

EUROPEAN ECO FORUM/JUSTICE AND ENVIRONMENT¹ STATEMENT

ON ACCESS TO JUSTICE (Agenda Item 6(c))

From the UK to Armenia, Germany to Belarus, and beyond, we profoundly regret the limited progress throughout the parties that has been made on access to justice in the intersessional period. The preamble to the Draft Decision on access to justice acknowledges that these problems persist, but in our view, states the matter far too mildly, as in fact, in a number of countries the situation has worsened; we see clear cases of backsliding or rolling back rights.

Moreover, in the present climate where we see environmental defenders coming under attack, the need to protect these defenders also through the courts, and to ensure that those exercising their rights under the Convention – including access to justice rights – becomes all the more critical – a point underscored also in the Draft Decision preamble at point 3.

And the problems we face are serious indeed.

Often we can't even get through the door. So-called justiciability barriers to access to justice like restrictive standing criteria and restrictions on the scope of review continue to be a serious issue. In Austria, outside of certain limited contexts, NGOs are completely denied standing. In Croatia, legislation makes the permanent violation of a right an admissibility condition for an administrative dispute, and in Germany recognition criteria for NGOs are incomparably high. There are concerns also that achieving access to justice in actual practice in that country will be long and entail costs borne by NGOs.

In some countries courts simply refuse to hear claims, whether because they deem NGOs can only raise procedural violations (as has been case in Czechia) or whether because the courts lack competence to review such claims, as could arise via a law recently proposed in Bulgaria, which would have stripped the cassation court of competence on EIA cases for infrastructural projects of national interest, or because courts – without a legal basis – simply as a matter of practice, refuse to hear cases, as may be the case in Belarus.

Access to justice is also blocked by burdensome costs – in some countries this has been a problem for a long time, whereas for others this is an emerging problem. In Austria for example, we have long faced prohibitive costs trying to challenge EIAs, and now face further potential costs in other cases. A legislative proposal in Bulgaria would drastically increase court taxes for the cassation court, in some cases up to 180 times. Similar problems happened earlier this year for all the costs before the Administrative Court in Croatia. Also in Croatia, access to legal aid is denied to NGOs.

Finally, procedures are often lengthy, and lack interim measures. So it often happens that by the time a ruling on the merits is given, the forest has already been cut down, the industrial facility built.

This picture is by no means complete, by no means adequately reflects either the depth or the breadth of the problems we face. But it should nonetheless make very clear: The problems are significant and wide-ranging, the need for finally addressing them never more critical. Thus we call upon the Parties to step up and take affirmative and determined steps to finally bring about access to justice.

¹ Due to the considerable number of interventions on this topic and in the interests of time, the European ECO Forum Statement on this agenda item was delivered jointly with that of Justice and Environment, which submitted separate written comments