

Agenda Item 4 - Tools to promote effective access to justice, Access to Justice Task Force meeting, April 27-28, 2022

Statement by Magdolna Tóthné Nagy, Guta Environmental Law Association, European ECO Forum

Mr. Chairman, dear Delegates,

On behalf of the Guta Association and European ECO Forum, we would like to call the attention of the Task Force to a more general issue of rule of law which also influences SLAPPs, and which can be experienced in several European countries, Parties to the Convention, including also member states of the European Union and others. There has been an increasing tendency not only for SLAPP cases but also for using certain legal instruments or administrative measures to create a deterring environment for civil society groups who are engaged in activities of public interest and protecting human and environmental rights. We can see examples when laws or regulations have been proposed or introduced with the intention to intimidate such CSO groups and journalists as well, deter them from certain activities or in the most extreme cases, even using these laws, regulations, or administrative measures to threaten or liquidate them. We have witnessed this latter, for example, in Belarus, where under the pretext of the implementation of the Law on Public Organisations, unlawful measures were taken and several hundred CSOs were liquidated, including Environmental CSOs (among others Ecohome). Other examples included, for example, laws or regulations on the funding of CSOs, labelling them foreign agents, targeting first of all those groups who have been criticizing or opposing the undemocratic measures or policies of the government, (one example is in Hungary, The Law on the Transparency of Organisations Receiving Foreign Funds, adopted on 13 June 2017). Although this mentioned law so far was not applied in Hungary and was repealed in May, 2021, at the same time, the Parliament adopted the Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life (“LexNGO2021”) which entered into force on 1 July 2021 and which qualifies CSO activities as “capable of influencing public life” and places the respective organisations under stricter control by the state solely on the basis of their form of operation and their balance sheet total, by the force of the law. Civil society organisations submitted a complaint against the new provisions to the Constitutional Court, while this complaint is pending, the State Audit Office has began checks on dozens of NGOs.

There were examples of other administrative harassments as well. One previous well-known example was the procedure by the Government Control Office of Hungary against the Environmental Partnership Foundation which was offering funds mainly for environmental CSOs, managing the resources provided by the EEA and Norway Fund, for the civil society, independently from the government. This group and its partners were accused to provide grants for activities supporting political parties and were threatened with suspension or elimination of their tax numbers, thus stopping their operation during the procedure. In the end, the Government Control Office had to admit that the accusations against the Partnership Foundation had no base and the procedure was stopped.

Nevertheless, in such cases, the reputation of the mentioned CSOs were damaged and these measures had a chilling effect on the functioning of the CSO community, as these have been illustrative of the current state of rule of law. These are only a few examples but we can see similar smear campaigns and cases of harassment or intimidation in other EU and non-EU countries. The 2021 Rule of Law Report, on „The rule of law situation in the European Union”

states: In the majority of Member States, there is an enabling and supportive environment for civil society, and the civil society space continues to be considered open.” ... „However, in some Member States, civil society organisations are facing serious challenges. Examples include deliberate threats, including through financial restrictions or controls, from the authorities, or inadequate protection against physical or verbal attacks, against arbitrary decisions, against SLAPPs, or when the level of protection of fundamental rights guaranteeing the work of civil society are lowered.”¹

Also we could quote on this matter the Liberties’ latest Rule of Law report which states: „CSOs and rights defenders continue to be targeted by verbal and physical attacks, legal harassment and smear campaigns, especially those who act in defence of the rights of minorities and vulnerable groups. An increasing number of governments put in place restrictive regulations to weaken, control or limit the activities of CSOs, in particular those performing advocacy and watchdog functions, while the financial landscape for CSOs has further deteriorated, as is their involvement in law and policy making.”²

These practices must stop and should be condemned. We call the Aarhus Parties to be partners and take and support actions to prevent and to eliminate such unlawful acts and practices. We hope that the newly adopted Rapid Response Mechanism will provide opportunities to address such complaints and infringements. We suggest that the Access to Justice Task Force should support and engage with the Special Rapporteur on environmental defenders, as persecution, penalization, harassment and intimidation of CSOs represent a barrier to access to justice. We support the proposal of the Chair, and on behalf of the civil society, we offer a similar support to the RRM and the Special Rapporteur, as the CSO group supporting the work of the Compliance Committee.

Thank you for your attention!

¹ The 2021 Rule of Law Report, The rule of law situation in the European Union, p. 23.

² Liberties Rule of Law Report 2022, p. 20