



**Implementation of the Aarhus Convention
in EU Member States**
Position Paper
2006



1. 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, transposition and implementation of the Aarhus Convention - Convention on access to information, public participation in decision-making, and access to justice in environmental matters (hereinafter the 'AC') was chosen by J&E as one of our three topics of concern. Based on previous assessments, we decided to focus on the AC's third pillar – access to justice, particularly transposition and implementation of Article 9.2.

J&E members from Austria, Czech Republic, Estonia, Hungary, Poland and Slovakia put together a collection of legal analysis and a collection of case studies. Both of these collections reflect situation concerning transposition, interpretation and application of primarily access to justice pillar of the AC in their national legal systems.

Based on this one year comparative research, J&E members are summarizing the most pressing issues and outlining specific recommendations to be presented to governments of concerned countries, Aarhus Compliance Committee, European Commission and other interested stakeholders.

2. The most pressing issues

The most pressing issues and shortcomings are astonishingly similar in most of our countries (few exceptions noted below):

- There is insufficient clarity on the position of the AC 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 a problem especially the position of organisations and individuals; for the most part only the standing of environmental organisations in proceedings under Article 9.2 is unproblematic.
- Efficiency of the review of the timeliness of proceedings is an issue, and injunctive relief or other forms of postponing challenged decisions are scarce.
- Review of decisions within the EIA process needs to be addressed and in particular screening decisions, since many assessments end at this stage and national systems make it often impossible to challenge these decisions

Positive and inspiring examples can be found especially in Hungary - the issue of direct applicability and precedence over national law; efficiency and timeliness of proceedings as well as review of EIA screening decisions are sufficiently addressed here.

3. Policy recommendations

Our work has led us to the following recommendations:

- Courts and administrative authorities should apply the AC directly in cases when the national law is conflicting. When the national law is insufficient it should be interpreted in conformity with the AC. The international law sets specific obligations to our countries

and the provisions of the AC are of a nature that rights and obligations can be directly deduced.

- Legal standing of the “public concerned” should be viewed and interpreted broadly. Environmental NGOs as public concerned should be unified on a basis where these can have not only the procedural rights violated but also the substantive ones. As for concerned individuals and other legal persons, courts and administrative authorities should apply the definition of public concerned in such way that does not require members of public to either have their material rights violated or for them to form an environmental NGO to effectively participate in decision making. It is important to acknowledge that the right to a healthy environment and right to privacy is not secondary to property rights.
- Legal systems must contain measures to provide for sufficient efficiency, timeliness and scope of court review. Norms of civil and administrative court proceedings should set specific time lines for review. Application of injunctive relief or other measures to postpone enforceability of challenged decisions must be realistic – courts and administrative authorities should not set unrealizable conditions. When this is not the case, decisions with negative environmental impacts are implemented regardless of serious violations of the AC and the right of public participation loses its very essence and sense.
- Because the screening decisions in EIA processes are in many cases replacing the actual and full EIA process and because they are setting the limits of the project or activity under revision for the subsequent permitting processes it is necessary that the public concerned has the full right to challenge the substance of such decisions.

4. Conclusions

The AC is a part of the legal system in Austria, Czech Republic, Estonia, Hungary, Poland, and Slovakia. In some of these countries it has been so for several years already (in Hungary since 2001), while in countries have only limited experience with it (in Slovakia it was ratified in 2005). While is acknowledged and applied as a part of the legal system this application is uneven. Some countries show more results, including positive results (such as Hungary), while in other countries it has yet to make a mark.

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 AC will be a suitable tool if the deficiencies mentioned above are eliminated. In some cases legislative change is necessary, but many of the shortcomings in the national legal systems can be resolved by interpreting and applying the existing provisions in compatibility with the letter - and mainly with the spirit - of the Convention.

To advance such an application, it is useful that members of the public concerned (namely environmental organisations and active inhabitants) use the AC in proceedings and base their claims and arguments on its provisions. Adequate capacity building of members of the public claiming their rights, as well as of public officials and judges granting these rights and formulating decisions, is a logical next step.

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