

The implementation of the Aarhus Convention by the Supreme Court of the Republic of Albania

1. Good morning to all the honored delegates and representatives. First of all, I want to thank you for your very interesting and valuable presentations. It is an honor to be part of this Panel to share the experience of my country Albania, in the implementation of the Aarhus Convention, to celebrate the 20-th birthday of the Convention, but also to address major achievements, challenges, lessons learnt and to suggest future actions regarding effective access to justice in environmental matters.

2. I am a judge, actually serving as a seconded judge in the Supreme Court of the Republic of Albania, and therefore I want to address the issue from this point of view. The Supreme Court of the Republic of Albania has a crucial role in promoting effective judicial review in environmental matters because it develops the groundwork for adjudication in many matters of law for the lower courts, and we have proved such role in some of our latest judgments.

3. The Aarhus Convention, also called "the democracy in the field of environment" is one of the most important acts in the field of environmental legislation in Albania, ratified by law since 2001. There is still much work to be done to completely implement it, but today; I would like to underline the successful work of the Supreme Court in directly applying this important act in the environmental case judgments.

4. The Administrative College of the Supreme Court of Albania in the judgment no. 322-2021 dated 21.07.2021 has directly implemented the Aarhus Convention, in order to legitimate the plaintiff in the process.

5. In this case, the plaintiff is a community of 27 residents of Margegaj village in the north of Albania and the "Land" association which object is to promote and protect the environment. The plaintiff has sued among others the Ministry of Energy, the Ministry of Environment, the National Environmental Agency and the companies that have obtained the permits, claiming that the construction and operation of hydropower plants in the area of Valbona Valley may seriously damage the environment of Valbona National Park.

6. The defendant has obtained all the necessary permissions and licenses to develop the project, including the permission for use of water reserve for the hydropower production. The plaintiff has filed a lawsuit in the First Instance Administrative Court of Tirana claiming that this activity will have quite a negative impact on the environment, flora, fauna and the biodiversity of this area.

7. The Administrative First Instance Court has rejected the lawsuit ruling that the plaintiff did not present any evidence such as photographs, environmental damage assessment documents to prove the damage to the environment. The Administrative Appeal Court dismissed the appeal, affirming the lower court decision, with the same reasoning.

8. The Administrative College of the Supreme Court regarding the legitimation of the plaintiff in the process has ruled that in this case there exist the conditions for securing the claims (*interim measures*), as it is evident the reasonable doubt for the possibility of causing a serious, irreversible and immediate damage to the plaintiff and the Court considers that taking the interim measures does not seriously affect the public interest. Interpreting the standards set out in the Aarhus Convention and in the Albanian legislation, the College ruled that the right to access to justice on environmental issues differs from other cases of litigation, where the parties access the justice to reclaim a violated right. Environmental issues are polycentric in nature, far from the formal contradictory aspect of a normal civil/administrative trial. Due to the nature of the claimed violated rights in environmental issues, is difficult to meet one of the essential procedural conditions for filing a lawsuit, the direct interest, as in these cases rights of a general nature are protected.

9. In another recent judgment, no. 087-2021 dated 31.07.2021, the Administrative College of the Supreme Court has also directly implemented the Aarhus Convention, in order to legitimate the plaintiff in the process.

10. This case relates to the lawsuit filed by the residents of a village in the Municipality of Kamza and the Organic Agriculture Association against the Municipality and the National Environmental Agency. A limited liability company was provided with a development permit, to develop the construction of a livestock complex with slaughterhouse, restaurant, in the area of Bruke Forest. The plaintiff pretended that the construction of the facility seriously violated their rights and interests as residents of the area, because the construction of the facility presupposed cutting the trees over 35 years old.

11. The College referred to the case-law of the European Court of Justice regarding the active legitimation of environmental associations to address the court. The Court ruled that the case-law is already consolidated, that the procedural rules for guaranteeing the right to address a court cannot be less favorable than the rights guaranteed by domestic legislation and cannot impose difficulties in practice to exercise these rights guaranteed by EU legislation. The Administrative College has accepted the recourse ruling that the environment is an inter-territorial concept, which transcends the borders of a country. Environmental protection is a basic condition for ensuring the development of society and is a national priority in order to inherit it undamaged between generations. Interventions of this nature in the environment, in the eventual acceptance of the lawsuit, are almost impossible or very difficult and expensive to compensate and repair with other actions and projects.

12. With this conclusion of the Supreme Court in this judgment, I would like to close my word, being hopeful that in the future we will be able to give a major contribution in the implementation of the Aarhus Convention in the Albanian case law in order to guarantee effective access to justice in environmental matters.

Thank you very much for your attention,

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