



Legal Analysis Aarhus Convention: Slovenia

**Legal Informational Centre
for NGOs Slovenia**



1) General information on ratification and transposition of the Aarhus Convention (AC) in Slovenia, in particular:

- **Ratification:** AC was ratified in May 2004 (ratification act published in Official Journal on June 7th, 2004, Ur.l. RS št. 62/2004).
- **Legal position of international conventions:** Under the Slovenian Constitution (Article 8 and 153), an international treaty ratified by the National Assembly is a legally binding act; laws and other regulations must be in conformity with it.
- **Date of final transposition:** The transposition of the AC is formally completed. Slovenia has not yet signed any of the amendments. There are some discussions about whether to sign and ratify the PRTR Protocol as a good will gesture of the presiding country (Slovenia will be the next Member State to hold the presidency of the EU in the first half of 2008).
- **National legal acts:** In 2003, Slovenia adopted the *Act on Public Access to Information* (ZDIJZ, Ur.l. RS št. 24/2003, 61/2005) as a general act governing the procedure which ensures free access to information of a public nature held by State bodies, local government bodies, public agencies, public funds and other public law entities, holders of public powers and public service contractors to everyone.

The *Environmental Protection Act* (ZVO-1-UPB1, Ur.l. RS št. 39/2006) is the general framework that regulates public participation in the decision-making process in the environmental field. It specifically defines non-governmental organizations undertaking environmental protection activities in the public interest. NGOs recognized under this law have the right to act as parties in the procedures defined in ZVO.

The *Nature Conservation Act* (ZON-UPB2, Ur.l. RS št. 96/2004) regulates procedures for recognizing associations performing nature conservation activities in the public interest. These associations are given ex lege right to represent the interest of nature protection in all administrative and judicial procedures.

2) Overall framework and context of AC related issues:

- General atmosphere relevant for the AC: NGOs were very active even prior to the ratification of the AC. They exercised pressure on the Government to start with the ratification procedure; they published several books and leaflets promoting the AC, etc. Because in Slovenia, there was a general freedom of information act in force, there were no significant changes regarding the regulation of the 1st pillar. The 1st and 2nd pillars of the AC were the most prominent. There were some joint activities of the MoE and NGOs dedicated to the promotion of the 1st pillar, especially¹, but in practice implementation still faces problems.

Differences in attitudes of public officials is significant, however NGOs are not active enough and they do not claim their rights under the AC². Problems regarding public participation in decision-making processes are currently similar in all sectors. The environmental sector seems not to be more open than any other. We assess that the implementation of the AC (except for the 1st pillar) is not satisfactory and remains on the minimum level of commitment³.

- A brief summarization of other two pillars:
 - i. The Public Access to Information and Environmental Protection Act clearly states the kind of information required to be available on the Internet and in the environmental registers. As a result, ministries and other public bodies put a number of relevant items of information on the Internet, thus the interested public can access information and documents directly.

As the MoE official for the transmission of information explained, the number of requests is decreasing annually, due to the fact that the public is currently more aware of the nature of information (e.g. they do not now ask for personal data, which is one of the exemptions from free access to information). At the beginning requests were sent for information that was not considered public information (general information, information for users of public services, etc.) or for information that was already available on the Internet.

If the public body declines access to information, one may appeal to the Information Commissioner. In 2006, the Commissioner received 15 applications filed against MoE, out of which 1 was refused, 1 was granted, 1 was returned to

¹ For example, REC and PIC held a number of workshops for NGOs and the general public throughout Slovenia. Workshops were dedicated mostly to access of information (what is public information, the most efficient way of getting information, the complaint procedures, competent bodies, etc.). However, the 2nd pillar was covered as well (mechanisms and tools for public participation).

² In the case described in the case study, the attorney of the association (which sued the Agency for the Environment) did not even argue the breach of AC, although it was already ratified and fully in force. Only after REC and PIC informed the association of their rights under AC, did they begin referring to the AC.

³ In the proposal referring to what to include in the AC National Implementation Report, PIC expressed its concern regarding the levels of information that (in our opinion) took a step back from active to passive information provision. Because the new Government's IT support for active information provision is no longer available, the public must locate all relevant information on its own. Many surveys regarding public participation in Slovenia, not only in the environmental field, but in general as well, conclude that the level of public participation is very low. B. Harvey, in his handbook "Access by NGOs to the structural funds in the new Member States of Eastern and Central Europe" writes about the "illusion of inclusion"; other surveys such as the Mirror to the Government, NGO Sustainability Index, etc. have very similar conclusions as well.

MoE and the remaining 12 were withdrawn⁴.

We assess that access to information is not problematic in Slovenia.

- ii. In 2004, the Environmental Protection Act was passed, regulating the standing of environmental NGOs in administrative procedures. With these articles, Slovenia fulfilled its obligations under AC, but the conditions for the standing are so strict that more than 3 years after the law was passed not even a single NGO acquired the status.

3) Particular issues:

This section describes how the following provisions of the AC are incorporated into the national legal systems; mostly by relevant provisions of national legislations or, where applicable, by national jurisprudence of the respective countries:

Article 2.5, Definitions:

- Public concerned: Permanent residents of the area affected by the environmental impacts of a project have a legitimate interest in line with the regulations on administrative procedure, if the impacts cause a disproportionate environmental burden or danger for human health, or if the person owns or possesses real estate, and thus is granted the status of accessory participant to the procedure (Art. 64 and 73 ZVO).
- NGOs: As was previously explained, Slovenia has two different laws regulating the legal standing of NGOs.

The Environmental Protection Act in Article 152⁵ states that the status of an “NGO acting in the public interest” may be obtained by an association, foundation or private institute:

- Whose founder is not the state, municipality, other public law entity or political party,
- Has a sufficient number of members (in case of associations, at least 30 members), employees (in case of institutes, at least 1 expert employee with a formal degree from the institute’s field of activity), or endowment (in case of foundations, at least 1250 EUR),
- Has been established for the purpose of environmental protection,
- Is independent from public authorities and political parties,
- Has been active in the field of environment for at least five years,
- Keeps its own account records audited, and

⁴ Source: Office of Information Commissioner.

⁵ More detailed conditions are set in the Rules on detailed requirements and measures for authorisation of status of non-governmental organization which acts in the field of environmental protection in public interest, Ur.l. RS št. 112/2006.

- Is active within the entire territory of the Republic of Slovenia, or at least in five member states, in the case of foreign NGOs that are registered outside Slovenia.

The status of “NGO acting in the public interest” is granted by the minister of environment upon the NGO’s application. A register of such NGOs is being kept by the MoE. Under article 155 of ZVO, these NGOs have the right to participate in procedures in accordance with this law’s provisions (ZVO explicitly states when NGOs can participate, Art. 64 and 73); they are represented in the Council of experts, the Consultative Council and other forms of cooperation established under ZVO or other regulations, passed on the basis of this law. “NGOs acting in the public interest” can also participate in the execution of other tasks of the ministry on the environmental protection field, especially by:

- Expressing viewpoints concerning particular questions of environmental protection,
- Participation in the ministry’s consultative bodies,
- Participation in delegations established for international conferences, together with the representatives of the ministry or the Government.

The AC was ratified and the ZVO passed in 2004, but before November 2006, the minister of the environment did not adopt rules that were obligatory under ZVO for the implementation of these provisions. Consequently, NGOs until recently, were not allowed to apply for the aforementioned status and thus were not able to participate in the respective procedures.

The Nature Conservation Act in Article 137 prescribes a second opportunity for NGOs to gain standing in administrative procedures related to the environment. This opportunity concerns administrative and judicial procedures in the fields of nature conservation. ZON states that the association (excluding other types of NGO legal entities) may acquire a status of “association acting in the public interest” if it fulfills the following conditions:

- Is active in the field of nature conservation,
- Has already received recognition, reward or any other favorable evaluation by internationally recognized experts for their activities in nature conservation,
- Obtains its funds at least in part by membership fees,
- Spends most of its funds for nature conservation,
- Contributes significantly to nature conservation by promoting it or by education.

The MoE grants the aforementioned status. These associations have the right to act in the interest of nature conservation in all administrative and judiciary proceedings.

These regulations set in two different acts, cause a number of problems in practice. Because of strict conditions, to date no NGO has acquired the status of “NGO acting in the public interest” under ZVO. Administrative bodies do not grant legal standing in ZVO procedures to

associations with the status of “association acting in the public interest” granted under ZON⁶. The first problem is that ZON grants the status of “association acting in the public interest” only to associations and not to other forms of NGOs, such as foundations and private institutes. Furthermore, the most significant problem is the difference in interpretations of ZVO provisions. While the MoE insists the status of “NGO acting in the public interest” under ZVO is general, meaning that with this status an NGO can participate or has active legitimacy for the commencement of any administrative or judicial procedure⁷, ARSO (Agency of Republic of Slovenia for the Environment) or other legal experts think that this status is much more narrow⁸. To substantiate this point of view, ZVO in Art. 155 lists rights of these NGOs (see above).

Since it explicitly states that NGOs can participate only in the procedures under ZVO, and ZVO qualifies NGOs as accessory participants in only two articles, we must agree with legal experts who claim that the narrow definition of the status is correct. But if this is true, it means that Slovenia is not in compliance with the AC. Furthermore, we assess that the definition of *the public concerned* is defined too narrowly in Slovenian legislation.

The above definitions of the public concerned and “NGOs in the public interest” under ZVO are applied for the procedure itself. They have the status of accessory participant with the same procedural rights as parties in the procedure. However, the presentation of opinions in consultations mentioned in several ZVO provisions (SEA, EIA, etc.) is not limited; everyone has a right to present comments and opinions within the set time limit. But in this case the competent body is not obliged to consider these opinions, they do not need to justify their decisions and final documents cannot be challenged on the grounds of comments not considered.

Article 9.2, specifically:

- Use of legal interest or impairment of right: Under Slovenian administrative procedures, parties to the procedure are those whose rights or direct legal interests may be affected by the administrative procedure. So sufficient interest and impairment of right is used alternatively in the Slovenian judicial system, but it is defined very narrowly (see above under public concerned, usually it does not go much further than neighbors). However, NGOs with the status of “NGO acting in the public interest” under ZVO⁹ have *ex lege* legal standing and do not have to show a legal interest or impairment of right.
- Maintaining impairment of right: The *Decree on the categories of activities for which EIA is mandatory*¹⁰ states activities for which an EIA is mandatory, whereas for all other categories of activities, an EIA is optional. The decree regulates one exception in the case of activities carried out for the defense of the country if EIS could jeopardize

⁶ For further explanation see case study.

⁷ From the AC National Implementation Report of Slovenia 2005: “Such NGOs (NGOs with the status under ZVO, author’s note) will be given the right to act in administrative and judicial procedures without having to claim legal interest, which is conferred to them *ex lege*.”

⁸ Environmental NGOs acting in public interest have a right to be parties in the following procedures:

- procedure for the issuing of environmental consent for the planned activity (part of EIA procedure, ZVO Art. 64),
- procedure of granting the environmental permit for the operation of installation which may cause large scale environmental pollution (ZVO Art. 74)

(Milieu: Measures on access to justice in environmental matters, Country report for Slovenia, 2006, p. 11).

⁹ It is not clear what the status under ZON entails.

¹⁰ Ur.l. RS št. 78/2006.

national security. The Government may decide upon such exceptions on the proposal of the Ministry of Defense¹¹.

EIA is carried out as part of the procedure for issuing environmental consent. The public described above must be included in the procedure. Article 64 of ZVO states that “NGOs acting in the public interest” have the status of *accessory participant* in the EIA, meaning that they have the same procedural rights as parties in the EIA; they can also file a complaint against the decision of ARSO, which is a competent body for the issuing of environmental consents.

Article 9.3, specifically:

- Provisions of national law relating to the environment: There is no definition of the phrase “provisions of national law relating to the environment¹²” in Slovenian legislation or jurisprudence. In fact, thus far we have not had any court case relating directly to the AC and in legislation, the procedures in which the public concerned has a legal standing are very strictly defined (Art. 64 of ZVO; issuing of environmental consent, Art. 73 of ZVO; issuing of environmental permit).¹³
- Access to administrative or judicial procedures:

Every public administrative decision about a right, obligation, or other legal interest of a natural person or legal entity must be adjudicated in the administrative procedure.

In case of violations of environmental law by acts or omissions of a public authority, two situations involving administrative decision-making will generally take place, so far as the general public is concerned:

- inspectorate procedure: notification of a harmful activity to an environmental inspector by a member of the public or NGO that spotted the violation (emission, noise, etc.),
- other administrative procedures: participation in an administrative procedure which aims at granting or revoking a license, permit, or other right connected to the environment (e.g. environmental or building permit).

After the administrative decision is final (an appellate decision has been issued or no appellate decision is possible), the aggrieved party can sue the authority that issued the final decision in the court of law. The responsible court of law is the Administrative Court.

In 2006, the Administrative Dispute Act was changed and a new Article 3 (among other things) states that decisions made by executive bodies and based on discretion, delegated by constitution or law are not administrative acts. In practice, this means that there is no legal remedy against political or strategic documents approved by the

¹¹ As in AC, Art. 6.1.c.

¹² ZVO, Article 3 states that the environment shall mean that part of nature which is or could be affected by human activity. Components of the environment shall mean soil, mineral resources, water, air, and flora and fauna including their genetic material.

¹³ Milieu: Measures on access to justice in environmental matters, Country report for Slovenia, 2006, p. 10.

Government, even if they breach public participation provisions (see case study on SEA).

ZVO Article 14 applies to the so-called *actio popularis*. In order to exercise the right to a healthy living environment, citizens may, as individuals or through societies, associations and organizations, file a request before a court to the effect that the entity responsible for an activity affecting the environment must cease the activity when it causes or would cause an excessive environmental burden or presents or would present a direct threat to human life or health, or that the entity responsible for such an activity may be prohibited from initiating the activity when there is strong probability that the activity would present such a threat.

- **Criteria for members of the public:** Members of general public can not appeal decisions; this can only be done by the public defined above and NGOs defined under ZVO and ZON. The same applies to judicial review. Persons whose rights or legal interests have been affected by the final administrative decision have standing to file a lawsuit. The same persons can also file a lawsuit if the administrative decision has not been issued in the time frame prescribed by the Administrative Procedure Act (one or two months). “Silence of the body” is perceived as a negative decision.

The standing for the judicial review is therefore limited to the same parties as in the administrative procedure. But here is a difference between NGOs that have the status of “*acting in the public interest*” under ZVO and ZON. While ZON explicitly states that associations acting in the public interest have a right to act in the interest of nature conservation in all administrative and judicial proceedings, this right is not conferred to NGOs under ZVO – their right to act is limited to administrative procedures and judicial procedures under ZVO (decisions of the competent body regarding environmental consent or environmental permit).¹⁴

In our opinion this narrow interpretation is correct on the basis of ZVO. However, it results in a serious breach of AC and it is not in accordance with the interpretation of MoE. For legally valid interpretations we would need a Constitutional Court’s decision.

Article 9.4, specifically:

- **Injunctive relief:** Under ZVO (Article 14), the court can, after the request filed by citizens or their associations, issue a decision that the entity responsible for an activity affecting the environment must cease the activity when it causes or would cause an excessive environmental burden or presents or would present a direct threat to human life or health, or that the entity responsible for such an activity is prohibited from initiating the activity when there is strong probability that the activity would present such a threat.

Administrative Dispute Act in Article 33 states that in the lawsuit the plaintiff can request:

- abolishment, issuing or amendment of a particular act,
- establishment that an individual action has illegally interfered with human rights

¹⁴ Milieu: Measures on access to justice in environmental matters, Country report for Slovenia, 2006, p. 14.

- or fundamental freedoms of the plaintiff,
 - banning the consequences of the act,
 - banning the continuation of the activity.
- Preliminary injunctive relief: Interim injunction under Administrative Procedure Act, Article 221: A competent body can issue for interim injunctive relief if, according to all circumstances of the case, it is absolutely necessary to regulate the relations or questions. The decision is issued on the basis of data known at that time. In the decision it has to be clearly stated that the decision is temporary. The competent body may link the issuing of an interim injunction to the condition that the opposite party is insured against any damages that may be created as a result of the issuing of an interim injunction.
 - Fair and equitable procedures: Slovenian Constitution in Article 14, paragraph 2 states that all are equal before the law. Article 23 states that everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law. Only a judge duly appointed pursuant to rules previously established by law and by judicial regulations may judge such an individual. Both the Administrative Procedure Act and the Civil Procedure Act, provide a basis for the exclusion of a judge or other competent person, if he/she is related to the parties in the procedure.
 - Timely procedures: The Slovenian constitution states that everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law.

The Administrative Procedure Act sets deadlines for decisions: 1st instance: one month (simple administrative procedure) or two months (other administrative procedures) after the beginning of the procedure. 2nd instance: two months after the beginning of the procedure. However, there is no deadline for judicial procedure; therefore the length of administrative procedure is considerably shorter than the length of judicial procedure.

- Not prohibitively expensive: The fees for administrative procedure and for the judicial review of administrative decisions are prescribed by two acts: Administrative Fees Act (ZUT, Ur.l. RS št. 42/2007) and Judicial Fees Act (ZST, Ur.l. RS št. 99/2002). In general, the costs to start an administrative procedure (around 3,55 EUR for the request and 14,18 EUR for the decision), to appeal or to file a lawsuit (63,44 EUR lawsuit in administrative dispute) are very low.

The client can also request free legal aid in judicial procedures, if his/her income does not exceed the financial census (minimum monthly salary per family member). If the request for free legal aid is granted, the client has a right to a free lawyer and the exemption from the payment of the costs of procedures (judicial fee, costs for witnesses, expert witnesses, translations, etc., but NOT costs of adversary party

Article 9.5:

Inspiring assisting mechanisms:

Slovenia has a number of assistance mechanisms, some are general and some are developed especially for the better implementation of AC (workshops, public debates, invitations to consultations). They include:

- Workshops, public debates on public participatory rights,
- Free legal aid,
- Publishing court decisions on the Internet,
- A very informative web page of the Information Commissioner with decisions regarding access to information,
- Invitations to consultations on SEA, EIA procedures on the Internet, etc.

All of them, except for free legal aid, are voluntary actions; no obligation to practice them is set in Slovenian legislation. Some of them are part of the new program “kinder administration”, developed by the Ministry of Public Administration, aiming at more open and more easily accessible administration. With their help small steps to better implementation are taken, but bigger problems remain unsolved.

4) Conclusions:

Slovenia ratified AC in 2004 and transposed its provisions into national legislation mostly by two laws. Although the transposition of the first two pillars is satisfactory, the transposition of the 3rd pillar is worrisome and the overall implementation gap is rather big, especially the access to justice pillar and the partly public participation pillar.

The biggest problem is that the executive act which is necessary for the NGOs' legal standing was not passed until late in 2006. NGOs currently have the ability to apply for the status of "NGO acting in the public interest", guaranteeing participation in procedures under ZVO, joint consultative bodies, delegations for international conferences, execution of some tasks related to environmental protection and access to justice in the procedures of issuing environmental consent and environmental permit. Due to a lack of financial and human resources, they unfortunately cannot do so. In practice, this means that public authorities can breach the AC, but the civil sector has no capacity to avail itself of legal remedies.

There is much ambiguity regarding the scope of "NGO acting in the public interest" under ZVO and the relation between two statuses granted under ZVO and ZON¹⁵. Changes of ZVO are now within the legislative process because of the ELD (Environmental Liability Directive) and although MoE (the competent body for the draft law) was/is familiar with the problems, they missed the chance to improve these provisions. The draft changes merely state that if the MoE grants the status to an NGO, the NGO is entitled to reimbursement of half of the costs for the financial revision. It is a step forward but it does not solve other problems with status.

Another narrowing of public's rights occurred in 2006 by the enactment of the new Administrative Dispute Act. Consequently, the public does not have legal remedy against political or strategic documents approved by the Government, if they are based on discretion, delegated by constitution or law.

Taking into account all problems listed, especially related to the definition of the public concerned, we evaluate that Slovenia is not in compliance with the AC.

¹⁵ For more detailed explanation see case study.

5) Legislation and literature

- Constitution of the Republic of Slovenia, Ur.l. št. 33I/1991-I, 42/1997, 66/2000, 24/2003, 69/2004, 69/2004, 69/2004, 68/2006 (Ustava Republike Slovenije)
- Convention on access to information, public participation in decision-making and access to justice in environmental matters - Aarhus Convention, UR.l. RS št. 62/2004 z dne 7. 6. 2004 (Zakon o ratifikaciji konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah - MKDIOZ)
- Environmental Protection Act, Ur.l. RS št. 39/2006 (Zakon o varstvu okolja, ZVO-1-UPB1)
- Nature Conservation, Ur.l. RS št. 96/2004 (Act Zakon o ohranjanju narave, ZON-UPB2)
- Act on Public Access to Information, Ur.l. RS št. 24/2003, 61/2005 (Zakon o dostopu do informacij javnega značaja, ZDIJZ)
- Administrative Procedure Act, Ur.l. RS št. 24/2006 (Zakon o splošnem upravnem postopku, ZUP-UPB2)
- Administrative Dispute Act, UR.l. RS št. 150/2006 (Zakon o upravnem sporu, ZUS-1)
- Administrative Fees Act, Ur.l. RS št. 42/2007 (Zakon o upravnih taksah, ZUT)
- Judicial Fees Act, Ur.l. RS št. 99/2002 (Zakon o sodnih taksah, ZST)
- Decree on the categories of activities for which EIA is mandatory, Ur.l. RS št. 78/2006 (Uredba o vrstah posegov v okolje, za katere je treba izvesti presojo vplivov na okolje)
- Rules on detailed requirements and measures for authorization of status of non-governmental organization which acts in the field of environmental protection in public interest, Ur.l. RS št. 112/2006 (Pravilnik o podrobnejših pogojih in merilih za pridobitev statusa nevladne organizacije na področju varstva okolja, ki deluje v javnem interesu)
- Milieu: Measures on access to justice in environmental matters, Country report for Slovenia, 2006
- United Nations Economic Commission for Europe, National Implementation Report, Slovenia, ECE/MP.PP/2005/18/Add.24, 17 May 2005
- Web page of MoE: www.mop.gov.si

6) Acknowledgements

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