Overview

The Aarhus Convention is a part of the legal system in all EU Member States except Ireland. In this paper, we confine our remarks to Austria, the Czech Republic, Estonia, Hungary, Poland, Slovakia and Slovenia. Some of these countries have had relevant laws implemented for several years (e.g. Hungary since 2001), while in others such laws are more recent (e.g. Slovakia since 2005). While the Convention is applied as a part of the legal system, some countries show more results, including positive results, whereas in other countries it has yet to find broader legal recognition.

We are convinced that the broader engagement of the public into environmental decision-making is vital for improving the quality of the places we inhabit and the life we live. For this purpose, the Aarhus Convention is useful only if deficiencies (mentioned below) are eliminated. In some cases this will require legislative changes, but many of the shortcomings in national legal systems can be resolved if existing provisions are interpreted and applied in compatibility with the letter - and more importantly with the spirit - of the Convention.

Members of the public concerned (environmental NGOs and residents) can play a role by using the Aarhus Convention in proceedings and by basing their claims and arguments on its provisions. Capacity building of civil society, public officials and legal professionals will help to ensure broad understanding of how and when it may be best used. This is especially the case for judges who will interpret and regulate the way the Convention is used in Member States.

I. Introduction

Justice & Environment (J&E) is a network of public interest environmental law organisations based in the EU member states. J&E aims to use law to protect people, the environment and nature. Our primary goal is to ensure the implementation and enforcement of the EU legislation through the use of European law and exchange of information.

In 2006 and 2007 J&E made a legal analysis and a compilation of case studies in Austria, the Czech Republic, Estonia, Hungary, Poland, Slovakia and Slovenia. This work illustrates the current state of transposition, interpretation and application of the Aarhus Convention in these countries. The scope is limited to the third pillar (access to justice) of the Convention in the respective national legal systems.

II. Priority issues

The most pressing issues and shortcomings show marked similarities in the countries we studied:

- **There is a lack of clarity on the position of the Aarhus Convention in the national legal systems**, particularly as to its direct applicability and precedence over national law in practice.
- **Legal standing both in administrative and judicial proceedings is an issue for both organisations and individuals.** The exception to this is NGO standing in proceedings under Article 9.2, which is relatively unproblematic.
- **The efficiency of the review and timeliness of proceedings is an issue**. This problem is magnified as there is a lack of injunctive relief or other ways to postpone challenged decisions.
- **Review of decisions within the EIA process, particularly screening decisions is problematic**. Many assessments end at this stage and national systems limit any further challenge of these decisions.

III. Policy recommendations

J&E makes the following recommendations:

- Courts and administrative authorities should apply the Aarhus Convention directly in it is in conflict with national law is. If national law is insufficient, it should be interpreted in conformity with the Aarhus Convention.
- The legal standing of the public concerned should be viewed and interpreted broadly. Standing for environmental NGOs (as public concerned) should be unified so that violations of both procedural rights and substantive rights ones are subject to court review. As for concerned individuals and other legal persons, courts and administrative authorities should apply the definition of 'public concerned' so that members of public neither have their material rights violated nor need form an environmental NGO to participate in decision making. The right to a healthy environment and right to privacy are not secondary to property rights.
- Legal systems must allow for efficient, timely court review with sufficient scope. Regulations for civil and administrative court proceedings should set specific time lines for review. The application of injunctive relief or other measures to postpone the enforcement of challenged decision must be realistic: courts and administrative authorities should not set conditions that cannot be met. This is to avoid decisions with negative environmental impacts being implemented in violations of the Aarhus Convention. Public participation looses its value when challenged projects are completed before their legality is established.
- In many cases, screening decisions in EIA processes replace the actual and full EIA process. The screening decisions set the limits of the project or activity under revision; this also applies to subsequent permitting processes. In such cases, J&E recommends that the public concerned has the full right to challenge the substance of such decisions.
- Judges need training on environmental legislation and specifically on Aarhus rights. Awareness of these rights is low.
- Member states need to provide resources such as appropriate personnel (to ensure that courts can handle environmental cases in time) and adequate technical expertise (to address technical or scientific case related issues). In addition, Member states should monitor the projects in question ensure court decisions are implemented.

For more information about J&E, visit our website www.justiceandenvironment.org

or write to info@justiceandenvironment.org

Justice and Environment

Dvořákova 13

602 00 Brno

Czech Republic