Aarhus Toolkits

Access to Justice in Environmental Matters

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Introduction

The Aarhus Convention establishes a right for access to justice in environmental matters in its Article 9. This right shall be granted by the parties of the Convention to a wide range of subject, falling under the scope of definition of „public concerned” according to Article 2.5 of the Convention (and also beyond this definition).

However, in practice we have encountered a wide range of problems concerning implementation of the access to justice requirements. Also, we have recognised several fundamental differences how courts and individual parties apply the Article 9 in the different countries.

The lawyers of the Justice & Environment network have been dealing with the Aarhus Convention. Several analytical and comparative studies, position papers and recommendations available on the www.justiceandenvironment.org homepage Aarhus and Publications section.

The short studies of this paper are summarising the most important experiences and recommendations of the J&E lawyers regarding the application of access to justice rights in their respective countries.

The studies are written in the form of “toolkits”. We aim to provide short, concise, user-friendly instruments to the users of access to justice rights. Each national chapter consist of three parts. First, we summarise the status the general application of the access to justice rights in environmental matters in general. Second a few case studies illustrate where we see “room for improvement”, and third, we also recommend solutions.

We hope that the cases studies, lessons and recommendations will help civil society organizations and individuals to protect the environment more effectively at court. And also, we hope that judges, administrators and legislators can also make good use of these tools. We aim to “level the playfield” and expect that the Aarhus Rights will be properly applied and implemented all over Europe.
Austria

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Access to Justice in Austria

In Austria the typical legal problem with regard to Access to Justice is the fact that non governmental organizations (NGOs) in the field of environment can not go to court to legally challenge acts and omissions of private persons and public authorities that contravene environmental law. This situation is worsened since other members of the public such as private persons also have no Access to Justice in most cases. There are some exceptions, but in general such rights do not exist.

This situation can be illustrated by the following examples:

a) AC/DC concert in nature protected area

This is a real case. The Australian hard-rock group AC/DC plans a concert in nature protected area in Austria. The concert should take place in May 2010. The area is protected among others since rare birds live and breed there. A nature conservation permit will be issued. Neither NGOs nor private persons have standing in this procedure. Standing is a pre-condition in Austria to get access to justice with regard to permitting procedures. Due to the lack of standing NGOs can not legally challenge the nature protection permit. In case the authority that permits the concert makes a legal mistake or does not sufficiently consider the interests of the protected birds, members of the public can not go to court.

b) Illegal disposal of waste

Ms. Miller went for a walk with her dog in the forest and finds an illegal waste disposal. 20 old cars and a lot of electronic equipment are disposed on 2,000 square meter field. It is obvious that landfill was established by well known company in the town. She informs the competent authority and an environmental organization about this. The authority does not react and does not take legally action the operator. Neither Ms. Miller nor the NGO can legally enforce the authority to act since they have no access to court.

This legal situation stems from the history of the Austrian administrative law and the so called “impairment of a right doctrine” (Schutznormtheorie). This doctrine says that standing and access to justice are only granted if specific legislation aims to protect the interest of certain parties to a procedure. Typical such interests are the protection of property and health of neighbours with regard to industrial installations. This means neighbours can protect their rights in some permitting procedures. However, they can not protect the environment as such. And NGOs have no rights to protect with regard to such procedures since an NGO can hardly claim its personal health (in a medical sense) suffers due to certain environmental issues. In the AC/DC case above there are no rights for neighbours to protect birds. The same counts for NGOs. And in the illegal landfill case Ms. Millers also has not right to take legal actions since this has nothing to do with her personal health and property.
Two sides of the story

Austrian public authorities and courts strictly follow the impairment of rights doctrine. This doctrine is (still) backed by the leading Austrian legal literature and opinions at Universities. The doctrine is based on the understanding that public authorities always act in public interest and what they do is legally correct by its nature. Therefore it is not needed that members of the public have the right to legally control their decisions. This is true in particular for “public interests” such as environmental protection. The only exception from this principle are cases where legislation protects certain interests of individuals, such as neighbours with regard to permitting procedures.

The NGOs, other members of the public and progressive lawyers claim that the impairment of rights doctrine is outdated, in particular with regard to environmental law. There are many cases reported where environment related decisions were not correct. Furthermore standing rights for the public lead to more transparency and higher democratic and legal standards. Far more important are the legal arguments since international (Aarhus Convention) and European law provides for access to justice for members of the public. This means Austria is legally obliged to grant such rights to the public, but has not followed this obligation until now. Advanced access to justice rights can only be found with regard to certain large scale industrial installations permitting procedures (EIA and IPPC) as well as with regard to environmental liability.

Legal arguments

The Aarhus Convention (the correct name is Convention on Access to Environmental Information, Public Participation and Access to Justice) of the UN-ECE (United Nations Economic Commission for Europe) provides access to justice rights to the public. Its Article 9 paragraph 3 says that members of the public shall have access to review procedures in order to legally challenge acts and omissions of public authorities and private persons that contravene national law relating to the environment. Austrian and the EU have ratified the Convention and implemented most aspects, but not this Article 9 par 3. This Convention is based on the idea that the environment has no voice and is under pressure by its nature since normally heavy economic interests prevail in industrial permitting procedures and with regard to other use of the environment. In the typical environmental procedure there are powerful investors or operators on the one hand, and the public authority on the other hand, that is under pressure from different stakeholders to grant development consents. Therefore the Convention aims to give the public the right to speak on behalf of the environment and legally protect it up to the courts.

The cases

Mellau/Damüls: Extension of Skiing-site

Two ski resorts in the western province of Austria (province Vorarlberg) were to be united by major investments (such as new pistes and ski-lifts). The project is located in the alpine regions and covers a construction site of almost 20 hectare. A major regional nature conservation NGO, Naturschutzbund Vorarlberg, claimed legal standing in the following nature conservation procedures by directly referring to Art 9 par 3 of the Aarhus Convention. The NGO directly referred to the Convention since Austrian legislation does not grant standing rights to NGOs nor to other members of the public in nature conservation procedures. The provincial administrative tribunal dismissed (Decision UVS-327-006/E10-2006, 30.08.2006) the claim arguing the Convention is not open for direct applicability.
Air pollution in Graz

In March 2005 a citizen of the second largest Austrian city, Graz, filed a civil lawsuit against the Austrian province of Styria (Steiermark) and the Republic of Austria. The lawsuit aimed at the determination that the Province and the Republic were to be held responsible for damages to health resulting from not undertaking measures against exceedances of PM10 limit values as provided under European and national laws. The civil lawsuit was submitted since there is no access to review acts and omissions of public authorities that contravene environmental law by the public concerned.

After a defeat in first instance, a victory in the second instance, the Highest Civil and Criminal Court (OGH, Oberster Gerichtshof) referred to case back to the first instance in order to repeat the procedure considering the highest courts legal determination (OGH 1Ob151/06x) in October 2006. The Highest Court rejected the claim, but opened another opportunity. The court’s dismissal was based on the view that the plaintiff would need to exactly specify the measures the province Styria should have, but has not taken and what would have been the difference as to the plaintiff’s health. So the procedure re-started at the first instance. However, such evidence is hard to provide and expensive. The plaintiff finally failed to do so. Only in summer 2009 the highest court of justice finally dismissed the claim due to lack of the right to make such an appeal without providing specific evidence on damages and exact measures that should have been taken by Styria (OGH Ob 68/09w). Four years of litigation ended without any success. Costs of more than 16,000 EUR occurred for the plaintiff.

Our recommendations

The cases clearly demonstrate how difficult - and impossible respectively – it is to reach environmental justice in Austria. It is the Austrian legislator that should act first and enact legal provisions transposing the Aarhus Convention.

We recommend to Austrian lawyers and NGOs to directly apply the Aarhus Convention. The Aarhus Convention Compliance Committee made several decisions interpreting the Convention. This means there is sufficient certainty how Article 9 par 3 of the Convention has to be interpreted. This was different some years ago. Since the EU has also ratified the Aarhus Convention lawyers can also refer to EU law when directly applying the Convention.

We recommend to Austrian authorities and courts to change the conservative interpretation of the impairment of rights doctrine and accept that NGOs have the right to take legal action on behalf of the environment and it is an obligation by international law to do so. By this practice and jurisprudence could bring legislators under pressure to enact legislation that complies with the Aarhus Convention.
Access to Justice in Croatia

The biggest as well as typical problem regarding access to justice in environmental matters in Croatia is the length of the court procedure and it is actually the biggest problem in the whole judiciary system. The length of the procedure would not be such a big issue if there would be a possibility to use the instrument of injunctive relief in environmental matters.

Judicial procedures regarding environmental matters should provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Unfortunately, Administrative Court in Croatia does not meet these requirements. First of all, there is only one Administrative Court for the whole country and it deals with all administrative disputes including environmental ones. For that reason, it cannot provide on-time decisions which is of crucial importance in environmental matters. Secondly, it does not include possibility for the plaintiff to use the injunction relief which would be also very much needed in environmental cases.

What does it mean? This means that when somebody (legal or natural person) initiates an administrative dispute against some decision, it cannot ask the Court to delay the execution of such decision until the Court’s verdict. According to Law on Administrative Disputes such a dispute, in general, does not prevent enforcement of an administrative decision, which is a matter of administrative dispute. But, at the request of plaintiff’s, body that is responsible for the execution (Ministry, County, City) can delay the legal effects of the decision (meaning - execution of the decision) until the final Court’s decision if the execution can cause such damage to the plaintiff which would be difficult to repair (if the law does not stipulate that the appeal does not delay the execution of the decision) if delay is not contrary to public interest, nor the delay can cause larger irreparable damage to the opposing party.

Two sides of the story

The main argument used by authorities in Croatia is that currently there is only one Administrative Court in the country and there are too many administrative disputes so it works with limited capacity. Also, authority states it is enough that there is possibility that another authority (body) decide to wait with the execution of the decision if the decision is the matter of the administrative dispute.

On the other side, citizens and NGOs are frustrated that there is a major possibility even if they win an administrative dispute it can be after several years and there is no effective tool to suspend the execution of such decision until the final Court’s decision. Meanwhile the decision which is the matter of the dispute serves as a base for realization of some project which can have major negative impact on the environment.

Legal arguments

From the field of international law, according to Article 9, paragraph 4 of so-called Arhus Convention countries which are parties of the Convention need to ensure that judicial procedures regarding environmental matters provide adequate and effective remedies, including injunctive relief as appropriate and such procedures must be fair, equitable, timely and not prohibitively expensive. It is clear that Croatian Administrative Court does not meet these requirements.

From the field of national law, it is clear that Law on Administrative disputes needs a major improvements as well as the Administrative Court in a way which will provide on-time and effective judicial procedure regarding environmental matters.
Cases

There are two cases to illustrate aforementioned legal problem. First one is the case called Cvjetni trg (Flower Square) in which several administrative disputes were launched against different location permits needed for realization of the project called “Cvjetni prolaz”. On these location permits, tenants of the neighbouring buildings appealed to the Ministry of Environment Protection, Physical Planning and Construction but all appeals were rejected so the tenants initiated an administrative disputes before Administrative Court. Parallel to that the tenants requested the Ministry which issued this location permits to delay the legal effects of the permits until the final court’s decision.

The second case is administrative dispute launched by NGO called Zelena Istra against approval of EIA study for golf course Brkac-Motovun. Shortly after initiating the dispute, Zelena Istra requested the Ministry of Environment Protection, Physical Planning and Construction to delay the execution of the approval of EIA until the final Court’s decision meaning to delay issuing of permits to investor which are needed for construction of the golf course.

Environmental arguments

Cvjetni trg is one of the most famous squares in Zagreb, and is situated in the historical city centre. Unfortunately, a private investor is planning to change the infrastructure of the square, by the project called “Cvjetni prolaz”. Part of that project consists of constructing a shopping mall, an underground garage and some elite urban apartments. Some of the new buildings would leave only 3 meters of space from other buildings in the block. Coefficient of the construction is above limits (that’s why Zagreb’s General Urban Plan (GUP) was changed, in order to allow this project). The garage would attract more cars, their number would increase after the construction of the garage and this would increase gas emissions but also noise emissions. The centre of Zagreb is already congested with cars, and there is not much space to increase their number. In addition, the entrance to this specific garage would be inside the existing pedestrian zone which means that the pedestrian zone would be reduced because of private interests. The realization of this project would change the architectural characteristics of the historical centre of Zagreb and would reduce public space.

If the project Brkac-Motovun golf course will be realized, Istria will lose one of its most beautiful landscapes, one of several that are commonly used in the promotion of Croatian tourism beauty in the world. Procedure of EIA of the golf courses lasted too long and had a series of failures and no compliance with law, a series of remarks that were sent by Zelena Istra and others were rejected without valid arguments. Zelena Istra was not against golf courses because golf is not necessarily harmful but is against the poor planning of golf that can threaten the environment. Project Brkac-Motovun is will affect water habitat and fauna and flora, which EIA did not take into account. There are also two important ecological networks - the Mirna river valley and the Motovun forest. The State Institute for Nature Protection has come to the conclusion that the construction of golf course in selected area could have a significant impact on the natural values and area of ecological networks, but it was ignored while decision on EIA was issued. In this case it is necessary to protect the river's bleeding, in order to protect the Motovun as a cultural entity, with the surrounding villages, which contain historical building structure.

Both cases are ongoing cases before the Administrative Court.

Meanwhile, in the first case the plaintiffs did not even receive response from the Ministry to their request to delay legal effects of the permit until the final court’s decision. The strangest thing is that when this request was submitted to the Ministry they did not know which departments is responsible for is and stated that they did not receive such a request yet (!). Finally, the request was sent to the department which is responsible for appeals (!) but still no response for it.

In second case, the Ministry claimed that it is not responsible to decide about the Zelena Istra’s request but the Istria County. After that, Istria County stated that there is no possibility for any department in the County to decide about any decision which was issued on the higher level, meaning the Ministry. After several letters between the County and the Ministry, the County finally informed Zelena Istra...
that it will decide about its request after investor submits request for permits needed for realization of the golf course and that Zelena Istra will be informed about it.

**Our Recommendations**

The Cvjetni trg is an ongoing case so there is no Court decision yet. So far, the tenants did not receive any response from the Ministry to their request for the delay of execution of the location permit and the tenants will appeal since the Ministry is according to the Law on General Administrative Procedures obligated to make a decision (in specific deadline) about any request submitted to it. The investor already requested issuing of the construction permit and after that he can start with the construction. Currently, the investor already started preparatory actions so some buildings were already demolished. Of, course, we are not happy with this result since the administrative cases are pending in the Court but investor is going on with the project, so it seems there is no possibility to stop the project. Even if tenants win the dispute, it is possible that the project will be realized and they would only have possibility to ask for compensation, nothing else.

The Brkac-Motovun case in an ongoing case so there is no Court decision yet. We partly agree with this decision of the Istria County about the Brkac-Motovun golf course case. The reason for that is that we would be much happier if the Ministry or the County issued decision that there is no possibility to issue any permit for the project before Administrative Court final decision about the dispute. However, we are pleased to have written opinion from the Ministry that the County is responsible to issued such a decision and written prove that the County will inform the Zelena Istra when it will receive request for any permit for the golf course and that the County will decide then if it will issue it or wait for the final Court’s decision.

Our opinion is that since the Ministry issued both, the decision on EIA and the location permit and this decision/permit is base for all other permits only the Ministry can delay the execution of such decisions. We believe it would be fair if the Ministry issued an order to investors to wait with execution of the decision which is a matter of an administrative dispute.

As long as there is only one Administrative court it is impossible to expect to accelerate the resolution of the case or that it will take in its jurisdiction another obligation meaning decisions on injunction reliefs. There should be more Administrative Courts and more administrative court judges and then the Court could decide on injunctive reliefs. Current provision about delay of execution of the decision is apparently not even developed since it is really not logical that the body whose decision is matter of a dispute is also the same body authorized to decide on the suspension of the execution of such decision. It is not logical to expect that it will temporarily put aside the legal effects of a decision which it issued at the first place.

We recommend to the competent authorities to make a major and very much needed change in the system so the Administrative Court would be also authorized to suspend execution of a decision which is matter of a dispute before the same Court.

Even it has flaws, we recommend NGOs (but also any citizen) to use current possibility to request the responsible authority to suspend execution of a decision which is a matter of an administrative dispute (also referring to the Aarhus Convention) since this is the only injunctive relief currently available in environmental matters. If nothing else, it will show that this does not work in practise and some significant change regarding it is needed.
CZECH REPUBLIC

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Access to Justice in the Czech Republic

The conditions for environmental NGOs in the Czech Republic to participate in most kinds of environmental administrative procedures are relatively liberal and easy-to-meet. If an NGO becomes a party of such procedure, it can also challenge the final decision of the administrative authority (“environmental permit”, “development consent” etc.) at the court.

The position of environmental NGOs before courts is, however, in some cases significantly weakened by the approach applied by the Czech courts, which can be called “impairment of a right theory”. What does it mean? Basically, the courts are convinced that every person, who has right to file a lawsuit against an administrative decision (this right is called “standing”) should only make arguments related to his or her “personal rights”, which were allegedly impaired by the decision. For example, the house owner who is not satisfied with a permit, making it possible to build a chemical factory on the neighboring parcel, can claim that his or her property rights or health conditions would be damaged by this investment. However, if such person would include into the lawsuit points concerning e.g. the danger of polluting a nearby river or the air quality in the whole region, the court would not deal with such arguments (if the doctrine is to be applied strictly).

Similarly, there have been many court decisions, in which the courts refused to deal with some of the arguments brought by the NGOs - often with the most important ones, concerning the merits of the case.

Two sides of the story

The courts have justified this approach by saying that the “personal rights”, impairment of which the NGOs only can claim in their lawsuits, are only their procedural rights in the administrative procedures. According to this interpretation, the NGOs can ask the court to review if they could see all the documents related to the environmental permit, if they had enough time to study them and express their opinion, if they were invited to the public hearing etc. However, they cannot claim that the permit (and the investment) breaches the requirements of environmental laws (e.g. limits of emissions or provisions prohibiting some activities in protected areas), as this is not related to any of their “personal rights”.

This interpretation is further based on the decision of the Czech Constitutional Court, according to which NGOs cannot claim a right for a favorable environment (which as such is granted by the Czech Constitution). The argumentation for this conclusion was very simple (and weak): The right for favorable environment (as well as the right for life, health protection etc.) can belong only to “natural persons” (people), not to the “legal persons” as NGOs (as the latter do not breath, drink etc.).

On the contrary, the environmental NGOs argue that they do not participate in the administrative procedures so that they could “enjoy” their procedural rights, but to protect the environment – and also the rights of their members. It has little if any sense if the courts concentrate on the procedural aspects of the administrative procedures (and force the NGOs to do the same), but the merits of the cases are omitted.2 This is also not in compliance with the requirements of international and EU law (see bellow).

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2 One result of this approach is that NGOs are being accused of obstructions and formalism.
Last but not least, the NGOs emphasize that the arguments “on the merit” and protection of their procedural rights are often closely related. This is particularly so with regard to the right that all their comments and objections are dealt with and answered properly by the authority. As the objections normally concern the factual problems, the courts also have to deal with them, when reviewing if the authority met this obligation in the decision. It should be added that in many cases, the courts dealt with the “substantive” arguments of the NGOs’ lawsuits (at least to a certain extent), using this logic. On the other hand, there are still decisions in which the very restrictive approach has been applied by the courts.

**Legal arguments**

From the field of the international law, the so-called Aarhus Convention, guaranteeing participatory rights and also right for judicial review of decisions in environmental matters, is applicable. Special importance for the problem of “admissible NGO arguments” has its Art. 9.2, according to which “members of public concerned”, including environmental NGOs, shall have right to challenge the “substantive and procedural legality of any acts, decisions or omissions” concerning the activities under Annex I of the Convention.

Similar provision is included also in the EC directives on Environmental Impact Assessment (85/337/EEC) and on Integrated Pollution Prevention and Control (96/61/EC).

As for the Czech legislation, most important are the provisions of the Act no. 150/2002 Coll., Code of Administrative Justice. In § 2, this Act declares that Courts in administrative justice provide protection to the individual public-law rights. In its § 65, conditions for right of a person to sue a decision of an administrative authority (standing) are defined. These provisions form a basis for the “impairment of a right theory”, as described above. However, it is possible to interpret them in a different way, and they should for sure be applied consistently with the provisions of the Aarhus Convention and EC law (see supra).

**Cases**

There are lots of cases illustrating the problem described above.

In the 1990’s, the courts often totally rejected to deal with the arguments of the NGOs. In 1999, lawsuit of an NGO against a permit (“exemption”) for a timber felling in the national park was refused as “made by evidently unauthorized person”. The court argued that there are no subjective rights of the NGO that could have been impaired by the permit.

Later the courts’ negative attitude towards NGOs lawsuits “softened”. The courts began to protect at least the procedural rights of NGOs, related to the right to participation in environmental administrative procedures. For example, in the case related to dispute about what water level should be fixed of the water reservoir (which has the status of Natura 2000 area), the court canceled the administrative decisions, because the NGO was not allowed to make copies of the documents, did not have proper time to comment on them etc.

Yet later, the courts have started – selectively - to deal with the NGO arguments concerning merits of the cases. As mentioned above, they have often explained or justified it in the way that there is a relation between the substantive arguments in the lawsuit and breach of the NGO subjective right that all their comments and objections are dealt with and answered properly by the administrative authority. E.g. in a number of cases related to the traffic infrastructure projects, the courts canceled the land use permits for the reason that the possible alternative corridors, which the NGOs proposed, were not assessed properly.

On the other hand, there are still recent decisions in which very restrictive approach has been applied. For example, a local NGO asked the court to review a building permit for an approach road to the industrial zone. It argued e.g. that the project was not assessed in the EIA procedure, although it should have been, and that the impact of the project on the Natura 2000 area was evaluated wrongly. The court (in 2008!) rejected to deal with these arguments, as they “relate to application of the
substantive laws, while the NGO is only entitled to claim impairments of its procedural rights”. The lawsuit was therefore dismissed.

The decisions totally refusing the NGOs lawsuits or the arguments included in them are obviously in contrary with both the principles and specific provisions of the Aarhus Convention. They are also not in compliance with the Czech constitutional principles, related to the right for “fair trial” (due process of law). They are even not based on any explicit provision of the procedural laws - just on one of their (extreme) interpretation of the “impairment of a right theory”.

Our Recommendations

It is therefore necessary to insist in and promote the interpretation that the courts must deal with all, both substantive and procedural arguments of the NGOs lawsuits against decisions issued in environmental cases. It can be recommended to the environmental NGOs and their lawyers use e.g. following arguments in case the courts refuse to deal with all points of their lawsuits properly:

- no specific provision of Czech legislation expressly limits the scope of arguments any subject is entitled to use in the lawsuit;
- the Constitutional Court has repeatedly declared a constitutional principle, according to which if there are two possible interpretations related to the right to access to courts, the one which is more in favor of broader judicial protection shall have precedence;
- refusing to deal with the substantive arguments of the NGOs lawsuits clearly breaches Art. 9.2 of the Aarhus Convention and related provisions of the EC law; at the same time, the Supreme Administrative Court expressed in the number of its decisions that the courts must interpret Czech law in compliance with the Convention’s requirements;
- from the “common sense” point of view, the courts should understand that the principal reason why the NGOs ask for judicial review of administrative decisions is protection of the environment, not of their procedural rights;
- it should be also accepted by the courts that NGOs could claim also impairment of the right for the favorable environment – at least with regard to their members; this interpretation is definitely in compliance with the principles of the Aarhus Convention

Having in mind the specific character of a case, the NGOs (lawyers) should use these arguments either in the appeals (cassation complaints) against unsatisfactory judgments, or directly in the lawsuits (to prevent the restrictive court’s interpretation).

Finally, it is to be recommended to the administrative authorities, namely to the Ministry of Environment and other ministries (who are responsible for appropriate execution of international commitments of the Czech Republic) not to promote the restrictive court interpretations concerning the NGOs lawsuits. It is unacceptable that they not only do this themselves, but even hire (and pay from the public budgets) expensive law firms to do that.
Access to Justice in Estonia

In environmental matters it is quite typical situation that a group of local people or activists disputes some environmental decision (e.g. mining permit, building permit, spatial plan), but the opposite party claims in the challenging procedure or in court that these persons don’t really have the right to dispute this decision, because their personal rights have not been violated.

This happens because according to Estonian law, according to traditional approach of the Administrative Court Proceedings Act, an individual can indeed turn to court mainly only in case if he can prove violation of his rights, or sufficient interest. In both cases, the disputed administrative act or measure must be directly related to his personal rights. So, an individual cannot usually submit a complaint to court for protection of public interests, for example he cannot dispute a mining permit in an area that is not personally related to him.

At the same time, Estonia has ratified the Århus Convention that provides a right for the representatives of public to dispute decisions, made in environmental cases. Violation of rights or sufficient interest of environmental organisations is presumed and they don’t have to prove it. Such extended standing allows groups or persons (environmental organisations) to dispute environmental decisions more easily than is possible for individuals.

However, such standing extends only to environmental organisations who correspond to certain criteria in national law. On the other hand, in Estonia no such criteria have been enacted, so it might be concluded that in Estonia, the standing is provided without limits (to all environmental organisations), or vice versa – that since there are no criteria, the Århus Convention is not applicable and the environmental organisations have no access to justice at all.

The Supreme Court has stated, however, that the Århus Convention is directly applicable and it provides standing for environmental organisations. The question is mainly, what kind of environmental organisations should have the standing – or actually, who should be regarded as environmental organisation. The standing could be given to all groups of people, but generally it is considered to be important that the standing was not given to everyone, in order not to give basis for possible abuse of this right (e.g. creation of fake environmental organisation, for example for disputing activity of a competitor).

The question lies especially in standing criteria of a partnership (“seltsing”). Partnerships are not legal persons, but they are created by a contract, concluded by persons acting for common goal. As there is no form provided for such contract in law, and the contract can be concluded at any time, creation of a partnership is very easy and it has been used namely by local protest groups who don’t have sufficient time to create eg association. Because of the speediness and simplicity of the way partnership can be created, it is not always possible to make completely sure that the partnership acts as defender of public interests and not for business interests of its members (as an example).

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3 There is an important exception from these rules - in spatial planning cases, in addition to right for dispute the decision in case of impairment of personal rights, every person is entitled to dispute the decision about spatial plan also in case he/she/it thinks the plan is in controversy with law - but in this case it must be clearly reasoned why the plan is not in accordance with public interest

4 CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS (RT II 2001, 18, 89; 2007, 10, 35)
Cases
The first case where courts acknowledged standing of environmental organisation, was the case of Restructuring Plan for the Oil-Shale Energetics in Estonia, where the association Estonian Green Movement filed a legal action to the court in order to establish illegality of omission of MoEA. In addition, the courts have acknowledged standing of other associations and a foundation. At the same time, the criteria for standing for associations and foundations are not clearly defined, because in current practice the complainants have been well-known environmental organizations, so there has been no significant argument about the standing. The courts have considered the main criterion to be the statutory goal of environmental protection (and that the organization has been active in environmental field).

Standing of partnerships has been an issue foremost in case of Ess-soo peat bog, where the local partnership disputed extraction permit and the Supreme Court stated that in principle, the partnerships may have standing, if they prove to be representing the public.

In this case, a few inhabitants of Urvaste municipality in South-Estonia discovered in 2004 that already some years ago there has been decided to issue a peat extraction permit for Ess-soo wetland. Two inhabitants created a partnership named „Green Urvaste“ („Roheline Urvaste”) and disputed the decision for issuance of extraction permit. As final result, the Supreme Court did not satisfy their complaint, stating that since the decision about issuance of the permit has been made several years before the partnership was founded, the partnership did not have standing. At the same time, Supreme Court discussed thoroughly whether such local organisation could have standing at all, and concluded that in principle it is possible.

The Supreme Court stated in its decision that “informal group can be considered as member of public that owns standing only in case the position of the group and of the significant part of local inhabitants that could be considered as public coincide and the public in one or another form accepts such representative and its relevant activities.” The Supreme Court particularly stressed that giving standing to informal groups must not open way to misuse of standing, including unlimited and unreasoned claims in presumable public interests. In this particular case, Supreme Court stated that the status of “representative of public” was proved by signatures that were collected from people for protection of this peat bog (altogether 2483 signatures, of which 536 signatures from people from the municipality in question).

The issue of standing has been raised also in case of Esivere quarry. In this case, a partnership founded by local people (Hanila Selts) has disputed a mining permit, but in the court proceedings there is argument about its standing. Hanila Selts argues about dolomite quarry, planned to be opened in Esivere village of Hanila municipality; among 20 members of the partnership there are local inhabitants on one hand, but also the people having their summer cottages in this area (musicians, actors etc). The purpose of the partnership is preservation and valuing natural environment of Hanila municipality. In the proceedings, representatives of developer and Ministry of Environment claim that the partnership does not have standing because it has not proved to represent the public, ie the

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5 Supreme Court’s decision from 29th of January 2004 in administrative case No 3-3-1-81-03
6 In the present draft of Environmental Code, the criteria have been specified, but there are no strict criteria for associations and foundations – the condition is that association or foundation must have environmental protection as its statutory goal and that it promoted environmental protection with its activities (when assessing whether the organization promotes environmental protection, capacity of the organisation shall be taken into account, considering its current activities, or if there is none, organizational structure, number of members and statutory preconditions for becoming a member).
7 Supreme Court’s decision from 28 November 2006 in administrative case 3-3-1-43-06
8 The description of Ess-soo case on webpage of Estonian Environmental Law Center (in Estonian): http://www.k6k.ee/keskkonnaigus/juhtumid/juhtumikirjeldused/ess-soo
9 Supreme Court’s decision in case No 3-3-1-43-06 from 28 November 2006
10 See the case description on webpage of Estonian Environmental Law Center (in Estonian): http://www.k6k.ee/keskkonnaigus/juhtumid/juhtumikirjeldused/esivere-karjaar
standpoints of partnership and significant part of local inhabitants coincide. In this case, the partnership does not have supportive signatures to show, and the partnership members estimate that major part of the inhabitants of local community are probably not ready to express support.

It could be argued whether the Supreme Court’s views in Ess-soo case about standing criteria are correct, especially considering how the results of these views express themselves in Esivere case. The main condition for standing of environmental organizations should be that the organization represents public, not personal interests of its members. The fact that major part of local population does not support activity of a partnership, does not really show that the partnership does not represent the public. The local people might have personal interests related to the planned activity (in Esivere case, opening of a quarry) – for example, a wish to gain some kind of personal benefits from the quarry – that are not related to public interests.

On the other hand, one must agree with the Supreme Court that in case the general purpose is not introduction of everybody’s free access to justice (actio popularis), the standing of partnerships should be limited in a way that allows to convincingly determine whether the partnership acts in public interests or not. It is difficult to think of better mechanism for this then proposed by the Supreme Court; therefore, until better solution, these criteria should be followed.

Our Recommendations

When creating a local protest group against some activity or in protection of some area, one should first to make clear whether the members of this group want to protect their personal interests or represent public interests. In order to get standing (access to court) it is necessary that the group represents public interests and that it’s able to prove it is so.

Some recommendations about the conditions that a local group of people, thinking of getting standing in court, should keep in mind:

- in order to represent the public in environmental matter as group of people, the group should organize itself as early as possible and participate in proceedings of the relevant permit or other act, not start creation of a partnership only after the permit has been issued and the group wants to dispute it;
- for founding a partnership, a written partnership agreement should be concluded, including the purpose of partnership to be environmental protection (it could be solely for the area or place to protection of which the activities of partnership are aimed, but it does not have to be only the area under the dispute in the concrete case);
- the public must accept partnership as its representative – for this, it needs to be proved that the standpoints of partnership and significant part of local inhabitants coincide and that activities of the partnership are accepted. Such accept might be proven with supporting signatures for the partnership in the issue under dispute (for example, support to protect some area).
HUNGARY

Csaba Kiss,
Environmental Management and Law Association

Access to Justice in Hungary

In Hungary, rules that make it possible for the members of the public and for environmental non-governmental organizations to take part in administrative procedures are relatively liberal and easy-to-apply. However, there are some instances when government bodies try to exclude certain persons or organizations from administrative processes, most probably to make decision-making easier for themselves. One such example is the participation of environmental non-governmental organizations in forestry related cases.

While forests are clearly part of the environment, the forestry authority says that administrative cases that relate to forests are not necessarily environmental cases.

How can that be? Because the notion “environmental case” is not based on natural features but depends on a legal definition. And according to this, all cases are environmental where the environmental authority participates.

Why is that important? Because the participation of environmental non-governmental organizations in administrative and judicial procedures (we call it legal standing) is ensured only in the so-called environmental cases.

So does the environmental authority participate in forestry cases? Yes, in some cases affecting e.g. protected forests. In Hungary, there is a unified environmental-nature conservation-water management authority in place, organized on a regional basis. However, in the aforementioned forestry cases the nature conservation department of the environmental authority takes part in the process.

The legal problem in such cases is that the forestry agency says: these cases are not environmental but nature conservation cases. Consequently, the environmental non-governmental organizations are excluded from such cases. However, it would be important for the protection of ecological values that there is an outside civil control in cases where e.g. the clear-cutting of protected forests is permitted by the forestry authority.

Two sides of the story

As was already mentioned above, the forestry authority says: forestry cases are not environmental, because the unified environmental authority does not participate in the decision-making as an “environmental” but only as a “nature conservation” department. Thus, the environmental non-governmental organizations are not allowed to take part in the process. By doing so, the forestry authority in fact limits the environmental questions to matters of air pollution, noise emission, waste management, etc. and does not consider forest management an issue where outside players such as civil society has any say.

On the contrary, the environmental non-governmental organizations do believe that management of at least the protected forests is a matter of public importance; therefore they want to participate in related decision-making. The first step towards this participation is to get what lawyers call “legal standing”, i.e. the right to participate. And to get legal standing, such organizations must prove that forestry cases are environmental cases. That is why the environmental non-governmental organizations say that forestry cases where the environmental authority participates are environmental cases at the same time, even if only the nature conservation department is active in the process.
Legal arguments

From among the international laws, the so-called Aarhus Convention guaranteeing participatory rights in environmental matters is invoked, also by referring to its principle that wide access to justice must be safeguarded. There is no general or specific EU law that is referred to; however, there is extensive reference to the Hungarian Environmental Protection Act in the legal disputes. This Act is the one that guarantees legal standing for environmental non-governmental organizations, however, this is also the norm which is not clear enough and needs further interpretation in administrative and judicial procedures.

Cases

There are two typical cases that illustrate this problem. In one of them, a local environmental non-governmental organization called NTE has learnt that the setting-up of a boar (wild pig) breeding zone and the building of a surrounding metal fence were permitted in a protected forest by the forestry authority. The nature conservation department of the environmental authority has been involved in the process. NTE claimed legal standing in the permitting process which was refused by the forestry authority. NTE has filed a lawsuit against the forestry authority at the competent County Court. The court, however, has interpreted the law differently from NTE and stated in its order No. 14.Kpk.21.022/2008/2. dated 23 May 2008 that if not the environmental department of the unified environmental authority was involved in the case but another department in charge of nature conservation (as was the case in the given procedure), the case cannot be considered an environmental one, and consequently, there is no legal standing for environmental non-governmental organizations.

In the other one, a local environmental non-governmental organization called FTE has learnt that a forest management plan is to be adopted for a forest including protected areas. Again the nature conservation department of the environmental authority has been involved in the process. FTE claimed legal standing in the permitting process which was refused by the forestry authority. FTE has filed a lawsuit against the forestry authority at the competent County Court. The case is still pending but there is hope for an outcome different from the above, i.e. that the court will grant legal standing to FTE.

The environmental problem behind both cases is whether the management of protected forests takes into account the ecological criteria. Some civil society groups believe that the decision-making in certain cases is faulty and does not guarantee a sustainable management of valuable natural areas.

In the first example, the court case was lost, while in the second example the case is still pending.

Our Recommendations

We do not agree with the decision of the court where the legal standing of NTE was refused. We believe that the judgment is unsubstantiated and contrary to both the letter and the spirit of the Aarhus Convention and the Environmental Protection Act of Hungary. We believe that a correct and inclusive decision both by the administrative authorities and the courts would be granting legal standing to environmental non-governmental organizations in forestry cases where protected natural values are affected. This would stem from the applicable laws but also from a natural logic, i.e. the involvement of expert public into the decision-making enriches the process and makes decisions better and more sustainable.

We recommend to the competent authorities (including the courts) to reconsider their standpoint and provide an opportunity for the public to participate in environmental decision-making, especially if it affects a rare natural value and the inclusion of outside players would mean more knowledge and expertise in the process.

We recommend to practitioner lawyers not to accept any time a refusal of legal standing from government authorities and fight for more inclusive decision-making processes (also referring to the Aarhus Convention and the practice of the Aarhus Convention Compliance Committee that has reinforced participatory rights numerous times) until a favorable court decision guarantees a meaningful say.
SLOVAKIA

Eva Kovačechová,
VIA IURIS

Access to Justice in Slovakia

Typical legal problem regarding access to justice in environmental matters in Slovakia is, that the administrative bodies do not accept NGOs, as relevant parties of procedure. The exception is in cases when the relevant act exactly define, that NGO is a party of administrative proceeding, if it meets the conditions to be a party of the proceeding, which are defined in the relevant act. In this point of view we can see three different groups of acts, where are defined conditions for participate in administrative proceedings in environmental matters.

1. acts, which expressly says, that NGO should participate in the administrative proceeding, if it will meet the conditions. The conditions for becoming a party of the administrative proceeding, under this acts, are relatively liberal and easy to meet and if an NGO becomes a party of such procedure, it can also challenge the final decision of the administrative authority at the court. The relevant acts are – Act on environmental impact assessment (EIA), Act on integrated pollution prevention control in environment (IPPC) Act on genetic modified organism (GMO) and an Act on Environmental liability.

2. acts, which expressly says, that NGO should participate in the administrative proceeding only as “subject participating”, not as “party of proceeding”. „Subject participating“ has much more weaker position in administrative proceeding in comparasion with subject, who is a party of proceeding. It means, that in decision-making in environmental matters under this acts environmental NGOs (or other public participants) do not have this rights:

- right of the public that due account is taken of the outcome of the public participation,
- right of the public to be informed about the whole text of the decision, including justification,
- access to judicial review of the decision, including merital and/or procedural illegality of the decision or of the inactivity of the administrative authority.

The relevant acts are – Act on Nature Protection and Forrest Act in all administrative proceedings under this acts and Act on integrated pollution prevention control in environment (IPPC), and Act on genetic modified organism (GMO) in some administrative proceedings.

3. acts, which do not specifically says something about participation for NGOs in administrative proceedings according this acts (because of the fact, that some of those acts do not say nothing about the question, what are the conditions for legal standing, or some of those acts says only, what are the conditions for legal standing for other subjects but not NGOs). The conditions for participation according this acts are defined in general act for administrative proceedings, the Administrative Act.

Administrative act in general make a possibility how to participate in administrative procedure for subjects, “those rights, interest protected by law or obligation, could be affected by decision made by administrative authority”, or those who assure this facts, until the moment, when it is disprove. But in fact, competent administrative bodies frequently do not respect the right of participation in the decision-making process, often deciding that NGO is not affected by the activity subject to the permit proceeding. Almost ever, if there is an administrative proceeding under those acts, which do not exactly define NGO as a party of proceeding. For this reason, the involvement of environmental NGOs in proceedings under acts, defined in point one, is often the only way for members of the public to participate and to protect their legitimate interests.
Two sides of the story

The public administration is not aware of the importance of public participation in environmental decision-making, with public authorities and officials often seeming to perceive public efforts to participate in the permit proceedings as burdensome or as an obstacle to the proper course of administrative proceedings. Public authorities mostly do not accept the fact, that with their decision in some administrative environmental proceeding could happened, will be NGOs rights, interest protected by law or obligation anyhow directly affected. In their point of view, it is absolutely clearly, that based on their decision will no change happened in rights, which belongs directly to NGO. Then, there will be not a new obligation for NGO based on decision and lastly, no interest protected by law, which belongs directly to concrete NGO will be affected.

Second point of official bodies argumentation is based on another simply and formal fact. In their point of view, if, in the concretely act, there is not exactly defined, that NGO could be, after reaching the conditions, a party of proceeding, there is no legal possibility for NGO to reach the status for party of proceeding. There is no right for NGO, pursuant to act, which define, that NGO cannot reach the conditions for being a party of proceeding. If a legislator will have this allowance for administrative proceeding under this acts, he will do so exactly in that concretely act (as he did so, for example, in administrative proceedings like IPPC, or EIA – see above).

Legal arguments

From the field of the international law, the so-called Aarhus Convention, guaranteeing participatory rights and also right for judicial review of decisions in environmental matters, is applicable. Special importance for the problem of “admissible NGO arguments” has its Art. 9.2, according to which “members of public concerned”, including environmental NGOs, shall have right to challenge the “substantive and procedural legality of any acts, decisions or omissions” concerning the activities under Annex I of the Convention. Also art. 9.3, is very important for “members of public concerned”, but is not so clear enough as art. 9.3. Aarhus Convention entered into force in Slovakia on 5 March 2006 when the Convention was ratified.

There is no general or specific EU law that is referred to; but, as for Slovak legislation, most important are the provisions of Administrative Act, where are defined generally provisions for “party of proceeding” (see above). Only party of proceeding has right to challenge and sue the administrative decision before the court, according Civil Procedure Code. Definitely, the conditions for being a party of proceeding should for sure be interpreted and applied consistently with the provisions of the Aarhus convention.

Lastly, there are few more important acts, which are described in the text above.

Cases

There are two typical cases that illustrate this problem. In one of them, an environmental non-governmental organization called VLK had been a party of proceeding, according its argument, that its rights and its interest protected by law could be affected by administration decision made in the permitting proceeding for chemical affussions (pesticides) executed in National Park (which is area under very high level of protection according Nature Conservation Act) against wood-borer (bark-beetle), by the regional environmental state authority. The regional environmental state authority disqualified VLK from the permitting procedure, because, because in its point of view, there is no right, or interest protected by law, which directly belongs to NGO in this type of administrative procedure and which could be affected by decision. Secondly, there is no special act (included Nature Conservation Act), under which conditions could VLK be a party of proceeding in this type of administrative procedure. VLK has filled a lawsuit against the regional environmental state authority and its decision, and its arguments were made mostly on the Aarhus Convention rights.

In the other one, there were local people from a small town in controversy against new waste dump. Operator of this waste dump submitted an application for a sitting permission to placed a new waste dump, which should be situated directly in the town, only 400 metres from the historical centre of the
town. One of the citizens claimed legal standing in the permitting process, according his argument, that his right for private life, healthy environment and his property rights will be violated and that are the reasons, why he claimed a legal standing. This was refused by the regional building authority, because there could not be violated this rights, from that reason, that this citizen lives not in place, which is so close to the waste dump, where this rights could be affected and violated. Citizen has filled a lawsuit against this decision.

First case was about permission for chemical affusions (pesticides) executed in National Park (which is area under very high level of protection according Nature Conservation Act) against wood-borer (bark-beetle). VLK set out, that using pesticides in National Park is inadmissible and very harmful for the nature in National park.

Second case is about sitting permission for a new waste dump, which should be situated directly in the town Pezinok, only 400 metres from the historical centre of the town. Near to the town is one more old waste dump, which is closed already. Influences of the new waste dump on health of local residence would be much more harmful in comparison with the old one, if this will be permitted.

In both cases is the judiciary proceeding still pending, both in second instance (after giving an appeal). First case was lost in first instance, in second instance the Supreme court start a preliminary ruling on European Court of Justice. Second case the citizen won in first instance, now is he waiting for final decision in appeal proceeding before the Supreme court.

Our Recommendations

We do not agree with the decision of the administrative bodies where the legal standing of was refused. We believe that in all cases (not only in this two examples, but in all permit proceedings subject to environmental impact assessment (EIA) procedures, for example the permitting of highways, power plants, mines, waste dumps, chemical factories, and many permit proceedings that have a serious impact on nature etc.) where is some need for environmental protection, is absolutely necessary to have some participants with all rights, which belongs to party of proceeding according administrative act. There is no other party of proceeding, then the members of public concerned, who will fight for environmental rights, because of the fact, that the other parties of the procedures have their own interest on decision, which is almost ever not in favor with environmental protection. So, our opinion is, that public authorities should always, if it is somehow possible, allows legal standing for public, and take the general public’s comments and positions into account.

It can be recommended to the environmental NGOs and their lawyers use following arguments:

- it is necessary to use the arguments based on Aarhus Convention,
- the interpretation of provisions in Slovak law, which execute Aarhus Convention must be interpreted in compliance with the principles of Aarhus convention, not against it,
- argument, that there is nobody who is responsible for protection of environment (right for favorable environment) and has a real possibility to be a party of proceeding and real interest for protection the environment. Therefore, the provisions in administrative act, in environmental cases, should be interpreted in favor for environmental NGOs.

Finally, we believe, that for the competent administrative authorities and courts, will legal standing of NGOs help in their decisionmaking. The decisions will be much more objective and legitimist, if in the administrative proceeding is, as a party of proceeding, some environmental NGO, which has arguments, based on expertise a scientific knowledge for environmental protection and if there are some opposite arguments from other point of view, then applicant or investor has.
SLOVENIA

Tina Divjak,
Legal Informational Centre for NGOs

Access to Justice in Slovenia

The most typical legal problem in Slovenia regarding access to justice is the problem of legal standing. According to Environmental Protection Act (EPA) the public concerned in environmental procedures includes persons permanently residing in the area concerned or owning or possessing a real estate and non-governmental organizations (NGOs) if they have status of an environmental protection non-governmental organization acting in public interest. However, NGOs gain such a status if they fulfill several conditions set by EPA, which are very strict (e.g. the number of employees, 5 years of activity in the field of environmental protection, financial audit) and almost preventing NGOs to gain the aforementioned status.

Furthermore, the Ministry of the Environment started issuing decisions only in 2009, although the Implementing Act, on the basis of which the status could be granted, was in force since 2006.

Two sides of the story

On one side there are arguments of the Ministry of the Environment claiming that the conditions for the status are not too strict and were actually made easier with the last amendment to EPA. Under these changes the ministry refunds 50% of the costs for the financial audit if NGO gets the status granted.

On the other side there are NGOs claiming that despite this last amendment the conditions are still too strict. Furthermore, several NGOs submitted an application more than a year ago and still have not got any response from the Ministry, even though the General Administrative Procedure Act states that the decision in such procedures should be issued not later than in 30 days.

Legal arguments

Both sides are referring to the Aarhus Convention (AC). The Ministry claims that Slovenia is in compliance with the Convention, since the AC does not determine specifically, which conditions NGOs have to fulfill in order to gain a status to act in public interest and leaves the conditions to be set by the country itself.

NGOs claim that Slovenia is not in compliance with AC because of strict conditions and slow responses from the Ministry of the Environment. Without a status of NGOs acting in public interest they do not have access to justice.

Cases

The case of DOPPS-Birdlife Slovenia, in which NGO wanted to gain status of an accessory participant in the procedure of issuance of an environmental permit for the construction of a wind farm. Because of the conflict between EPA and Environmental Conservation Act the case lasted for four years and eventually after an appeal to MoE in a 2nd instance administrative procedure DOPPS finally got the status of the party in this procedure.

Another more recent case is the case of Friends of the Earth Slovenia, which sent a notice before before filing a lasuit to the Ministry, where they requested that a status of NGO acting in public interest should be granted11 to them. After 10 days they got a response from the Ministry that they have to complete their application in order to get the status. FoE finally got the status in September

11 This notice was sent almost a year after the request was submitted.
2009, more than a year after they submitted their application, even though general Administrative Procedure Act states that the decision in such procedures should be issued not later than in 30 days.

In both described cases there are no disputes about specific environmental problems, since the problems described are more procedural, referring to lack of implementation of AC.

**Our Recommendations**

We agree with the final decision made by the administrative court. In June 2006 the court finally ruled in favour of DOPPS (BirdLife Slovenia) in the case vs. MoE (wind farm Volovja reber case). The ruling was that associations can gain status of an accessory participant not only on the basis of provisions set in Nature Conservation Act (NCA), but also on the basis of provisions set in Environmental Protection Act (EPA). The grounds of the judgment clarified that the status gained in accordance to one act does not exclude the status gained in accordance to the other act.

There is a raising question whether a complaint to the Aarhus compliance committee should be submitted, because of the strict conditions set by EPA. In order to gain a status of acting in public interest NGOs have to fulfill very strict standing conditions which could mean non-compliance with AC.

On the basis of the ruling in the Birdlife case we recommend NGOs to argue MoE decision if they are excluded from the procedure on the basis that they have a status according to Nature Conservation Act and want to gain status according to Environmental Protection Act. Because having one status does not exclude NGOs to gain a status on the basis of another environmental act.

Changes to EPA should be done and the conditions to gain the status should be made less strict, enabling more environmental NGOs to act in favour of the environment.

We recommend to the authorities to respect the ruling made in the Birdlife case and in any other similar cases enable or approve the status of acting as accessory participant to NGO on the basis of EPA or NCA. Only with this kind of practice NGOs will have an opportunity to participate in environmental procedures that affect the environment.

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12 The key question in this case was if the intervention, for which an environmental permit has to be issued, could or would have any impact on nature or its conservation. After that the status of the association should be tested – if the association was founded for acting in public interest for the protection of that part of nature for which the intervention is envisaged.
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Justice & Environment (J&E) is a European network of environmental law organisations. J&E is an non-profit association with a mission that aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature. J&E fulfils this mission by ensuring the enforcement of EU legislation through the use of European law and exchange of information. J&E was created in January 2003 and founded as an non-profit association in September 2004.

J&E currently comprises six full-member organisations: Environmental Law Service, Czech Republic (EPS); Estonian Environmental Law Centre, Estonia (EELC); Environmental Management and Law Association, Hungary (EMLA); ÖKOBÜRO – Coordination Office of Austrian Environmental Organisations, Austria; Legal-Informational Centre for NGOs, Slovenia (PIC); and the Centre for Public Advocacy, Slovakia (VIA IURIS).

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All J&E activities are based on the expertise, knowledge and experience of its member organisations. The members contribute their legal know-how and are instrumental in the initiation, design and implementation of the J&E work programme. The strong grassroots contacts of the members enable J&E to concentrate on Europe-wide legal issues and horizontal legislation, notably the: Aarhus Convention, environmental impact assessment, environmental liability, pollution, Natura 2000, transport and the building of legal capacity.

Within these fields J&E: carries out analysis, compiles case studies and joint position papers; formulates strategic complaints, encourages discussion and legal education; and conducts outreach activities. Thus J&E provides added value from civil society to legislators and adds tangible benefits by broadening public knowledge of EU law and legislation.

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