

Task Force on Public Participation in Decision-making, March 1-2, 2021

General Statement, March 1, 2021

Statement by Magdolna Tóthné dr. Nagy, Guta Environmental Law Association, on behalf of Eco Forum

We welcome the discussion on the very relevant topics on the agenda of the 9th meeting of the Task Force on Public Participation in Decision-making, under the Aarhus Convention, and take the opportunity to turn your attention to some cross cutting issues which significantly influence, how the public is able to exercise its rights to public participation in decision-making under the Convention.

During the extraordinary times of COVID-19 pandemic, we live in now almost for a year, we experience attempts in many countries that under special legal regimes or state of emergency, introduce measures and practices which seriously affect, may affect or curtail the rights for public participation in decision-making, in addition to the rights under the other two pillars.

These may include suspension of public participation procedures, postponement of public hearings, using more and more the virtual tools to replace physical meetings, while often not respecting the legal obligations or rules how these meetings should be organized in line with the public participations rights. We also see in some countries that under the disguise of the pandemic, attempts have been made to restrict the public's rights to participate in administrative procedures by introducing new, restrictive criteria for environmental NGOs, and giving priority to economic interests. For example, in Slovenia, the procedure for construction permitting has been simplified by introducing such criteria, and similar criteria have been introduced also for the participation of nature protection NGOs in the permitting procedures according to the amendments to the Nature Conservation Act. These criteria eliminate the possibility for the majority of environmental NGOs with public interest status in Slovenia, to exercise their rights in representing public interest, and prevents them from practicing their rights to public participation and access to justice. Changes of the Environmental Protection Act, Building Act and Spatial Planning Act have been also announced, all with the intention to shrink the rights of NGOs.

In some other countries, there is the risk that under recalling the need for economic recovery, the public participation rights and consultation processes may be further limited or even avoided. Planned development projects are qualified as of national interest, and simplified, accelerated procedures are introduced. Public participation procedures are cut to minimum or are avoided as EIA procedures are not applied. Due to the pandemic, notification procedures, information provision and public hearings in affected communities are or may be restrained, especially, at the local level, while facilities with potentially dangerous or highly polluting activities are planned or being permitted. (E.g. many recent projects in Hungary but also in other countries.)

We acknowledge the need for certain protection measures due to the pandemic but we do not see that these trends and regressive practices are justified and are in line with the provisions of the Convention. Here we refer to the statement of the the Chair of Compliance

Committee addressing Parties to observe the obligations and rights on public participation, in line with the Convention, even during these extraordinary circumstances.

In this spirit, we call on Aarhus Parties to ensure that the rights for public participation under the Convention are respected and applied. We also call for a real, green recovery, applying the safeguards of precautionary approach, strategic environmental assessment, and environmental impact assessment when activities with potential hazards or with potential risks to the environment are planned, and before they are permitted, while observing the public participation procedures and rights.

At the same time, we highly value the efforts of Parties to a positive, more generous and facilitative approach to public participation during the pandemic, - providing more time, being more flexible and adaptive to support engagement by the public, - and implementing good practices when using virtual tools or means for public participation. These practices should be promoted and shared across the Aarhus community. We also see challenges that the use of virtual consultations entail, such as the digital (gender) divide between rural and urban areas, and the problem of online violence that does not only affect women but also other marginalized groups.

We see an increasing intimidation, threat, penalization, harassment and in some countries even persecution, use of physical force and detention against environmental defenders, individuals, environmental activists, lawyers, experts or journalists, etc. who raise their voice, campaign or protest against controversial, large development projects potentially polluting the environment, controversial projects such as nuclear power plants, or raise the issue of limiting practices of public participation. We welcome the initiative under the Aarhus Convention to develop a Rapid Response Mechanism for adoption at the next Meeting of Parties. We support the option to establish an independent Rapporteur on environmental defenders, which could serve as effective and fast means to protect environmental defenders, provide a rapid response to alleged violations of Art. 3.8. We urge Parties to join us and support the establishment of this mechanism, - and especially the option of independent Rapporteur on environmental defenders, - for adoption during the upcoming next Meeting of Parties.

We wish the Task Force useful, interesting and productive discussions, and conclusions which could outline what the Task Force needs to address, among others, during the next period, after the next Meeting of Parties.

Thank you for your attention!