



VISEGRAD 4 AARHUS CENTER NEWSLETTER NO. 1 OF 2018

MISSION

Improve EU environmental legislation and its implementation for the benefit of environment and people across Europe.

OBJECTIVE

Enhance awareness on access to environmental justice in the V4 country NGOs as direct beneficiaries.

J&E

Improving Access to Justice – Focus on Central Europe

J&E is operating the Visegrad 4 Aarhus Center, where our member organizations and partners from Czechia, Hungary, Poland and Slovakia are at the service of the public in issues involving questions of transparency, inclusiveness and justice.

J&E and ClientEarth are pleased to announce the project to further improve access to justice in Central Europe.

The International Visegrad Fund is helping to further the mission of the EU funded ATOJ-EARL project to raise awareness among legal professionals about access to justice in environmental matters.

You can read more about our project aiming at improving access to justice in the V4 region at the following link:

<http://www.justiceandenvironment.org/ivf/>

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The project is co-financed by the Governments of Czechia, Hungary, Poland and Slovakia through Visegrad Grants from International Visegrad Fund. The mission of the fund is to advance ideas for sustainable regional cooperation in Central Europe.



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JUSTENVINET



+36 1 3228462



HTTPS://WWW.FACEBOOK.COM/
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CZECHIA

Is keeping the status quo enough for granting standing to environmental NGOs?

Czechia has a long history of excessively polluted ambient air. Pollution is mostly attributed to local heating and industrial and energy plants. However, the public still has hard time accessing justice in matters of overly lenient decision-making in terms of emissions to the air. Operators of these facilities can opt for a derogatory regime which enables them to get ready for more stringent environmental regulation until 30 June 2020. In order to do that, their emission ceilings were adjusted in their operational permits to more lenient ones. However, no public was allowed to comment or submit observations on the fact that high emission ceilings are being preserved in a situation of grossly exceeded air quality limits. Therefore the regional authorities denied standing in the proceedings to environmental NGOs.

This course of action of regional authorities was challenged at court of law in four cases of different power plants. In order to justify NGO standing, it was essential to justify the fact that imposing less stringent environmental rules is always an approach with potentially adverse effects on the environment for which arguments of technical and legal nature were put forward. However, the first instance court dismissed the claim. The court stated that prolonging existing environmental regulation for a particular plant cannot be considered as potentially adverse to the environment as it is only keeping the status quo. However, in case of air quality limits being significantly exceeded for decades, NGOs believe they should have a say in matters that contribute to the unlawful status quo. Two cases are still pending before the first instance courts and should more dismissals occur, the remaining cases will be taken before the supreme administrative court of Czechia.





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HUNGARY

Aarhus+20 and the first Hungarian training in the EARL project

2018 is a special year in the life of the Aarhus family as we celebrate the 20th anniversary of the signing of the Convention. To celebrate this important date, the deputy Ombudsman for Future Generations initiated a cooperation with J&E's Hungarian member organization EMLA to hold a joint session on the achievements of the Aarhus Convention in Hungary. This date also served as a good occasion to hold the first training in the [EARL project](#) and back-to-back with it, the Hungarian workshop in the [Visegrad 4 Aarhus Center project](#).

The meeting was held on 21 November in Budapest, and approximately 50 persons attended it, mainly coming from the regional environmental competent authorities all across the country, but the judiciary, the academia and the civil sector were also represented.

Presentations in the morning reflected on the process leading to the adoption of the Convention, thanks to the testimonies of people involved in drafting the text of the first version. The afternoon session was the actual training component of the meeting. As a starting point, a sociologist described why people want to participate and what patterns can be identified in participatory processes. Legal and practical barriers to access to justice were identified, together with provisions of the Convention and adjacent case law that helps members of the public participate in environmental decision-making. An EU and Visegrad 4 outlook on how other countries regulate and practice access to justice closed the day.

The event was publicized on the Facebook page of the [Ombudsman Office](#), the [Facebook page](#) of EMLA and [Justice and Environment](#).





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POLAND

Access to justice for the public concerned when challenging Air Quality Plans in Poland

In March 2016, a citizen of Zakopane, a town in southern part of Polish Malopolska region, experiencing high levels of air pollution with dust particles (PM₁₀, PM_{2.5}) and benzo(a)pyrene, challenged the regional Air Quality Plan (AQP, implementing Art. 23 of the Directive 2008/50/EC on ambient air quality and cleaner air for Europe) to the administrative court. The claimant argued, that the AQP was inefficient and failed to include measures ensuring that exceedance period are kept as short as possible.

In July 2016, the Regional Administrative Court in Krakow deemed the complaint inadmissible, arguing that s/he failed to prove sufficient legal standing. According to the court, AQPs are addressed to administrative bodies, not to the individuals and as such they cannot violate their legal interest. Even if the AQP should have been inefficient or faulty, it could not violate the claimant's legal interest, as the plan as such did not cause air pollution.

After appeal the **judgment was upheld** by the Supreme Administrative Court in November 2016. The claimant argued that the court should take into consideration both the Aarhus Convention and the EU law and jurisprudence and interpret the national law in line with them, but the Supreme Administrative Court decided that such interpretation of the national law is impossible. In march 2017, the claimant submitted a complaint to the Constitutional Court against the provision of law (Art. 90 par. 1 of the Voivodship self-government act) that effectively forbids the citizens to challenge AQPs before a court. The case is currently pending in the Constitutional Court.





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SLOVAKIA

In October 2018, a Slovak regional court ruled that a mining company did not qualify for a permit to mine gold, putting a temporary end to a project that raised serious environmental concerns. Since 2011, VIA IURIS has been providing legal aid to the civil society association Podpoľanie nad zlato, an association founded by local communities in order to impede the construction of a gold mine close to Detva town (region of Central Slovakia). Podpoľanie nad zlato had serious concerns about the planned mining and so they wanted to participate in the administrative procedure regarding designation of the mining area. The administrative mining authority refused to grant standing to the association because the Mining Act No. 44/1988 does not regulate public participation in this procedure. The administrative decision refusing legal standing of Podpoľanie nad zlato was challenged before the court with legal help from VIA IURIS.

The plaintiff claimed that public participation in the procedure on designation of the mining area is regulated not only by specific mining legislation but also by the General Administrative Procedure Act. The fundamental principle is that national legislation must be applied in accordance with the Aarhus Convention. The Court stated that the Aarhus Convention is an international treaty which takes precedence over national legislation, though it has no direct effect. Therefore, the national legislation shall be applied in compliance with the Aarhus Convention in order to achieve the aims set out in environmental legislation. Moreover, regulation on filing an appeal in administrative procedures must be interpreted in accordance with Article 9(3) of the Aarhus Convention in order to enable environmental organization to judicially challenge any administrative decision. So, with the help of VIA IURIS and thanks to Aarhus Convention Podpoľanie nad zlato succeeded in being recognized as a party to this procedure pursuant to the Mining Act.





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