



# VISEGRAD 4 AARHUS CENTER NEWSLETTER NO. 1 OF 2019

## 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 from Czechia, Hungary and Slovakia and partners from Poland are at the service of the public in issues involving questions of transparency, inclusiveness and justice.

J&E and ClientEarth Poland 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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## CZECHIA

Groundbreaking judgement: exception from noise regulation cannot be a permanent arrangement

The competent regional court revoked an exception which enabled exceeding the noise limit from a nearby road. This is the first case in the Czech Republic where the court revoked such exception and where standing and access to justice was granted to the person affected by the excessive noise.

The exceptions have been repeatedly granted for the road on the outskirts of Brno for more than 15 years by the authorities. The noise levels have been steadily rising instead of dropping as a consequence of not implementing noise prevention measures. The last decision granting the exception was now revoked. The court reasoned that the purpose of noise exceptions is to enable the operation of the road for a limited time period in case the noise levels cannot be lowered fast enough. At the same time, it is necessary to draw up and implement efficient noise-lowering measures which would ensure meeting the noise level limits in the foreseeable future. The regional authorities did not follow the national law when they granted the third consecutive exception for the same area in 2016 without evaluating the efficiency of previously implemented noise-lowering measures. In addition, the exception-granting decision did not sufficiently explain why the newly proposed measures should be more efficient than those already implemented.

This case is directly related to the [ACCC/C/2010/50](#) case where the Czech Republic was found in breach of the Aarhus Convention by the Compliance Committee when the national law refused standing in the noise exception procedure. This judgement now corrects the breach.

by Petra Andrásik / [Frank Bold Society](#)





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## HUNGARY

What will the new Hungarian law on administrative courts bring for access to justice?

A new piece of legislation entering into force on 1st January 2020 was adopted by the Parliament in Hungary still in December 2018.

As a result, all administrative judicial disputes will be decided by new administrative courts, which are independent from the regular justice system. The law creates a complete, independent judicial regime next to the regular private law and labor law courts, with its own self-governing bodies, supreme administrative court (being to some extent a rival to the Curia, Hungary's highest court) and management and administration system.

In this new structure the administrative judges will be appointed by the Minister of Justice who is a member of the Government. Furthermore, he is also responsible for the call for proposals for job vacancies in this court. It will also be possible for the Minister to appoint members of the administration as judges. Finally, the Minister will have budgetary control over the new courts and will decide over promotions and pay rises for individual judges.

Certainly, we should not get ahead of ourselves in condemning an institution that has not even been created, let alone proven its rationale. However, it seems that the reform is focused on increasing the control of the executive over the judiciary, essentially seeking to have government-loyal judges decide cases brought against the government. Given that neither environmental protection nor access to justice are policies that are specifically favored by the current political regime, we must carefully watch how it will affect access to justice in administrative cases and in particular, in environmental matters.

by Csaba Kiss / [EMLA](#)



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## POLAND

[Polish seminar on access to justice](#) organised at the Ombudsman's Office

The barriers and challenges related to access to justice in environmental matters were the subjects of a seminar organized by ClientEarth Poland in the last week of January in the Office of the Ombudsman in Warsaw. It was the first training undertaken within the project "Access to justice for a greener Europe" in Poland.

"The issue of providing citizens with access to courts has been the most underrated part of the Aarhus Convention for years," said Dr Jerzy Jendrośka, a member of the Aarhus Convention Compliance Committee, during the first part of the meeting devoted to international standards in the field of access to justice in environmental matters.

The voice of Dr Hanna Machińska, Deputy Commissioner for Human Rights, was slightly more optimistic. In her view, the Aarhus Convention became part of European Union law thanks to the CJEU rulings regarding the application of the Convention's provisions. She also emphasized that the Aarhus Convention, through the rulings of the CJEU, affects domestic law.

The speakers in the second part focused mainly on identifying barriers to access to justice in environmental matters.

Legal advisor Agnieszka Warso-Buchanan presented barriers to access to courts on the basis of limited possibilities to challenge legal acts regulating air quality issues in the Visegrad Group countries as well as in Bulgaria and Romania.

The meeting initiated a series of eight training sessions on access to courts in matters related to environmental protection.

by Małgorzata Kwiędacz-Palosz / [ClientEarth Poland](#)





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## SLOVAKIA

The EU's General Court considers availability of effective judicial remedies in national courts

In case T-560/17 Fortischem v Parliament and Council, the General Court dismissed an action brought by a Slovak chemicals company against an EU Regulation prohibiting the use of mercury and mercury compounds in certain manufacturing processes, implementing the Minamata Convention on Mercury, on the grounds of lack of individual concern.

The Court then addressed the applicant's argument that lack of standing under Article 263 TFEU breached its right to an effective remedy under Article 47 of the Charter of Fundamental Rights. It recalled its consistent case law that the validity of EU acts are challengeable in national courts through the preliminary reference procedure as an alternative to direct actions before the CJEU. The Court found that the applicant's argument that it must first exhaust all administrative remedies before a preliminary reference can be made by a Slovak Court was insufficient to render its available remedies ineffective.

by Anne Friel / [ClientEarth](#)

