

## **Intervention by Magdolna Tóthné dr. Nagy, European ECO Forum and Guta Environmental Law Association**

### **Roundtable on environmental defenders, June 24, 2022**

#### **Chairman, distinguished Delegates,**

In our statement we will focus on the the situation of environmental and human rights defenders (EHRDs), and the persecution, harrassment and intimidation they may suffer (except SLAPPs), first of all in the Western Balkan region. We base our findings on the study (draft) Assessment report on the situation of environmental human rights defenders with particular focus on the Western Balkans, 2021, commissioned by UNEP. This research was conducted by Justice & Environment and a network of environmental CSOs.

We will also draw some conclusions on some EU countries and Ukraine, later.

The mentioned UNEP report is a very valuable analysis and overview of the situation, covering the last 5 years up to 2021. A similar study following the methodology, would be highly recommended for other regions to have a full picture of the situation of environmental defenders in the UNECE region. Such studies could enable the Parties and also, the newly elected Special Rapporteur on environmental defenders to consider what are the biggest challenges, and propose/adopt solutions to deal with them.

If we look at the major factors influencing the situation of environmental defenders in the West Balkan region, the policy and regulatory context, the existing international frameworks, the relevant international human rights obligations are the primary drivers for national policy and legislation that create protection mechanisms for environmental human rights defenders (Among them: the UN Human Rights Council resolution on the right to a healthy and sustainable environment, the Aarhus Convention). There are also international human and environmental rights mechanisms that could serve as a protection, and could take measures in this respect, when needed. Among them, we have now the newly created Aarhus Rapid Response Mechanism.

National legislation and policy is driven by the European Convention on Human Rights – ensuring the basic fundamental human rights, - along with other conventions or international legal instruments. However, these latter do not require explicitly, specific legislation on EHRDs at the moment.

In the countries examined, **no specific legislation or coordinated policy actions have been taken at the national level to protect EHRDs**, except some ad hoc steps to support some EHRDs in some countries.

We could mention as a good practice the due diligence obligations in place in the European Union (EU), e.g. in the mining sector to prevent human rights abuses in conflict in affected and high risk areas. However, this not applied in the West Balkan countries yet.

Among the **institutional arrangements**, the Ombudspersons could take a role in the prevention and protection of harrassment of EHRDs, however, there have not been such specific actions experienced related to EHRDs. Another opportunity in each country is **the consultation for the CSOs with the government** regarding the situation of the civil society, and usually major development plans or projects. These, and different cooperation channels between government and civil society, **could be used also for discussing, proposing measures to improve the situtation of EHRDs.**

#### **Policy and regulatory context – Conclusions**

There has been progress generally, in environmental legislation and practice with the EU approximation, implementation of international conventions, including Aarhus Convention – however, there is still place for improvements.

As these countries are constitutional democracies, the fundamental rights are enshrined in constitutions, as required by international human rights and environmental conventions, and this influences also, the situation of EHRDs. There has been advance in meeting international obligations on human rights and rule of law but at the same time, the work of EHRDs is challenging due to the many conflicting interests and trends that affect or may affect the CSOs' situation and the environment.

It would be critical that **environmental defenders and activists should be seen as important and valid partners** by the government in the development and improvement of environmental policies and legislation.

The governments need to seek for additional tools for cooperation with EHRDs and make further improvements in access rights. E.g.: public consultations should be meaningful and have impact on the final decision.

### **Current status of EHRDs**

There is an enabling environment in general, for CSOs/EHRDs. The status of CSOs is regulated. There are only ad hoc instances when particular organizations face extra hurdles due to decisions of state bodies regarding financial scrutiny or administrative measures. CSOs, and - thus EHRDs- enjoy the status of being a party in administrative and judicial procedures and are able to influence environmental decision-making. However, in some countries, direct affectedness needs to be proved.

### **Physical and/or verbal harassment and other means of pressure**

Verbal harassment is common in high profile environmental cases. (There are examples mentioned in the assessment.)

Physical harassment, especially resulting in bodily harm is exceptional. (There is no intentional killing.) There was an example when a pregnant lady lost her baby due to the brutal police action in a demonstration.

Yet, we can say that **the region is in a moderately affected category**, compared to regions where harassment is daily and life-threatening problem. But there are cases that need to be monitored and investigated.

Physical harassment could be mainly attributed to the actions of State bodies, especially to police. Cases of bodily harm result from efforts of state to maintain order as opposed to actions of private companies to privatize law enforcement.

### **Media coverage - Role of the media**

The role of the media is crucial in creating/influencing the environment for CSOs/EHRDs. The environmental issues are usually covered when „sensational”, and the same is the situation of EHRDs. Their activities are rarely covered but mostly positively. There are some negative examples in some countries when political interests undermine this.

Case must show „attention value”, not impossible to get attention if other factors are also involved (e.g.: party politics, corruption, national interest, large scale pollution, human health).

We should also mention the **impact of COVID pandemia**, when the restrictive measures also had limiting impact on the exercise of certain fundamental rights (right to assembly, direct personal participation, access to justice in form of appearing before a court), and thus on the activities of EHRDs. The use of online tools partly compensated for this.

#### **Highlighting some of the most important recommendations of the study:**

**Governments should legislate on the protection of EHRDs and enact rules against harassment** – There is still a decent situation in the region, with moderate or low level risk but this could change.

Advice from regional intergovernmental organizations could help before legislating or making policies on EHDRS.

Not only at the national level, but also at the international level, it should be considered by intergovernmental organizations in the region to establish safeguard measures to deal with the harassment of activists.

Some of the good practices already exist: Human Rights Council's Special Procedures, UNEP's 2018 Environmental Defenders' Policy, the Aarhus Rapid Response Mechanism. Other bodies could also apply formalized mechanisms where members of the public could approach them with complaints, if non-compliance happens.

There are institutional arrangements that could be utilized more at the national level: Ombudsmen institutions could protect and strengthen the position of EHDRs.

As there is lack of national funds, civil society can ask for support and assistance from international networks. EHRDS need to strengthen networking in-country and internationally.

Local governments (and governments) should ensure open and inclusive decision-making and not to treat EHRDs as enemies, especially, in procedures on exploitation of natural resources.

Legal assistance by lawyers and lawfirms should be provided to EHRDs.

Capacity building is needed:

- for EHRDs on legal and other tools to enable them to protect themselves better;
- for local communities/local governments on the important role of EHRDs and how they could cooperate and prevent harassments;
- for public authorities, including administrative organs, law enforcement agencies, police, prosecutors, judiciary, private security services, and developers, international financial institutions, etc. on the obligations they must respect to prevent and reduce the threats and the verbal and physical harassments.

Regarding the media: Media should be more open towards the environmental challenges, and also cover more and show the role of the EHRDs. Regional media usually covers harassment and actions against EHRDs more objectively than national. CSOs should work with the media and be trained to increase their capacities and to learn to deal with the media.

As for the situation of limitations during the COVID time: governments should have specific plans not only for the pandemic and recovery but also for guaranteeing environmental human rights and rights of defenders in similar situations.

#### **Situation of CSOs and EHDRs in other regions of Europe**

In the European Union, in most EU Member States - as we already pointed out during the last Access to Justice Task Force meeting, as well,- there is generally an enabling and supportive environment for civil society, and the civil society space continues to be considered open. However, EHDRs face serious challenges in some EU Member States, where there is an increasing tendency of using legal instruments or administrative measures to create a deterring environment for civil society groups engaged in activities of public interest and protecting human and environmental rights.

Laws, regulations or administrative measures are or have been proposed or introduced to intimidate, deter EHDRs from certain activities, or in most extreme cases, to threaten or to liquidate them. Smear campaigns are conducted in the media controlled by the government. (These phenomena are also happening in other non EU countries.)

As the EU Rule of Law Report 2021 states: „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.”

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.

#### **Situation of CSOs and EHDRs in Ukraine**

The brutal situation of war could mean threats to the safety and life of EHDRs and their families, and also averts attention from environment protection, and those who advocate for this, and their rights.

As the statement of the Ukrainian NGO Environment-People-Law on this issue also mentioned, the Aarhus Convention, as many other MEAs, is silent on its application in war time. Thus, the limitation of Aarhus rights in the time of war could be decided arbitrarily by the state/s, and this creates risks that Aarhus principles, human rights could be unreasonably limited during hostilities.

In the future economic reconstruction, the role and rights of the EHDRs should be ensured and guaranteed, and they should be taken as partners, when the future plans, developments will be formulated.

#### **Recommendations:**

We are glad to see that the Aarhus Parties have supported the adoption of the Rapid Response Mechanism and the election of the Special Rapporteur on environmental defenders. This is a truly historic moment.

We call on the Aarhus Parties to continue to support the Rapid Response Mechanism and the Special Rapporteur actively, but should be also partners in **taking and supporting actions at national level to prevent and to eliminate unlawful acts and practices of harassment**. Among others, they should introduce specific legislation and policies towards this end. The newly elected Special Rapporteur could help in this, and give recommendations based on what experiences will be gained on the most critical issues in the field in the next few years.

As the harassment of EHDRs represent a barrier to the implementation of all pillars but mostly to access to justice, the Access to Justice Task Force should engage regularly with the Special Rapporteur on environmental defenders, not only the Compliance Committee.

A similar study as the UNEP assessment on the situation of environmental human rights defenders in the Western Balkans, is proposed to be conducted for the other regions of Europe.

The civil society welcomes the establishment of the Rapid Response Mechanism and the election of the Special Rapporteur and offers its support for the work of the Special Rapporteur. The NGOs can be instrumental and help the Rapporteur to implement his deliberations in the field. They can identify and call attention to cases, can help in communication on spot, can raise awareness about the mechanism and how it could be used, etc.

The good example of how currently NGOs support the work of the Compliance Committee could serve also as a model for the cooperation between the civil society and the Special Rapporteur in the coming years.

Thank you for the attention!