

Item 4 Access to Justice among Youth and Children

Statement by Remina Aleksieva, Youth and Environment Europe, at the 28th Working Group of the Parties to the Aarhus Convention

Dear all, I will speak on behalf of [Youth and Environment Europe \(YEE\)](#), the largest network of environmental youth organisations in Europe.

I will present the current challenges and potential remedies for ensuring effective access to justice for young people and children. This statement was also developed with input from the [Child Rights International Network \(CRIN\)](#).

The active exercise of access to justice, as safeguarded by the Aarhus Convention, is constantly showing to lead to more ambitious environmental and climate action. Of high relevance is the recent landmark ruling by the ECtHR on the [KlimaSeniorinnen case](#) (April 9, 2024), wherein the Court held Switzerland accountable for its failure to fulfil its positive obligations under the European Convention on Human Rights on climate action.

This is highly significant not only for being the first instance where the ECtHR found a State non-compliant with the ECHR due to climate inaction, but also for granting NGOs access to litigate climate change-related cases. This establishes a rigorous test for NGO standing in climate-related legal matters, which was adopted after a careful consideration of the importance of the Aarhus Convention and its implementation at national level.

In addition, the ECtHR's deliberations on the minimum conditions for States' actions carry substantial weight. These minimum conditions serve as the foundation upon which any future legal challenges in this domain will be built, ensuring accountability.

Within this momentum, youth environmental NGOs, young climate activists and children are becoming crucial stakeholders for raising awareness, advocating for enhanced access to justice and demanding more ambitious policies. Despite their key role however, many are the challenges they face.

Here we outline some common challenges faced by youth and children in accessing justice:

Legal Standing: The lack of independence and legal status that national legal systems commonly accord to children is a serious barrier to them accessing justice. In many countries children often cannot act before courts without their parents or legal representatives (e.g., Albania, Belgium, Cyprus, Denmark, Finland, France, Germany, Latvia, Liechtenstein, Luxembourg, Malta, Norway, Poland, Romania, Slovenia, Spain, Sweden, Switzerland).

The burden of proof: The burden of proof, including the need to establish causation, is another serious barrier to accountability. Article 9.3 currently leaves room for states to set criteria in national law determining which NGOs should have access to justice, preventing them from bringing certain cases to court. In Sweden, for example, there is a criterion saying that an ENGO must have existed for three years and have 100 members to have standing, which makes access to justice practically difficult for newly founded youth organisations.

Costs of litigation: Children and youth are very unlikely to be in a position to pay for legal advice or representation, yet they must be able to access and rely on justice systems to provide remedies for rights violations. Some countries, such as the United Kingdom, impose very high limits on liability for environmental cases, meaning the potential costs of litigation are prohibitively high.

Limitation periods: Strict time limits on when a case must be submitted can present a serious barrier to children accessing remedies (e.g., Belgium, Germany, Hungary, United Kingdom), particularly for children who may not be able to approach the courts until they have reached the age of majority.

Accessible mechanisms, including access to information: Despite the relevance of such information to the full exercise of their rights. In some cases, there are no specific provisions on children's right to access information or it rarely accounts for child-specific factors and is often beyond children's reach (e.g., France, Germany, Sweden).

With this, we want to urge States parties to the Aarhus Convention, the Secretariat and the international community to consider the following recommendations:

- To adopt rules of standing that enable youth and children to challenge any violation of their rights under the Convention on the Rights of the Child and the Aarhus Convention in the context of environmental harm and climate change.
- To reverse the burden of proof in environmental cases and interpret the law concerning the burden of proof in a way that promotes environmental protection. To better balance the rights of victims to access justice, parties can adopt the Special Rapporteur on toxics and human rights recommendations (e.g., A/HRC/42/41) on implementing a recalibration of the burden of proof toward those with greater access to information.
- To explicitly relax limitation periods in environmental proceedings, particularly where delay in bringing a case is not in fault of the victim, where the harm is particularly severe or where it may take time for harm suffered to become evident.
- To implement free legal aid, advice and representation for youth and children, as well as protective cost orders, which limit the financial risk to a person who brings a case in the public interest.
- To define more clearly the requisites of "not prohibitively expensive" (NPE; Article 9.4) for parties to the Convention, particularly in the context of providing access to children and youth. A good practice in this regard could be the set-up of specific schemes for legal aid where young people affected by environmental harm (directly or indirectly) can access legal representation or to put in place an effective high-cost protection mechanism.
- For parties to keep up with the dynamics of the climate emergency and create specific legal remedies available for the public, with a focus on children and youth.
- To ensure children can access all court complaints and mechanisms as applicable to the Convention. A good practice in this regard would be the [comparative legal analysis](#) by the Child Rights International Network (CRIN), which is currently conducting a project on children's environmental, political and civil rights, and their access to justice.
- To create age-appropriate information that accounts for child-specific factors, easily accessible to children, concerning climate change and environmental matters.
- To encourage the establishment of novel forms of remedy that address the specific damage caused in the context of environmental harm and climate change.