

# Collective Redress from an NGO Perspective

Twenty-eighth meeting of the Working Group of the Parties  
to the Aarhus Convention  
Geneva, July 2-4, 2024

Summer Kern (with Csaba Kiss)  
Justice and Environment

Funded by the European Union



# Important Background

## Right to a Healthy Environment

*For all (present and future). Last 5 decades key.*

- ▶ 1972 Stockholm Declaration...
- ▶ 1992 Rio Declaration (Principle 10)...
- ▶ 1998 Aarhus Convention (Art. 1)...
- ▶ 2021 UN HRC Resolution...
- ▶ 2022 UNGA Resolution...

### AIM OF THE CONVENTION

“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

*(Article 1 of the Aarhus Convention)*

Collective Right



Collective Remedy

# Further links to the Convention: Need for broad legal standing and proper remedies

- ▶ **Article 2(4)** defining “the public”
- ▶ **Article 2(5)** defining “the public concerned”
- ▶ **Article 9(2)** providing access to justice regarding decisions, acts and omissions subject to article 6
- ▶ **Article 9(3)** providing access to justice regarding acts and omissions by private persons and public authorities that may contravene law relating to the environment
- ▶ **Article 9(4)** regarding remedies, which must be inter alia adequate, effective, fair, equitable, and not prohibitively expensive



AARHUS CONVENTION  
for our environment

# Benefits of Collective Redress

- ▶ Standing: Some cases where individual standing for public interest claims in the collective interest so restrictive as to be ineligible
- ▶ Better Remedies (see Article 9(4) above)
- ▶ Procedural Economy
  - ▶ For justice system
  - ▶ For plaintiffs and defendants
  - ▶ For overloaded governmental bodies that lack resources to pursue each case
- ▶ Environmental law enforced
- ▶ Deterrence of unlawful practices
- ▶ Plaintiffs have better protection against retaliation, such as harassment, penalisation, or persecution, including SLAPPs (Article 3(8))

# Verein KlimaSeniorinnen and others v. Switzerland

- ▶ Standing of individuals denied (personally and seriously concerned criteria affirmed)
- ▶ But the association representing individuals did have standing – a break with previous jurisprudence
- ▶ Reasoning: Association action better reflects the collective nature of causes, effects and necessary mitigation measures
  - ▶ Again, there seems to be recognition that small, individual claims not as suitable in this context
  - ▶ Only those associations have standing that are legally recognized, are constitutionally aimed at climate protection, and legitimately represent members or other persons suffering from climate change
- ▶ Climate cases different than other environmental cases, requiring different approach
  - ▶ Application to pollution and biodiversity loss cases? (see Court's dicta)
- ▶ *Note: Court did not recognize a right to a healthy environment as such*



# Next steps and potential challenges

## Next steps

- ▶ Map out and test individual claims that are not eligible alone but are if bundled together
- ▶ Proper implementation of the Representative Actions Directive
- ▶ Implementation of the KlimaSeniorinnen ruling in CoE States
- ▶ Recognition of Right to a Healthy Environment, ideally through a Protocol to the ECHR

## Potential challenges

- ▶ Unduly restrictive standing criteria for qualified entities/associations
- ▶ Inadequate (non-deterrant) compensation
- ▶ Lacking injunctive relief
- ▶ Forum shopping due to differing State implementation

Finally, to remember:



Thank you!

[www.justiceandenvironment.org](http://www.justiceandenvironment.org)

Funded by the European Union

