

UNECE Aarhus Convention
Ms. Ella Behlyarova
Secretary

Monday, 07 June 2021

Statements by J&E on Access to Justice in Environmental Matters
at the 25th Session of the Working Group of the Parties to the Aarhus Convention

Statement No. 1

Access to Justice on the EU Member State level

The level of access to justice guaranteed by the EU Member States varies, mostly owing to the fact that there is no directive on ATOJ that would set clear detailed rules. However, the case law of the CJEU serves as a harmonizing factor. The level of access to justice also changes due to the development of domestic legislations, the development of domestic case laws and of the CJEU case law mentioned in the foregoing. For this reason, the preparation of the eJustice Fact Sheets by the Commission for the eJustice portal, covering all 27 MS is a very valuable exercise. It is to date the most up-to-date collection of public information regarding how one can have remedies in environmental cases. It covers all possible aspects of access to justice, principal amongst them criteria of legal standing, timeliness, costs, injunctions and capacity building. It has been accompanied by a brief indicator exercise, where each MS expert answered simple questions. The outcome of this shows that overall, the most problematic areas are legal standing of individuals and injunctive relief, while the least problematic are costs at the administrative phase of a case and legal remedies in EIA / IED cases. We welcome this tool for raising awareness of the public and legal professionals on access to justice and looking forward to the publication of the fact sheets online, as well as a periodic updating of the documents in the future.

Statement No. 2

Access to justice on the EU level

As is known, the findings of the Aarhus Convention Compliance Committee (ACCC) in the C-32 case will have a major impact on access to justice on the European Union level. The ensuing process of the amendment of the Aarhus Regulation is ongoing and each major stakeholder, e.g., Commission, EP, Council is active in that process, having formulated their respective standpoints. The tripartite interinstitutional negotiations (a.k.a. the trilogues) just started last week. ClientEarth, EEB and J&E formed an action coalition, and we monitor the process as well as inform other NGOs via the Aarhus Mailing List. The coalition led by CE promotes full compliance with the AC, with the original findings and with the Advice of the ACCC. However, in our understanding, the current and published draft of the Commission does not ensure full compliance. There are issues not at all covered, especially legal standing for individuals; it should be improved. Also, as we were informed, the Council adopted a negotiating position leaving out EU acts that require national implementing measures from those that can be subject to an internal review. This is problematic ahead of the upcoming MOP7 of the Convention. Also, EC state aid decisions are outside the scope of the Aarhus Regulation. As for the latter, we would like to emphasize that in case C-128 initiated by J&E Austria (Ökobüro), the ACCC found that by failing to provide access to administrative or judicial procedures for members of the public to challenge decisions on state aid measures taken by the European Commission, the EU failed to comply with article 9 (3) of the Convention. We hope that the amended Aarhus Regulation will reflect all these aspects and will eventually contain a text that is fully in compliance with the Aarhus Convention and the ACCC findings.