

European ECO-Forum

Aarhus Convention rights during the COVID-19 pandemic

During the unfortunate COVID-19 pandemic in Europe we have experienced with regret that many Aarhus Parties when announcing special legal regimes or state of emergency, also introduced measures which seriously affected and limited the public's rights on access to information, public participation and access to justice. The concern about the impact of the pandemic on the implementation of the Convention arise across all three pillars.

Although we understand that there could have been and could be a need for certain safety measures to avoid risks posed by personal face-to face encounters, we do not see justified the restriction of these rights. It is not justifiable why deadlines for the provision of information have been prolonged for example for the double in Romania or from 15 days to 45 days in Hungary.

Public participation procedures have been suspended and public consultations have been postponed for later in many countries and also different virtual tools have been used. We have some lessons on how these have worked that we still need to evaluate. However, under the disguise of the pandemic, in some countries attempts have been made to curtail the public's right to participate in some administrative procedures. The procedure for construction permitting has been simplified in Slovenia by introducing new restrictive criteria for environmental NGOs and giving way to economic interests. These criteria eliminate the possibility for the majority of ENGOs with public interest status to exercise their rights in representing public interest and prevents them from practicing their right to public participation and access to justice. These restrictive criteria have been introduced also for the participation of nature protection NGOs in the permitting procedures in the amendments to the Nature Conservation Act and are to be in force until the end of 2021. The new provisions and conditions have been proposed and adopted by the Parliament without proper public consultation and the regular legislative procedure. Changes of the Environmental Protection Act, Building Act and Spatial Planning Act have been announced, all with the intention to shrink the rights of NGOs.

Many countries have repealed or are repealing the special measures and legislation brought under the state emergency or special legal order. However, as we see (in Slovenia), some stay in force, while others might be reintroduced in the second wave of the pandemic, if again special legal order or similar restrictions were to be applied. Further, there is the risk that under the disguise of the need for economic recovery, the public participation rights and consultation processes may be further limited.

The legitimacy of any changes or constraints proposed to positive implementation measures for the Convention on the basis they are now necessitated by the pandemic, must be subject to the most exacting scrutiny. It is wholly inappropriate that pre-existing practices and regulations implementing the Convention are being impacted in circumstances where other aspects of our society and its activities are not, and we are seeing evidence of this, not only in the countries mentioned above but also in others (e.g. Ireland, Ukraine, etc. There needs to be very close scrutiny to ensure that the

pandemic is not used as a flag of convenience, to introduce regressive practices and implementation, and to compromise environmental democracy.

We call on Aarhus Parties to ensure that the rights under the Convention are respected and the limitations will be immediately restored once the exceptional restrictions are lifted. We also call for a more generous and facilitative approach to public participation – providing more time, and being more flexible and adaptive to support engagement by the public, and equally so with review of decisions under the access to justice pillar. As economies and social interactions begin to open up following severe episode of the pandemic, we need to allow for proper periods of adjustment before it can be reasonable to expect the public to participate fully in environmental decision-making.” The further practice of implementation should not return to these regressive practices, even in case of a second wave of the pandemic.

The Working Group should return to this issue in its October meeting and assess the developments.

Furthermore, as life should go on, even during the pandemic, we propose to elaborate recommendations on alternatives for ensuring public participation in environmental decision-making which are in line with the Convention’s provisions, during a possible second wave of the pandemic, and provide good practice examples, of which Parties could make use of, in such extraordinary times.