



THE AARHUS CONVENTION AND THE NUCLEAR SECTOR – WHERE ARE THE LIMITS OF ACCESS TO INFORMATION?

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Overview



Problem of timely, proper and trustful information

- Nuclear events
- Siting of nuclear facilities
- Licensing of nuclear facilities
- Operating of nuclear facilities
- Decommissioning of nuclear facilities

Overview



Key problems:

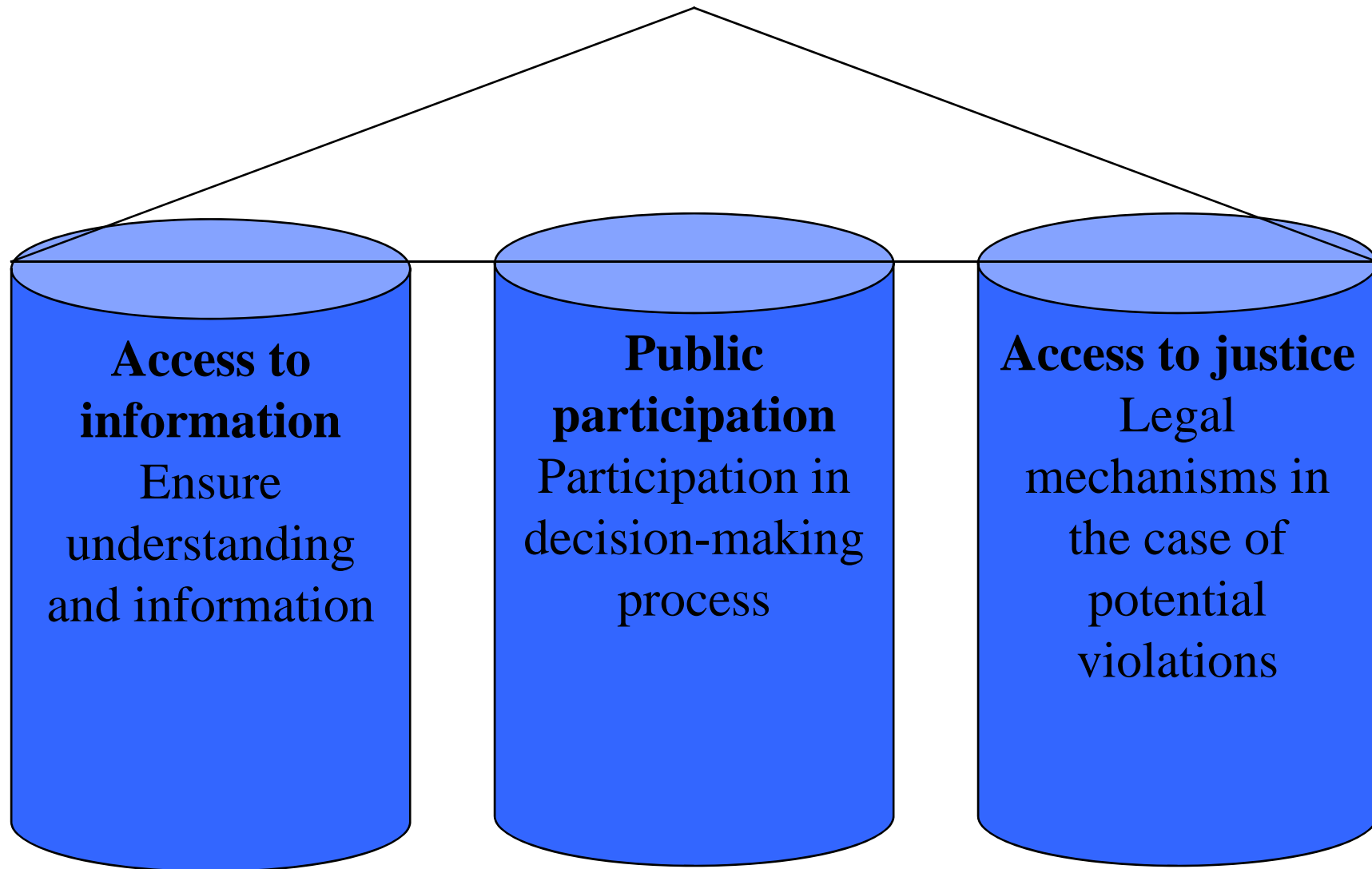
- Aarhus convention as a basis of right to environmental information
- Right to safe environment as a basic human right – attitude of the ECHR
- Right to environmental information vs. Right to information as Individual right vs. Political right
- Limits to the right to information in nuclear world
- Scientific information vs. Research information
- What's the future

Aarhus convention



- links environmental rights and human rights;
- acknowledges that we owe an obligation to future generations;
- establishes that sustainable development can be achieved only through the involvement of all stakeholders;
- links government accountability and environmental protection;
- focuses on interactions between the public and public authorities in a democratic context.

Aarhus convention – three pillars



Right to information



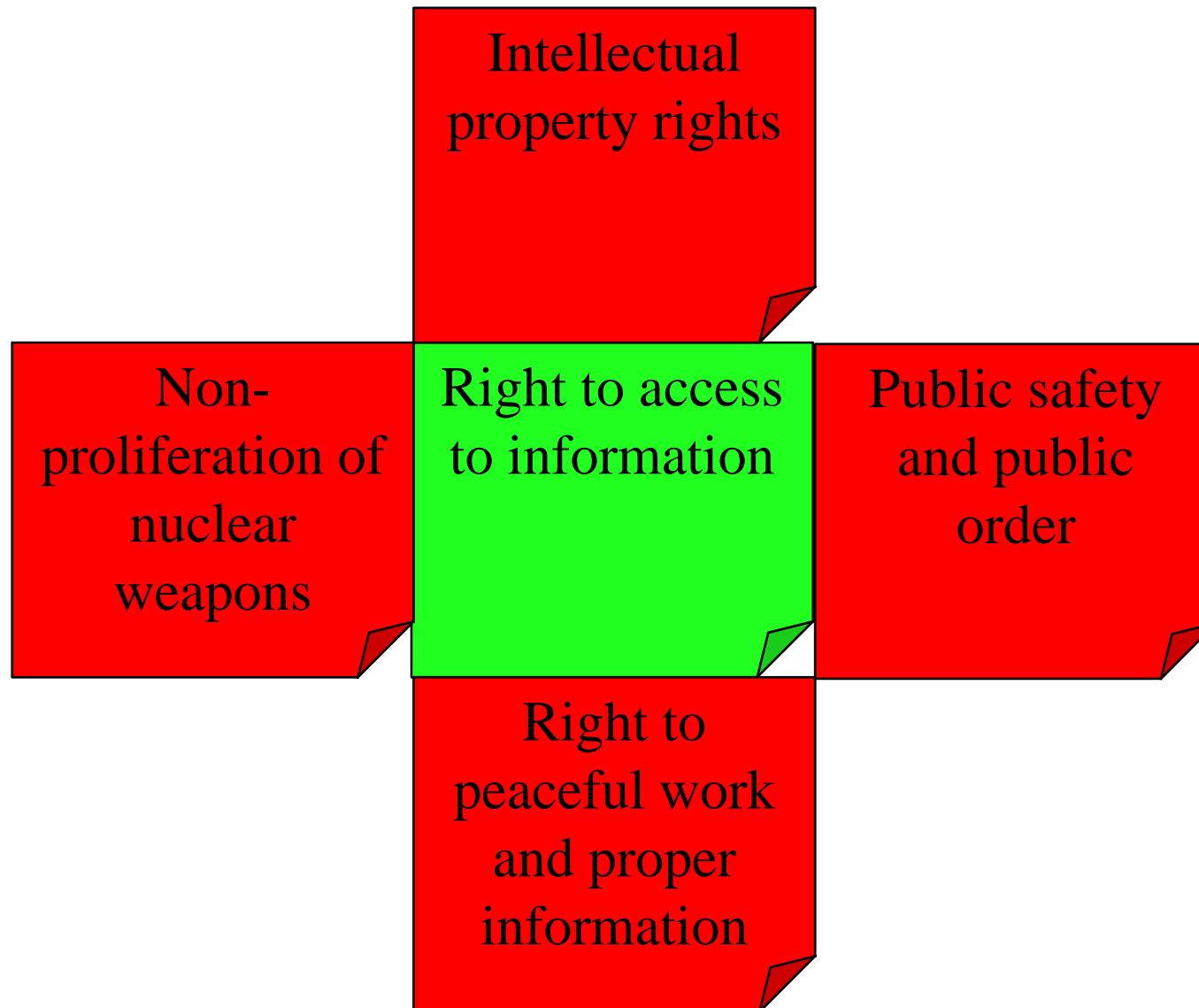
- **Right to access to information as a political right:**
 - **Art. 19 of The Universal Declaration of Human Rights (UDHR) from 1948 (United Nations 2015) – proclaims the right to freedom of opinion and expression;**
 - **Art. 19(2) of The International Covenant on Civil and Political Rights from 1966 (Office of the United Nations High Commissioner for Human Rights (OHCHR) 2015) – guarantees the right to freedom of opinion and expression;**
 - **Art. 10 of The European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950 (Council of Europe 2015) provides the right to freedom of expression.**
- **NB: right to environmental information is not equal to the right to access to information. First is individual right, second could be executed also through political associations.**

Right to information - conflicts



- **Dealing with right to access to information regarding nuclear facilities there are following limitations:**
 - **requested material is in the course of completion or are unfinished documents or data;**
 - **requested information concerns internal communications;**
 - **requested information breaches the confidentiality of the proceedings of public authorities;**
 - **requested information is part of international relations, public security or national defence;**
 - **requested material is trade secret or protected by intellectual property rights.**

Limits to right to information



ECHR and right to a healthy environment



- ECHR hadn't dealt with environmental matters till the beginning of 1990's
- The first environmental case *Powell & Rayner v. UK*, 1990 started a new ECHR's practice (London Heathrow Airport)
- Other decisions: *Taşkin and Others V. Turkey*, ECtHR, App. No. 46117/99, March 30th 2005; *Case of Okyay and Others V. Turkey*, ECtHR, App. No. 36220/97, October, 10th 2005; *Case of Demir and Baykara V. Turkey*, CtHR, Grand Chamber, App. No. 34503/97, November 12th 2008, *Case of Tătar V. Romania*, ECtHR, App. No. 67021/01, January 27th 2009; *Case of Branduse V. Romania*, ECtHR, App. No. 6586/03, April, 7th 2009; *Case of Ivan Atanasov V. Bulgaria*, ECtHR, App. No. 12853/03; *Case of Grimkovskaya V. Ukraine*, ECtHR, App. 38182/03, July 21th 2011; *Case Di Sarno and Others V. Italy*, ECtHR, App. 30765/08, January 10th 2012; *Case of Lesoochránárske Zoskupenie Vlč V. Slovakia*, ECtHR, App. No. 53246/08, October 2nd 2012.

ECHR and right to a healthy environment



- **ECHR set three main requests for the states in the field of healthy environment:**
 - **states have especially positive obligations, to take appropriate measures able to protect the individuals against the adverse effects on their rights of environmental pollution of different kinds (noise, chemical, industrial), such as: creating a comprehensive legislative and administrative framework on environmental protection, ensuring the “horizontal effect” of the Convention;**
 - **states have obligation to inform the public about the risks of serious pollution caused by industrial or other activities, dangerous to the environment;**
 - **states must ensure a fair balance between the economic interests and welfare of the community as a whole and the individual rights and interests.**

Right to information – new problems



- **Public participation as a political right in the system of western type democracy – participation through elections and ev. referendum**
- **Public participation as spin-off to decentralisation – possible constitutional dispute (unclear process of defining the stakeholders)**
- **Right to information as contrary per se – the need to adopt information to different groups and persons**
- **Right to information as a possible political playground – environment as a part of political concessions**
- **Right to information – new dawn for „layman trolls“, NGO's and media promotion**

Scientific vs. Research information

- **Scientific information** - part of technical information concerned with the study of natural phenomena. It could be retested and verified.
- **Research information** – information dealing with the research to establish or confirm facts, reaffirm the results of previous work, solve new or existing problems, support theorems, or develop new theories.

Scientific –
reserved to
science and no
political
discussion



Research –
possible political
discussion

What's going on?



- More research information than scientific one
- Nuclear science – young science (a lot to be discovered yet)
- Nuclear event vs. air traffic disaster
- International limits to information and international standards of reporting nuclear events
- Democracy crisis in western democracies
- Too many cooks spoil the broth

How to deal with the problems



- **Distinguish between free access to information and limited access to information – set a register of limited information with the reason of restriction**
- **Different groups and different individuals need different presentation of the same information – different sides of the same coin**
- **Express clearly what's the scientific information and what's research information – research information could be different pondered in political decision-making process, scientific not**
- **Evade the scientific relativism or limit the discussion of scientific relativism**
- **Distinguish between the individual and group constitutional rights**
- **Distinguish between legitimacy and legality**
- **Acknowledge the present uncertainty of definition of media and journalist**



Thank you!

