refused. L1 said that an ordinary person should be able to find out about how request environmental information on the Internet. Also, if the request is refused in the first instance, an ordinary person should be able to appeal to a higher administrative instance. However, if a refusal is appealed to court, L1 believed it necessary to be familiar with court procedures, which can require legal assistance. Adding to this, L1 said that the knowledge in the Belarusian courts about the AC is generally poor; that they do not understand the nature of the claim. L1 has for example been asked by judges to state an interest when pursuing cases about access to environmental information.

L2 said that people without legal knowledge often word their requests for environmental information in ways that allow the authorities to withhold the information. L2 always writes specific and well-referenced requests and, as a rule, obtains the requested information. Since the removal of the decree listing objects of environmental information (see Chapter 7.1.1.2.), it has, according to L2, become more important to motivate that the desired information can be classified as environmental. In L2's experience, public authorities sometimes want the requesting party to state an interest. It happens that authorities contact L2 to inquire about L2's interest in the matter. Being a lawyer, L2 is in such cases able to explain that the stating of interest is not a legal requirement for accessing environmental information. However, according to L2, many ordinary citizens are still unaware of this and feel obliged to state an interest.

E/S2 thought it better for ordinary citizens to get assistance from experts when requesting environmental information. E/S2 said that Belarusian public authorities operate differently compared to the 'best practice' countries in Europe, where staff in administrations help ordinary people to "translate their non-professional requests to professional language". According to E/S2, Belarusian public authorities do not communicate with the public in this way. Also, E/S2 deemed that even legal assistance is not always enough in order to draft a specific request for environmental information and said that it can be necessary to consult scientific expertise.

7.2.3.2. Quality and validity of environmental information

Issues with quality and validity of environmental information were raised by most of the activist. A wide-spread view was that public authorities sometimes provide environmental information that is invalid or incomplete. According to the activists, this happens either because the authorities want to conceal controversial matters or because they are not competent enough to provide information in a correct manner. E/S1 and E/S2 both stated that there can be issues with the quality of environmental information but did not attribute this fact to pure falsification. L2, like the activists, had experienced the provision of faulty environmental information. The issue of quality and validity was not discussed with L1, AC1 or AC2.

7.2.3.2.1. Monitoring by Ecohome

The monitoring report does not specifically discuss the quality and validity of obtained environmental information. However, it confirms that there is a problem with quality of environmental information, which consequently affects the possibilities of appealing decisions about the provision of environmental information (see Chapter 7.2.4.1.1.).

7.2.3.2.2. The activists

As is further outlined in Chapter 7.2.4.2., a general view among the activists was that public authorities only disclose environmental information that does not contain controversies or display mistakes conducted by the officials. In line with this view, most activists expressed scepticism towards the validity of the environmental information that they had obtained. For example, A3 said that:

> […] in our campaign, we have never had actual data on which we could rely. And there were also fake gossips that were floating around […]. And then everyone is speaking about this and it is not really known who is creating these gossips and why. And this would also inhibit the campaign, because people were waiting for fake decisions to take place, which never happened.

A3 also explained that the activists had sometimes asked journalists to attend press conferences held by officials and ask the officials questions about the plan for the district. According to A3, the replies received during such events had been very vague and sometimes even false; having "nothing to do with reality".

A5 and A6 said that it is a general thing that authorities respond in a vague and declaratory manner when they want to conceal information; for example, just stating that everything is in accordance with the environmental norms or legal provisions. A6 said that, when requesting environmental information, they are usually referred to the official websites of the authorities. However, in the end, the activists tend not to use environmental statistics about for example contamination levels and water quality that their local authorities actively publish, as they suspect that this information can be distorted.

A14 said that the public authorities in Kalodziščy for a long time just replied to the locals' requests for environmental information about the Amkodor factory in a declaratory manner,

stating that the state had conducted the environmental expertise in accordance with law and the public had no reason to worry.

The activists in Brest claimed to have received a lot of 'stupid' answers from the public authorities regarding the implications of lead production; stating that lead is not a dangerous substance and that there are no reasons to worry.

A12 raised validity issues with official data concerning nuclear power and nuclear contamination. According to A12, the presented EIA of the plant in Astraviec did not live up to the requirements and was incoherently structured. In a similar manner, A12 said that the official information provided about monitoring of nuclear radiation resulting from the Chernobyl accident is general and vague. In the experience of A12, it is very difficult to access raw data concerning nuclear contamination; in other words, unprocessed data obtained from radiation monitoring.

A14 gave a concrete example of the provision of incomplete or invalid environmental information. After having requested information unsuccessfully for several months, the activists in Kalodzišči were invited to come to the premises of the Amkodor factory for a few hours to read the EIA (see Chapter 7.2.4.2.). At the premises, the activists discovered that the presented EIA differed significantly from the one that had been provided during the public discussions about the project a few months earlier. According to A14, the previous EIA contained an 'environmental passport'[285] of three pages, while the EIA in the premises of the factory contained up to a hundred such pages; including tables with chemical data. Based on this discovery, the activists concluded that the previous EIA had been incomplete.

The activists in Brest gave several examples of incomplete or invalid information. As will be outlined further in Chapter 7.2.5.2., the activists conducted investigations and identified the EIA of an analogue car accumulator factory in Italy. One activist said that, when comparing the Italian EIA with the EIA of the planned factory in Brest, they discovered that the levels of calculated yearly air pollution from lead were about 100 times higher in the Italian EIA. Based on this, they deem the Belarusian EIA to be incorrect. The activists had also studied the Belarusian EIA together with technical experts and identified violations of applicable legislation, also in terms of the EIA procedure. One activist explained that, during a court hearing, they figured out that there were three different EIAs for the factory in Brest; one which they could access online, one that had been submitted to the state environmental

[285] An 'environmental passport' contains information about the use of resources (natural, secondary etc.) by a user of natural resources and the impact on the environment of this production as well as information on permitted use of the natural resources, applicable environmental norms and economical liability resulting from the environmental pollution and use of natural resources, see Legal Dictionary, 'Экологический паспорт ["Environmental Passport"]', http://multilang.pravo.by/ru/Term/Index?name=%D0%AD%D0%9A%D0%9E%D0%9B%D0%9E%D0%93%D0%98%D0%A7%D0%95%D0%A1%D0%9A%D0%98%D0%99%20%D0%9F%D0%90%D0%A1%D0%9F%D0%9E%D0%A0%D0%A2&langName=ru&size=25&page=4&ch=%D0%AD&type=0, (accessed 06 December 2018); Resolution by the Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States (No. 43-10 of 27 November 2015).

expertise and a third, final, one. The second EIA was twice the length of the one accessible online and the contents of the third EIA differed significantly from the two previous ones.

The activists in Brest said that most of the authorities have claimed that there is no lead contamination resulting from the factories in Pinsk and Belaaziorsk. Based on their own investigations (see Chapter 7.2.5.2.), the activists deem this to be false information. Also, the activists said that they had in fact received two official replies confirming that some contamination has taken place on these sites. One of these replies came from the Brest department of the Ministry of Environmental Protection and Natural Resources and the other one from a state-run laboratory.

7.2.3.2.3. The lawyer and the scientists

Contrasting to the generally sceptical view among the activists, L2 claimed to trust environmental information obtained in writing and to apply a "presumption of innocence". According to L2, it is easy to check whether information provided in writing is valid or not by comparing it to other available data. However, L2 had experienced the provision of incomplete or invalid information and provided two example cases. The first case concerned information received from the authorities concerning a legal entity; allegedly responsible for an unlawful construction. While the authorities claimed that the legal entity no longer existed, the legal entity was apparently still operating as it responded to communications. The second case concerned a dispute of construction permit, which ended up in court. During the court hearing, the responsible ministry displayed two versions of the construction permit; issued on the same date; with contradictory contents. Based on such experiences, L2 said that it is important to obtain environmental information from different sources to be able to compare it.

L1 said that, since the implementation of a state registration for the conduction of environmental assessments (see Chapter 6.4.1.) the quality of environmental assessments has improved some. This improvement follows from the possibility to challenge a "bad quality" environmental assessment with reference to the requirements enshrined in the certification procedure.

E/S1 had no personal experience of the provision of invalid environmental information but was aware of the phenomenon. E/S2 also lacked personal experience of the issue but said that the quality of environmental information in Belarus can be questionable. However, E/S2 thought this to be a result of incompetence and did not think that Belarusian authorities actively falsify information.

7.2.4. Restrictions on access

The issue of restrictions on access to environmental information was mostly discussed with the activists and the lawyers, as they possessed direct or indirect experiences of trying to access environmental information on request. E/S1 and E/S3 did not regard restrictions on access to be an issue of major importance, while E/S2 identified some problematic aspects of

it. As the aspects identified by E/S2 were more related to the quality and validity of environmental information, they have been outlined in Chapter 7.2.3.2. The issue was not discussed in greater detail with AC1 and AC2, who made it clear that they had little insight into the practical application of the law. However, AC1 said that a reason why access to environmental information has not generated a lot of judicial practice in Belarus could be that the law in fact functions well.

7.2.4.1. Monitoring by Ecohome

From Ecohome's report, it is not possible to deduce exactly how many of the submitted 228 requests were refused altogether. However, the report gives two examples of unlawful refusals. The first one, from the Rogachev regional executive committee, is explained in Chapter 7.2.4.1.1. The second refusal concerned information about changes made to the EIA for the construction of a small hydropower station at the Stakhovo hydropower plant in the Dnieper-Bugsky canal, submitted to the Stolin district executive committee. This refusal stated that the requested information was not environmental information.[286] In addition, 80 requests about information regarding plans and programs received no replies at all. This kind of negligence can be regarded as indirect refusal of access.

Furthermore, a significant number of the replies did not supply environmental information in the requested form. Out of the 61 requests concerning the results of public discussions about significant environmental decisions, only 32 were successful in this regard.[287] In 23 cases, environmental information was provided but not in the requested form. Three requests were redirected to another body, which was allegedly the owner of the environmental information.[288] Out of the 49 replies received about plans and programs, 15 provided copies of the requested plans. Out of the remaining 34 replies, some provided other types of information about the plans in question.[289]

According to the report, the time limit for responding enshrined in article 74^4 of the Law on Environmental Protection (ten working days) was only observed in 45,5 % of the cases.[290]

Despite of these results, the report concludes that the availability of environmental information has increased significantly over the last few years. Partly, it deems this to be a result of the recent changes in law; requiring holders of environmental information to make it publicly available on the Internet.[291] However, the report states that it has also "for some

[286] Magonov, Sinitsa and Dubina, 'Доступ к экологической информации: вопросы реализации и защиты права', p. 12.
[287] Magonov, Sinitsa and Dubina, Доступ к экологической информации: вопросы реализации и защиты права, p. 13.
[288] Magonov, Sinitsa and Dubina, p. 13.
[289] Magonov, Sinitsa and Dubina, p. 13.
[290] Magonov, Sinitsa and Dubina, p. 13.
[291] Following amendments to the Resolution of the Council of Ministers No. 734 of 24 May 2008 through *Resolution of the Council of Ministers No 399 of 19 May 2016*, it has been clarified what kinds of environmental information should be included in the Government Repository of Data on the State of the Environment and Environmental Impacts (or State Data Fund on the Environment or Influences on It), see National Legal Internet

reason" become much easier to obtain documents on request, starting from 2017. Even though it does not provide an explanation to why this is so, it makes it clear that this change is in any case not a result of an increased legal awareness among the holders of such information.[292]

7.2.4.1.1. Appealing refusals

According to the monitoring report issued by Ecohome, the right enshrined in article 74^4 of the Law on Environmental Protection to appeal refusals to provide environmental information does not fully correspond to the needs of the public, since explicit refusals to provide information are quite rare in Belarus. Access to environmental information is more often restricted through giving inadequate replies to the requests; for example, providing incomplete information or information in another form than the requested one.[293] This issue was also identified in a report by the UNECE Task Force on Access to Justice in 2014.[294] For this reason, the report states that it can often be more effective to use an appeal procedure based on the Civil Code of Belarus[295], according to which a court must safeguard legally protected rights and interests of citizens, which can sometimes imply ordering public authorities to perform their duties.[296] As access to justice in environmental matters lies outside the scope of this research, Ecohome's monitoring of court procedures will only be outlined to the extent that it concerns access to environmental information.

Ecohome selected 14 cases where requested environmental information had been supplied in an inadequate manner, or where the request did not receive any reply at all. Based on these cases, 14 claims were filed using the civil procedure outlined above. Of these, 13 claims stated that the rights of the public association Ecohome had been violated when requested environmental information had not been supplied and one claim was filed on behalf of an individual's interest.[297] In four cases, the courts initiated proceedings immediately and in another case, the appeal was considered following an order to submit the consent of an individual citizen and member of the public association to the court.[298] The remaining nine claims were on different grounds rejected by the courts.[299]

Portal of the Republic of Belarus, 'Правительством Беларуси внесены изменения в некоторые документы, регулирующие вопросы охраны окружающей среды ["The Government of Belarus has amended some documents governing environmental issues"]', 2016-05-25, http://pravo.by/novosti/novosti-pravo-by/2016/may/10557/, (accessed 05 December 2018).

[292] Magonov, Sinitsa and Dubina, p. 18.

[293] Magonov, Sinitsa and Dubina, p. 14.

[294] Skrylnikov, Study on Standing for Individuals, Groups and Environmental Non-governmental Organizations Before Courts in Cases in Environmental Matters in Armenia, Azerbaijan, Belarus, Kazakhstan, Republic of Moldova and Tajikistan [unedited version], p. 24.

[295] Civil Code of the Republic of Belarus (No. 218-Z of 7 December 1998 [amended as of July 17, 2018]), Article 7.

[296] Magonov, Sinitsa and Dubina, Доступ к экологической информации: вопросы реализации и защиты права, p. 14.

[297] Magonov, Sinitsa and Dubina, pp. 14-15.

[298] Magonov, Sinitsa and Dubina, p. 15.

[299] Magonov, Sinitsa and Dubina, pp. 16-17.

The report concludes that the courts demonstrated a generally restrictive approach to admitting claims regarding access to environmental information. As some of the claims that were admitted were identical in contents to those rejected, the report deems that Belarusian courts lack competence and knowledge to deal with claims filed in the public interest (in this case by a public association).[300]

7.2.4.2. The activists

Out of the 14 activists, twelve had personal experiences of requesting environmental information from the authorities and so did the lawyers. The activists and the lawyers considered restrictions on access to be an issue of significant importance but their views on how often, and to what extent, access to environmental information is being restricted differed. Even though the lawyers also identified several problematic aspects connected with restrictions on access to information, they were generally more positive about the possibilities of obtaining environmental information than the activists.

Concerning explicit refusals to provide environmental information, both the activists and the lawyers identified the following grounds as being most common:

(1) the requested information does not constitute environmental information
(2) the requested information cannot be disclosed due to commercial interests
(3) the requested information can be classified as official information for limited distribution[301]

For the local activists, experiences of requesting environmental information were directly connected with their local environmental problems, while the activists working with Ecohome had a broader experience; going further back in time. Nonetheless, the activists' views on imposed restrictions were remarkably homogenous. All activists thought that environmental information is generally difficult to obtain from public authorities and from private enterprises in Belarus. For example, A1 and A2 responded that they could not think of any types of environmental information that are easier or, alternatively, more difficult to obtain as all types are difficult to obtain. When asked what type of environmental information is more difficult to obtain, A12 responded:

[…] Each kind. Even the name of the person who is responsible for the project. Each kind of information. Sometimes it's very, very difficult – it might be very difficult to obtain in Belarus.

In a broader sense, access to environmental information can be restricted either indirectly through providing environmental information that is vague or declaratory instead of explanatory or invalid information (see Chapter 7.2.3.2.2.), or directly by explicitly refusing access. For many of the activists, these issues were inseparable and were thus discussed together. However, for the present analysis, a distinction between providing 'deficient' environmental information and refusing to provide information has been made. Nonetheless, it is important to bear in mind that the opinions of many of the activists outlined below

[300] Magonov, Sinitsa and Dubina, p. 18.
[301] In accordance with article 18(1) of the Law on Information, see Chapter 7.1.3.2.

correlate with how they perceive the quality and validity of provided environmental information.

All activists believed that public authorities in Belarus conceal environmental information that is unfavourable or sensitive to them, namely, information that reveals mistakes or illegal actions conducted by the authorities, information about negative environmental aspects or information connected with big investment projects.

Some activists provided examples of environmental information that could be obtained more easily. According to A4, this is for example environmental information that has already been published on the website of the authority. However, A4 also explained that authorities sometimes respond to requests by stating that the information has been made available online without providing a clear reference to where. Many activists said that authorities are more open to disclosing environmental information when this information implies that "everything is OK" and that environmental standards are being complied with.

One Brest activist used the example of information from public authorities concerning the 1AK-GROUP factories in Pinsk and Belaaziorsk and said that the authorities have provided data about these plants showing that the prevalence of lead contamination resulting from the production is within the norm. However, as outlined in Chapter 7.2.3.2.2., the activists think that the provided information is invalid. A5 said that the authorities occasionally share information that reveals non-compliance with the standards, but only if this non-compliance is not a controversial matter; for example concerning the number of trees in a green area.

According to A7 and A12, it is generally difficult to access "raw" environmental data, in other words monitoring data that has not yet been processed. A7 said that data from water monitoring is, almost by principle, being classified as information for 'official use' and A12 gave the example of restrictions on raw data concerning nuclear contamination from the Chernobyl accident. According to A12, it is not possible to access primary data about soil contamination by different nuclides, which in turn imposes great difficulties on public action and precaution. Such restrictions are, according to A12, imposed easily as the national provisions about restrictions on access to environmental information due to national security, commercial interests and individual rights are formulated in such a broad manner.

Most activists believed that the prospects of obtaining environmental information are strongly dependent on the holder of it. A wide spread impression was that local authorities have a generally poor level of knowledge about the legal provisions and tend not to apply the rules correctly. Some activists had more positive experiences with ministries than with local authorities. For example, A7 said that the Ministry of Environment mostly gave all the available information. A14 said that the Ministry of Architecture had been helpful in providing the requested information in a clear and comprehensible way. According to A4, the Ministry of Emergencies is easier to approach in this regard while the Ministry of Foreign Affairs is most difficult. It thus seems like the activists had slightly more confidence in the

ministries than the local authorities, but that the confidence in public authorities in general was still notably low.

The activists in Brest and Kalodziščy provided concrete examples of when their access to environmental to environmental information had been restricted in, according to them, unlawful ways. The case in Kalodziščy has also been outlined in the Ecohome monitoring report.[302]

The activists in Brest had obtained a response from the Ministry of Environment upon a request for information concerning the design of the car accumulator factory. The reply stated that the information could be classified as official information for limited distribution as it concerned a business activity, without motivating this further or referring to the AC. According to the Brest activists, to refuse requests in this way, without giving a clear motivation, is a strategy used by authorities when they want to conceal sensitive information related to important investment projects.

According to A14, the local authorities did not let the residents access the EIA report of the Amkodor factory in Kalodziščy as it was allegedly in private ownership of the company. The residents continued to request the same information from various public authorities and were eventually recommended to approach the private enterprise directly. According to A14, the company initially claimed that the EIA report was no longer in its possession as the project had been reviewed by the state expertiza[303] and therefore transferred there. The residents were thus 'ping-ponged' between the public authorities and the private enterprise. After about half a year, the residents were invited to come for one day to Amkodor's premises to read the EIA report, which consisted of several hundred pages. During three or four hours, the residents managed to take about 60 photos of the documentation before the deputy manager of the factory told them to leave and forbade them to come back. During their short access to the documentation, they detected that the information provided at the premises of the company differed significantly from what had been provided during the public discussions earlier (see also Chapter 7.2.3.2.2.).

7.2.4.2.1. Appealing refusals

Despite the rather homogenous view on the prospects of obtaining environmental information from public authorities and private enterprises in Belarus, the activists provided slightly different perspectives on the effectiveness of appealing refusals to a higher administrative instance or to the court.

According to the Brest activists, appealing refusals from public authorities is not an effective remedy for them as the authorities work "unanimously" in their attempts to conceal information about the car accumulator factory. As outlined in Chapter 7.2.5.2., the activists in Brest believed more in alternative strategies for obtaining sensitive environmental

[302] Magonov, Sinitsa and Dubina, pp. 16-17.
[303] For an explanation of the term, see Chapter 2.1.4.

information. Despite of this, one Brest activist said that it is important to make us of the legal remedies as well to get the full "effect". Adding to this perspective, A12 said that the chances of winning a court case are "very, very small" when it concerns environmental information related to important foreign investment projects and used the Chinese-Belarusian investment park Great Stone outside of Minsk[304] as an example. A1 said that appealing refusals to court is not fully effective in Belarus, as the courts are not independent.

A7 thought that the general knowledge among judges in Belarus about the provisions on access to justice in the AC is poor and said that they have received a lot of rejections from courts even to open cases. Appealing a refusal to provide environmental information to court is usually difficult and time consuming. According to A7, it can however sometimes be effective to appeal a refusal from a local authority to a higher authority.

According to A4, to refuse requests for environmental information can be a way for authorities to avoid further "fuss" about the issue as they know that the amount of people who file requests is a lot higher than the amount who are prepared to pursue a case in court. In this way, the authorities make use of the 'legal illiteracy' among the general public, knowing that most people will not have the time, energy or competence to appeal a refusal. However, A4 had also experienced appeal processes when the court or the higher authority had taken the side of the requesting party. A4 thought that appeals could be beneficial as they are imperatives for the authorities to rationalise their decisions more clearly. There are however, according to A4, some cases that can never be successfully pursued in court, namely cases regarding political decisions that have been ordered from higher levels. In such cases, appealing is never an effective remedy.

A13 said that the activists in A13's area only appeal refusals in exceptional cases, but that appeals are usually effective in the sense that the local authorities become more open to giving out the information. According to A13, this happens because the authorities are afraid about the consequences of not providing information. A13 has also once experienced that an appeal resulted in personal consequences for deputy staff at the local authority. This happened when A13 appealed against the negligence by the local authority to reply to a request for environmental information to the higher administrative instance. In response, A13 received a reply informing about punitive administrative measures that the responsible deputy staff had been subjected to following the negligent act. The reply did however not contain the requested environmental information.

A13 provided two examples of successful appealing; both concerning appeals of refusals to access information about public hearings. In the first case, the information was eventually published online and in the second case, the public hearing was declared as non-functional since the public had not been informed in a correct manner. However, A13 did not think that appealing refusals of access to environmental information automatically makes it much easier

[304] Great Stone Industrial Park, 'General Information', http://www.industrialpark.by/en/general-information/, (accessed 30 November 2018).

to access the desired information, but rather that it tends to make the authorities disclose at least some of it.

7.2.4.2.2. The lawyers

Even though both lawyers thought that environmental information in Belarus is at times being restricted in unlawful ways, they did not emphasise the difficulties in obtaining environmental information on request as much as the activists and were more positive regarding the effectiveness of appealing refusals.

L2 did not think that refusals of requests for information frequently inhibit the access of the public. L2 also said that the grounds for refusal listed in article 74^4 of the Law on Environmental Protection are quite adequate in themselves. However, this lawyer deemed article 18^1 and the Decree on the Service Information of Limited Access (See Chapter 5.3.2.3.2.), as problematic in this regard. According to L2, basically all urban plans and other detailed schemes become information "for official use" after the public hearing is over and access to them is thus refused. Since this decree, which describes the procedure of attributing information to the "for official use" category, is not accessible for the general public, motivating a request for access to such information becomes truly difficult. As an example, it has not been possible to access a document called "environmental protection scheme" of Minsk at all.

In the experience of L1, it is usually easier to access EIAs than other types of environmental information. While authorities can argue that other types of information related to the environment is not in fact environmental information, it is evident that EIAs constitute environmental information. L1 said that information holders who do not want to disclose the requested information sometimes claim that it is not environmental. For example, this has occurred in cases of requests concerning levels of polluting emissions from factories.

Also, L1 said that the information holder determines whether EIAs can be accessed after the public hearing. Sometimes, information holders argue that they have no obligation to provide the EIA after the public hearing. However, appealing such a refusal is an effective way of overcoming this obstacle, as the court can enforce the right to access this information, according to L1.

L2 mentioned the extraction of environmental information by authorities as another problematic area that can impose unlawful restrictions on public access. According to L2, it happens that authorities are not able or willing to extract unrestricted information from information with restrictions and disclose it. In such cases, access to all requested information is simply denied. This inability to extract information accordingly can however also have the opposite result, according to L2. Sometimes the authorities give out information that was not included in the request and expect the requesting party to manage the extraction.

7.2.4.2.2.1. Appealing refusals

Regarding court appeals in general, L1 said that the knowledge about the AC in Belarusian courts is very poor and that there has been no improvement in this area. Consequently, the judges do not understand the nature of such claims; for example, that there is a direct obligation on public authorities to provide environmental information. According to L1, there is a tradition in Belarus going back to Soviet times that public authorities are always right and hence courts are reluctant to take on cases that would reveal mistakes conducted by local authorities. However, L1 also said that the few successful cases that has been pursued by Ecohome in court have all concerned environmental information. Access to environmental information is thus an area where more progress has been made, compared to public participation in decision-making and access to justice in environmental matters.

7.2.5. Alternative strategies for obtaining environmental information

For many of the activists, alternative strategies for obtaining environmental information played an important role in their activism; either as a supplement or a substitute to formally requesting such information from public authorities. The alternative strategies mentioned can be divided into the following three categories:

1. Obtaining unofficial environmental information through personal contacts with public authorities.
2. Conducting investigations autonomously
3. Attracting media attention about the issue to put pressure on authorities to disclose more information.

Each of these strategies are described in more detail under the following headlines.

7.2.5.1. Unofficial information

According to A3, it can sometimes be necessary to apply ‘cunning’ tactical strategies in order to ‘break through’ to some specific officials and thereby obtain desired environmental information. Such a strategy could be useful when there are people in the public authorities who are concerned about the same issue. However, it is not certain that these officials are able to influence much. Therefore, one must constantly think about different ways of approaching various individuals in the authorities, according to A3.

To make personal contacts with officials was mentioned also by A4 as a way to obtain environmental information that would otherwise not be disclosed. However, A4 said that it is difficult to publicly use such information as it has been provided unofficially. Also, the activists in Brest said that it is sometimes possible to obtain unofficial information from authorities, or even from private enterprise, but that the activists try only to use information that they have obtained in a formal way, as unofficial information is difficult to validate.

A13 had made use of personal contacts to obtain more information about a local farm which produced bad smelling waste. When approached about the smell, the local authorities responded that there were no environmental problems with the farm. However, A13 managed

to make an appointment with a higher official who happened to pass by. During their meeting, the official admitted that waste was leaking out from the farm, exceeding the environmental norms, but was not willing to specify with exact numbers. According to A13, public deputies can sometimes admit environmental problems during private discussions, but they will, in such cases, not provide documents to prove this information. A13 exemplified this with another situation in which a member of the local environmental inspection office disclosed a document about tree felling, which contained some violations of the applicable law, and allowed A13 to take photos of it. As this deputy was later administratively punished, the deputy is no longer willing to share information with members of the public.

7.2.5.2. Conduction of investigations

Some of the activists had initiated their own investigations of environmental problems following failures to obtain, in their eyes, valid official information. These investigations implied both browsing the Internet to find applicable data about similar issues and conducting scientific investigation at the actual site.

As regards the first option, A5 explained that local activists have a web portal where they publish environmental information that they find in their own researches. The portal serves the function of informing members of the public about existing environmental issues. It also allows people to leave comments and thereby contribute with more information or create an online debate about the issue. According to A5, this is an information flow that the authorities cannot influence or stop. Consequently, the Internet has become an important channel where official information can be supplemented and challenged. However, the activists try to be careful and do not publish information that cannot be validated, as they do not want to be charged with providing faulty information.[305]

The activists in Brest had conducted thorough investigations online and thereby obtained environmental information about factories similar to the one under construction in Brest. They had located an analogue factory in Italy, accessed its EIA and translated it into Russian. According to one of the activists, the calculated levels of lead emissions in the Italian EIA were about 100 times higher than those in the EIA of the Brest factory. However, the activists had experienced little success when approaching the local authorities with this information. They also found it difficult to base their arguments on the alternative information as they had no means of proving that it also applied to the factory in Brest.

Some of the interviewed activists had initiated scientific investigations themselves. The results of such investigations can be submitted through the public environmental review procedure (see Chapter 6.4.1.) if the public discussions are still ongoing. However, many activists said that the public usually becomes aware of a planned project too late to participate in such procedures. Information obtained through autonomous investigations is thus mostly

[305] Article 47(1) of the Law on Information, Informatisation and Information Protection states that an 'owner of information' bears the responsibility for provision of deliberately false or incomplete information.

useful in order to contravene or supplement environmental information obtained from the authorities. Adding to this perspective, E/S2 said that the non-governmental organisation of experts that E/S2 works for frequently receives requests about environmental information from members of the public who want to oppose for example a decision to build or expand a factory.

The activists in Brest had actively conducted their own investigations. In response to claims from the authorities that the factory in Belaaziorsk produced third class hazardous waste, the activists broke into closed storage rooms and brought jars of lead waste to the offices of the authorities to prove that the lead waste is in fact second-class hazard.[306] According to one activist, creating 'sensations' in this way is necessary to break through the 'wall of silence'. The activists have also found that dumping of lead waste takes place in Belaaziorsk. When the authorities did not react to these allegations, activists drove to the dumping site and filmed it. The video material was then published on a website created by the activists.

In addition, activists in Brest had invited a laboratory from Moscow to take samples from the grounds adjacent to the factory in Belaaziorsk and analyse these against applicable environmental norms. According to one of the activists, the analysis identified levels of lead contamination that were ten times higher than the norms. The activists submitted the conducted review to different authorities and asked them to act. However, the authorities responded that the Russian laboratory had no accreditation in Belarus and was thus not allowed to conduct investigations in its territory.

A12 and A14 emphasised the importance of environmental information that has been obtained through independent collection and analysed by professionals. Both expressed a distrust towards the impartiality of the state environmental expertise. However, A14 said that if the activists in Kalodziščy could only access the full information about the Amkodor factory, they would consult independent professionals themselves and review the data. A6 said that one way of obtaining valid environmental information is to initiate private independent expert assessments, but that the residents are not able to finance such assessments.

Despite the general distrust of governmental authorities and the state environmental expertise, A14 thought that The National Academy of Sciences is an independent institution as it consists of scientists and not government officials. The Academy has, according to A14, also been helpful in conducting inventories of the forest that the activists could use. A3 had positive experiences with the Academy of Sciences as well, which among other things had made an inventory of the greenery in a disputed area. However, the activists in Brest claimed

[306] Hazardous waste is divided into four categories in Belarus, ranging from 'low-hazard' (Category 4) to 'extra-hazardous' (Category 1), see Van Breusegem, W. and Gonser, J., 'Country Fact Sheet Belarus', Implementation of the Shared Environmental Information System principles and practices in the Eastern Partnership Countries (SEIS East) - Waste Statistics, European Commission, 2017-12-14, p. 8, https://eni-seis.eionet.europa.eu/east/areas-of-work/data/Annex3BelarusCountryFactSheetFeb2018.pdf, (accessed 06 December 2018).

that a member of the Academy of Sciences had once given out false information about the prevalence of lead in the 1AK-GROUP factory, following instructions to do so.

7.2.5.3. Media attention

A third alternative strategy to obtain environmental information for the activists was to create publicity about the issue to put pressure on the authorities. A4 explained that in Belarus, apart from there being precedent law, there are also 'precedent scandals', meaning that only if there is a scandal about something, change can take place. Hence a strategy to obtain environmental information can be to start a scandal by attracting media attention to the fact that the information has not been disclosed. In such cases, authorities sometimes make official statements in the media in response to the issue and these statements can be informative.

A14 said that the activists in Kalodziščy had used media attention in similar ways and invited correspondents to write about their campaigning in order to pressurise the authorities. For example, when the activists mobilised a group of 15 people and went to the offices of the Minsk district department to put pressure on the officials to disclose information about the Amkodor factory, they also invited media to report about this event.

7.3. Socio-legal analysis of the implementation of the right to access environmental information in Belarus

This chapter will provide answers to the third research question by analysing the findings outlined in Chapter 7.2. against the background of the various legal, political and historical factors specific to Belarus that were described in Chapter 5 and of the findings of the doctrinal analysis in Chapter 7.1.

7.3.1. Making the request

The responses from the interview participants concerning the making of the request for environmental information highlight several interesting phenomena. Even though A7 and L1 provided slightly different perspectives, there seem to be a wide-spread view that requesting environmental information is a complicated legal, and possibly also scientific, exercise that often requires expert assistance.

Most interview subjects believed it necessary to frame one's request in a sufficiently professional and detailed way, or, as A3 put it: writing to the authorities in 'their language'. L2 believed that ordinary citizens often fail to obtain environmental information due to the ways in which they frame their requests. However, some of the activists did not deem the drafting of the request to be of crucial importance, since they believed that authorities withhold sensitive information anyway. Also, A4 did not want to appear as a 'legal expert' and framed requests in an emotive and human language instead.

The findings indicate that the legal provisions about access to environmental information are perceived as complicated and inaccessible by those without legal expert knowledge. Some activists did not feel confident enough to submit requests for environmental information without professional legal support. The applicable law was also perceived as uncertain; both in terms of its content and its enforcement. Firstly, many participants thought that the legal knowledge among ordinary citizens is poor; as exemplified by the unawareness about that the stating of interest is not required when requesting environmental information. Secondly, all interview subjects believed that there is a general lack of knowledge among public authorities about the right to access environmental information. Judging by the activists' and lawyers' experiences, it appears that many authorities also believe that the stating of an interest is a requirement for accessing environmental information. Evidently, the participants perceived the right to access environmental information as something contrasting to the general legal framework of Belarus, in which there is no general principle of public access to official records. As has been explained in Chapters 1 and 5.3.2., the process of implementing article 4 of the AC in national Belarusian law has been long and connected with legal conflicts. The lack of a pre-existing legal framework and the lengthy implementation process could, together with general issues in Belarusian law with confusions about the hierarchy among legal rules (see Chapters 6.2. and 5.3.2.), explain the perceived legal uncertainty. Such an uncertainty could also derive from the fact that Belarusian legislation can change rapidly following the extensive legislative powers of the President (see Chapters 6.1 and 6.2).

None of the activists nor the lawyers seemed to assume that the authorities would comply with applicable legislation. According to the activists, enforcement problems do not only result from poor knowledge but could also derive from intentions not to disclose certain types of environmental information. Evidently, most interview participants had low expectations about the willingness or competence of public authorities to facilitate constructive communication with, or give necessary assistance to, the party requesting environmental information. Public institutions were, on an overall, perceived as bureaucratic and difficult to approach. The perception of public authorities as difficult to approach and to communicate with appears to derive, partly, from the centralised and 'vertical' power structures of these authorities (see Chapters 6.1 and 6.2.); implying that officials on the lower levels cannot effectively influence the decision-making. The findings thus indicate that an insufficient separation of powers among public authorities creates obstacles for members of the public who wish to request environmental information. However, it also seems like a genuine lack of knowledge about the right to access environmental information among public authorities places a heavy burden on the individual who frames the request.

Some activists said that the fear of appearing as an 'opponent' of public authorities and to 'criticise' them can stop ordinary citizens from requesting environmental information.
However, none of the activists could connect negative personal experiences directly with requesting environmental information and some stated clearly that they are not connected. It is thus unclear whether requesting environmental information implies risks for personal safety. That feelings of discomfort exist could however be explained by that Belarus has a weak tradition of civil society engagement and a strong presence of the secret police and

armed force structures; going back to Soviet Union times (see Chapters 6.1. and 6.3.1.). The way in which public authorities have dealt with the opposition against the NPP in Astraviec and the Amkodor factory in Brest also shows that other types of involvement in environmental issues can imply risks for the personal safety of environmental activists.

7.3.2. Quality and validity of environmental information

In general, the activists regarded the quality and validity of provided environmental information with a high level of scepticism. E/S1, E/S2 and L2 identified problematic aspects in this area as well but were less pessimistic about the prospects of obtaining valid environmental information. Based on the obtained results, no conclusions about the actual quality and validity of environmental information in Belarus can be made and this is also not the intention of the study. However, as the right to access environmental information becomes ineffective if obtained information is perceived as distorted by those who have requested it, the issue is of major importance.

Most activists thought that public authorities still distort or withhold environmental information that would reveal either serious environmental problems or mistakes conducted by the officials. This perception of public authorities seemingly correlates with the culture of secrecy and spreading of misinformation that developed during Soviet Union times (see Chapter 6.3.1.).

That a public scepticism towards provided environmental information prevails could be explained by several of the identified nation-specific factors. Firstly, there is no general public right to access official records in Belarus and authorities enjoy a wide discretion to restrict access to official information other than environmental information (see Chapter 5.3.1.). Furthermore, authorities exercise a direct control over state-owned media and an indirect control over private media actors (see Chapter 6.1.) and can thus impose restrictions on investigative journalism. In addition, the procedures for state environmental assessments imply that environmental expertise cannot operate without a state certification (see Chapter 6.4.1.), meaning that they are also under a certain level of state control. Thus, it becomes difficult to verify obtained environmental information by comparing it with information from sources that are completely independent from the Belarusian state. This problem is highlighted by the experience of the activists in Brest, who could not use the results from their own investigations since the invited Russian laboratory had no accreditation in Belarus (see Chapter 7.2.5.2.). Even though some activists believed the National Academy of Sciences to be an impartial an independent body, they displayed generally low confidence in Belarusian public authorities. Deprived of the possibility to effectively consult independent information sources, it is understandable that the activists were sceptical towards provided environmental information. It should be noted, however, that L1 deemed that the state certification was a positive development that had generally improved the quality of environmental assessments.

Secondly, most of the activists had obtained environmental information that they, sometimes based on their own investigations or comparisons, deemed to be incomplete or invalid. Even though no conclusions about the actual quality and validity of provided environmental information can be drawn without extensive scientific investigations, the findings of the study reveal a serious problem in this regard. The activists' and L2's experiences from obtaining seemingly invalid or incomplete environmental information are striking. Regardless of if these experiences can be attributed to intentional falsification and distortion of information by public authorities, or to the lack of knowledge among the same, they strongly indicate the existence of actual problems with information quality and validity. During Soviet Union times, centralised and vertical power structures created incentives for public officials to withhold sensitive or unfavourable environmental information; establishing a culture of secrecy and fear (see Chapter 6.3.1.). As the contemporary power structures of Belarus have characteristics resembling those of Soviet Union times (see Chapter 6.2.) it is understandable that activists attribute the provision of incomplete or invalid environmental information to a similar culture of secrecy and fear. Adding to this, it appears that public officials actually risk being subjected to administrative punitive measures if they disclose environmental information not intended for disclosure. However, such punitive measures could seemingly also follow from a failure to provide environmental information (see Chapter 7.2.4.2.1.).

7.3.3. Restrictions on access

Most of the activists emphasised the difficulties with obtaining environmental information on request from public authorities. They also believed that public authorities restrict access to information that is unfavourable or sensitive to them and apply the legal provisions for these purposes. Even though the lawyers seemed to obtain environmental information on request more frequently, both groups identified the same grounds for refusal as being most common; namely that the information (1) is not environmental, (2) cannot be disclosed due to commercial interests and (3) is classified as official information for limited distribution.

Responses from both activists and lawyers indicate that article 18^1 of the Law on Information is being used to classify environmental information data as official information for limited distribution. As has been outlined in Chapter 7.1.3.2., the application of article 18^1 of the Law on Information in relation to environmental information is possible due to the broad articulation of the grounds for refusal in article 74^2 of the Law on Environmental Protection. Since the decree regulating the procedure for attributing information to the "official use" category is non-accessible to the public, a personal wishing to challenge a refusal of a request for environmental information has a clear disadvantage when trying to motivate an appeal or a repeated request. According to both activists and lawyers, development plans and raw monitoring data are frequently, or even as a rule of thumb, classified as information for official use. If this is true, such treatment of environmental information contradicts the remarkably broadly articulated 'guarantee' enshrined in article 74^2 that data about "the state of the environment" should not be restricted and equally that environmental information about emissions of contaminating substances, chemicals and about various ionizing and electromagnetic radiation should not be made subject to restrictions. Even though all refusals

to provide environmental information could, theoretically, contravene the list in article 74^2 of environmental information to which access is guaranteed, the secret procedure of attributing environmental information to the "for official use" category is especially problematic in this regard. The lack of public insight into this procedure means that there is no effective way of publicly reviewing or enforcing compliance with article 74^2 when environmental information is being attributed to "official use".

From the findings of the monitoring report it indeed seems like access to environmental information is more often being restricted by indirect means (ignoring the request, provision of incomplete information) than by explicit refusals. Consequently, Ecohome deems that the right to appeal enshrined in article 74^4 does not fully correspond with the needs of the public and that the outlined civil appeal procedure can be more effective since it can be used to enforce the performance of administrative duties connected with civil rights. The monitoring report also concludes, in line with the views of the interviewed activists and lawyers, that the knowledge about the implications of the right to access environmental information among Belarusian public authorities and courts is generally poor and that courts tend to interpret the right restrictively. The findings highlight a problem with enforcement of the right to access environmental information that appears to derive from the failure by public authorities to respond to requests for environmental information accordingly. It can be assumed that this failure at least to some extent is a result of poor knowledge and competence about the applicable law.

It is however interesting to note that the interview subjects displayed different views on the effectiveness of appealing. While some activists thought that appealing a refusal to provide environmental information is, since Belarusian courts are subordinated to political decision-making, a largely useless exercise; the lawyers as well as A13 provided examples of successful appeal processes. It is thus possible that the imposed restrictions on access to environmental information are to some extent sustained also by a 'legal nihilism' among the Belarusian public, who refrain from challenging refusals due to a general distrust of available legal remedies (see Chapter 6.2.). This nihilism could discourage members of the public from pursuing their requests for environmental information and thus leave many refusals unchallenged; even in cases where an appeal could have been successful. However, despite any issues with the perception of law among the general public, the Belarusian judicial system is in fact not fully independent and impartial; thus to some extent subject to political decision-making (see Chapter 6.2.).

All activists, both lawyers and two of the engineers/scientists thought that public authorities are generally poorly knowledgeable about the right to access environmental information. This view is further confirmed by the Ecohome monitoring report. To give an adequate explanation to why this is so lies outside the scope of this research. It can however be assumed that the lack of a general principle of access to official records increases the need to educate public authorities about the special regime for environmental information and that more progress could be achieved in this regard.

The Ecohome monitoring report concludes that, despite remaining legal and practical obstacles, it has become easier to obtain environmental information in Belarus over the last few years but does not provide an explanation to why this is so. According to the report, the level of knowledge among public authorities and other information holders has not increased notably during the same period. Neither the present study can, based on its findings, provide an explanation to the increased availability of environmental information. It should however be noted that this trend correlates in time with the amendment to article 2 of the Law on Information as well as compliance procedures in the ACCC (see Chapter 5.3.2.). Also, Ecohome representatives believe that an increased public activism plays an important role.[307]

7.3.4. Alternative strategies for obtaining environmental information

Most of the activists had used alternative strategies to obtain environmental information. These strategies consisted of obtaining unofficial information from personal contacts, conducting investigations autonomously and attracting media attention. For many, the alternative strategies were not only supplements to formally requesting information but regarded as the only way to obtain useful and valid environmental information.

The active engagement among Belarusian citizens in alternative strategies to obtain environmental information is symptomatic of the wide-spread distrust of public authorities that has been discussed in the previous chapters. Two of the outlined strategies – obtaining unofficial information and attracting media attention – are aimed at 'piercing through' the perceived wall of silence; either through personal relations or provocation. The third strategy – conducting autonomous investigation – is an attempt to challenge official information by means of scientific evidence.

Even though the giving out of unofficial and non-verifiable information could be explained by unprofessionalism and lack of respect for the law by individual officials, one cannot disregard the possibility that such actions partly arise from frustrations about imposed restrictions on public access to environmental information. An official who, because of limited executive powers or fears of punitive measure, is unable to disclose important environmental information might regard the provision of unofficial information as an alternative way to assist concerned members of the public.

The general distrust of public authorities is further indicated by the perceived usefulness of media attention and creation of scandals. In this regard, parallels can be drawn to how public protests in the aftermath of the Chernobyl accident resulted in an increased disclosure of information (see Chapter 6.3.1.1.). However, as the right to access environmental information has been implemented in Belarusian legislation since more than a decade, the current situation is different than during perestroika in the Soviet Union. Thus, incentives among members of the public to create 'media scandals' about environmental situations in order to

[307] Personal communication with Ecohome, 9 January 2019.

obtain information further raises the question whether the right to access environmental information has been effectively implemented.

Citizens' attempts to conduct autonomous investigations to challenge environmental information provided by public authorities further confirm a low confidence is these authorities. Even though the present study does not assess the actual quality or validity of provided environmental information in Belarus, it can conclude that an effective implementation of the right to access environmental information is being undermined by doubts about information quality and validity. That the quality and validity of environmental information is still a manifestly important issue for Belarusian citizens seems to confirm the argument put forward by Harman-Stokes in 1995 that the quality of any information disclosure laws will have to compensate for the pre-existing cultural bias against providing information (see Chapter 6.3.2.).

8. Conclusion

The study has analysed the implementation of the right to access environmental information in article 4 of the AC in Belarusian legislation against the background of legal, political and historical factors specific to Belarus; combining a doctrinal method with socio-legal research. Following the division of methods, the conclusion is separated into two chapters.

8.1 Doctrinal analysis

The right to access environmental information differs from Belarusian legislation about general access to official records, which requires a stated interest and allows authorities to impose restrictions on access for a range of purposes (see Chapter 5.3.1.). Since Belarus signed the AC, the right to access environmental information enshrined in article 4 of the AC has been implemented by articles 74 - 74^7 of the Law on Environmental Protection with supplementing legislation. Following compliance procedures in the ACCC, Belarus amended the Law on Information in 2017 to clarify that a stated interest is not required to access environmental information and the ACCC has subsequently deemed Belarusian legislation to comply with the provisions of the AC (see Chapter 5.3.2).

The findings of the comparative doctrinal analysis reveal that the provisions about access to environmental information in articles 74 - 74^7 largely correspond with those of article 4 of the AC. However, there are some notable differences. Some of these **differences** result from the choice of terminology and do not appear to contravene the provisions of article 4. Unlike article 4 of the AC, the Law on Environmental Protection separates environmental information into two categories (information for "general" or "special" purposes), but this separation appears only to implement a cost regime for the provision of environmental information, which is permissible under article 4(8) of the AC (see Chapter 7.1.2.3.).
Furthermore, the Law on Environmental Protection imposes obligations on both public authorities and private entrepreneurs to provide environmental information, while article 4 of

the AC only contains obligations for public authorities. However, the definition of "public authority" can according to article 2(2)(c) of the AC also under certain circumstances encompass private entrepreneurs. Also, the time limits for providing or denying access to environmental information are shorter in the Law on Environmental Protection than in article 4 of the AC (see Chapter 7.1.4.2.).

Some differences between article 4 of the AC and its implementing Belarusian legislation appear to have substantial implications. Even though the grounds for refusal of access to environmental information prescribed by article 74^2 of the Law on Environmental Protection correspond with those of article 4(4) of the AC, article 74^2 implicitly enables an application of article 18^1 of the Law on Information, making it possible to classify environmental information as official information for limited distribution. Enshrined in a decree not available to the public, this classification procedure is not transparent. It thus becomes difficult for the requesting party to appeal a refusal of access motivated by that the information is classified for official use. Furthermore, unlike article 4 of the AC, the Law on Environmental Protection does not require public authorities to perform a public interest test, in which the permitted grounds for refusal of access are interpreted in the light the public interest in the matter. Instead, article 74^2 lists certain types of environmental information for which access may not be restricted. However, due to the lack of transparency concerning the classification of environmental information as information for "official use", it is impossible for the public to review whether information classified for official use in fact fall under the listed types of environmental information in article 74^2. Consequently, the normative status of article 74^2 is unclear.

8.2. Socio-legal analysis

The socio-legal research into the implementation of the right to access environmental information in Belarus reveals a complex picture, in which the application and perception of the right correlates with various legal, political and historical factors. Seemingly, these factors strongly influence an effective enforcement of the right.

Requesting environmental information from public authorities was regarded as a complicated exercise by most activists and some even deemed it necessary to get expert assistance in doing so. There appears to be a lack of knowledge about the legal right; both among members of the public and in public authorities. Evidently, the belief that a stated interest is required to obtain environmental information still prevails. Also, some activists thought that feelings of discomfort could prevent members of the public from requesting environmental information. However, there was no clear evidence of negative implications for personal safety in this regard. The perceived difficulties can be explained by the fact that the right to access environmental information differs significantly from the general legal framework about access to official information in Belarus, as well as by that the process of implementing the right has been long and connected with legal conflicts. There is also a general issue with legal uncertainty in Belarus, resulting from confusions about the hierarchy among legal rules.

Furthermore, centralised and vertical power structures of Belarusian public authorities seem to contribute to the perception of these as difficult to approach and communicate with.

The activists displayed a profound scepticism towards the quality and validity of environmental information provided by public authorities. This view was to a lesser extent also confirmed by some of the other interview participants and by the Ecohome monitoring report. The activists believed that public authorities actively distort or withhold environmental information that is sensitive or unfavourable to them; in particular raw monitoring data. This scepticism related to personal experiences of the provision of incomplete or invalid environmental information. Furthermore, structures in the contemporary Belarusian political and legal system, where public authorities on the lower levels are strongly subordinated to higher political powers and the state exercises a notable control over other official information as well as the media and – in the case of environmental information, also environmental assessments - can explain why a strong scepticism towards officially provided information prevails. Account must also be taken for that a culture of secrecy and fear was present in public authorities during Soviet Union times and that a cultural bias could thus remain.

Many activists deemed refusals of requested environmental information to be an issue of significance. It should however be noted that seemingly a low number of the requests submitted by Ecohome in its monitoring were explicitly refused. Generally, the lawyers did not deem refusals to be equally problematic as the activists, but both groups identified the same grounds for refusals as being most common. One of these grounds is that the requested environmental information is classified as official information for limited distribution according to article 18^1 of the Law on Information. Both the activists and the lawyers alleged that it is common practice to classify raw monitoring data and development plans in this way. The problematic practice of classifying environmental information as official information for limited distribution can be attributed to the lack of a clear hierarchy among rules in Belarusian law.

Interestingly, the interview participants' views on the effectiveness of appealing refusals of access differed. While some activists did not deem appealing to be an effective legal remedy at all, others had positive experiences in this regard. According to the Ecohome monitoring report, the right to appeal refusals of access to environmental information enshrined in the Law on Environmental Protection does not fully correspond with the needs of the public since access to environmental information is more often being restricted indirectly rather than by explicit refusals. In such cases, the monitoring report regards a civil appeal procedure as more effective to enforce the right. These findings further support that a lack of competence and knowledge among public authorities inhibits an effective enforcement of the right to access environmental information. From the activists' responses, it is possible to discern a tendency of 'legal nihilism' but the responses also correlate with the fact that the Belarusian judicial system is not fully independent and impartial.

Most activists in the study had used alternative strategies to obtain environmental information: either obtaining unofficial information from public authorities, conducting investigations autonomously or attracting media attention. The active engagement in alternative strategies to obtain environmental information confirms a wide-spread distrust of public authorities; clearly manifested by the conduction of autonomous investigations. This distrust correlates with difficulties of obtaining environmental information from sources fully independent from the Belarusian state.

Notwithstanding that many obstacles must seemingly be overcome before the right to access environmental information in Belarus is effectively enforced, there are however also indications of a positive development. The Ecohome monitoring report concludes that accessing environmental information has generally become easier over the last few years.
Even though neither the monitoring report nor the present study can properly explain this positive trend, it must be noted that it correlates in time with the recent amendments to the law, intended to improve the implementation of the right. It is also possible that efforts by the civil society together with compliance cases in the ACCC have shifted the approach of public authorities in Belarus, making them more prone to disclose environmental information.
Representatives from Ecohome believe that increased public activism plays an important role in this regard.[308]

[308] Personal communication with Ecohome, 9 January 2019.

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