

Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Sixth session

Meeting of the Parties to the Protocol on Pollutant
Release and Transfer Registers to the Convention
on Access to Information, Public Participation in
Decision-making and Access to Justice in
Environmental Matters

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Item 6 (c); Substantive issues: Access to Justice

Keynote address of the Slovak Supreme Court Judge Mr. Miroslav Gavalec

Environmentally responsible behaviour of anyone has been a crucial part of our presence at the Earth and we continually recognize that this affects firmly our earth-bound being. It is not surprising that we have accustomed to state everyday that the environment is our life-support system, common and irreparable welfare and a confirmation for a human future because the mankind is not able to adapt to rapid climate changes and negative consequences resulting of them.

It is very good that there is an increasing debate not only among experts and environmentalists but ordinary people too. Especially a public has not persisted yet to elements of classic liberalism values aiming towards property rights, effective transport of goods, free movement and liberties or globalization of local markets but it puts the accent on the ongoing consequences of their development, it means pollution, global warming or loss of biodiversity. There is simply no way to solve as appropriate these matters without strong commitments from Governments and their authorities including courts.

Facing increased probabilities of natural negative phenomena and disasters including their impacts on human health the role of legal top-down regulation is absolutely necessary in order to guarantee a future for anyone. The legislative activities of the United Nations in this field are very helpful and effective, confirming a principle of rule of law and the Aarhus Convention is one of them. Only 9 substantive articles for a judicial interpretation concentrated into 3 pillars became an engine of environmental democracy. Access to information, Public participation and Access to justice as fundamental elements of the Aarhus Convention influence in very strong manner

judicial practice. The Aarhus Convention creates a bridge for environmental communication between courts and public with very important impacts on various European legal orders.

The first and essential influence of the Aarhus Convention is the fundamental change in the interpretation of European traditional “*locus standi*” doctrine.

The principle of *locus standi* is a very old procedural principle that forms the basis of any action in a court of law. It refers to whether or not someone has the right to be heard in court. It means the right to bring an action, to be heard in court, or to address the Court on a matter before it. *Locus standi* is the ability of a party to demonstrate to the court a sufficient connection to and harm from the law or action challenged to support that party’s participation in the case.

Questions of *locus standi* most often arise in proceedings for judicial review. In general, in order to bring an action before a court or challenge another decision, a potential claimant must have an entitlement (*titulus*) to do so. That determination of *locus standi* is influenced by classical but restrictive idea – only persons arguing that they were affected or violated in their individual rights have standing unless otherwise stipulated. Only that person is also entitled to bring an action before a court against administrative decisions or procedural irregularities. If the claimant is not able to prove a direct infringement of his/her individual rights the court has to declare dismissal of action. It means that there is no prosecutor competent to bring an action in private interest on behalf of the others in the position of an “*actio popularis*” claimant. This traditional approach would create an obstacle for anyone, it means by the words of the Aarhus Convention for „members of public“, to challenge according Article 9 of the Aarhus Convention any matters concerning the environment. Above mentioned approach was changed by case-law in favour of environmental protection not only under the Aarhus Convention but also according to national law relating to the environment or in other words if the provision in question somehow relates to the environment.

The second but not least question is a legal interpretation of foggy term “environment”. This question becomes, then, what values to apply when solving specific environmental issues. Some people can prefer e.g. the human benefits from an exploitation of nature (so called anthropocentric view for values) and another part of mankind expresses broader ecological interests. It raises the ethic question of whether the human species can do whatever it wants to the environment to advance its own interests or not. The scope where these reflections are situated is limited by the term “environment” and its protection. If we want to accept an idea of protection we would know what the subject of our protection is.

It is obvious that there is no legal definition of the term environment in the Aarhus Convention. Accordingly the Aarhus Convention the courts in intuitive manner have accepted all litigations concerning soil, water, air, waste, nature, and flora and fauna

protection, limitation of noise and toxic materials or emissions in order to offer judicial protection towards public affected by the problems with those cited elements of environment. The environmental NGO's and some changes made in *locus standi* doctrine play important role in this sense. These cases on the one hand require much patience and good technical skills but on the other hand they increase transparency of rules and accountability for their application. The Aarhus Convention has not become an only accelerator for case-law but for economic operators as well as better scientific knowledge to answer question: what is the frame of environment. Policies such as absolute limits on carbon dioxide from industrial carbon cycle, governmental funding and subventions of alternative energy systems as well as coordinated efforts to conserve and protect biodiversity around the Europe is the best answer for that question.

It should be underlined that the above mentioned positive impacts of the Aarhus Convention in judicial practices were achieved on condition that there has been the significant promotion of the exchange information, experiences and good practices relating to the implementation of the third pillar of the Aarhus Convention by way of various networks, training institutions or on-line jurisprudence database from United Nations institutions.

Thank you very much for your attention.