



PEOPLE POWER FOR THE PLANET

How the Aarhus Convention enables **citizens' voices** to be heard

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European ECO Forum

Who we are: The European ECO Forum acts as an open, participatory framework facilitating participation of the environmentally concerned public in a number of pan-European intergovernmental processes, including those under the Aarhus Convention. Some years after the fall of the Berlin Wall this convention was drafted by governments and non-governmental organizations (NGOs) to enable the public to play a fuller role in tackling Europe's environmental problems. It was adopted on 25 June 1998 in the Danish city of Aarhus.

The European ECO Forum brings together an ad hoc coalition of more than 200 environmental citizens' organizations (ECOs) and other NGOs acting in the UN's Economic Commission for Europe region (UNECE). It is primarily focusing on the 'Environment for Europe' (EfE) Ministerial process and related processes such as UNECE multilateral environmental agreements.

The Public Participation Campaign (PPC) of the European ECO Forum aims at improving and implementing the Aarhus Convention throughout the pan-European region. It is coordinated by the European Environmental Bureau (EEB).

This guide was compiled for the EEB by Margherita Tolotto on the basis of contributions submitted by NGOs active in the European ECO Forum framework and further elaborated with the help of EEB staff Jeremy Wates, Nick Meynen and Martin Söderberg, Magda Toth Nagy, Senior Advisor, REC project team, and Tsvetelina Borissova Filipova, Senior Expert, Participatory Governance Topic Area Leader, REC.



Editors responsible: Mara Silina/Jeremy Wates. **Spanish translation:** Leticia Baselga. **Design:** www.onehemisphere.se (Sweden). Reproduction of all parts of this publication is authorised with acknowledgement of the source. This publication is available in English and Spanish. **Financially supported by:** Environmental Agency of Abu Dhabi (EAD). The sole responsibility for the content of this publication lies with the EEB. This publication reflects the authors' views and does not commit the donors.



“BUILDING BRIDGES BETWEEN REGIONS BY IMPROVING PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE”

This publication forms part of the project “Building Bridges between Regions by Improving Public Access to Environmental Information, Public Participation and Access to Justice”. The project provides a forum for the exchange of experience between parties and stakeholders to the UNECE Aarhus Convention, and other regions, primarily Latin America and the Caribbean (LAC), on implementing Principle 10 of the 1992 Rio Declaration on Environment and Development. It is aimed at increasing the capacity of governmental and civil society stakeholders at different levels as well as the judiciary and other actors (e.g. the media) on Principle 10 implementation in the UNECE region and in other regions by offering a forum for exchange

of experience, and developing and providing capacity building programmes and targeted trainings, drawing on experiences and good practices from successful countries and models (such as the Aarhus Convention and its Protocol on Pollutant Release and Transfer Registers (PRTRs) and other similar initiatives.

The project aims to contribute to regional efforts to implement the 2012 Declaration on the Application of Principle 10 of the Rio Declaration, put forward by LAC countries at the Rio+20 conference and supported by the Economic Commission for Latin America and the Caribbean (ECLAC) as technical secretariat, and the Bali Guidelines.

The project is implemented by the Regional Environmental Center (REC) and the European Environmental Bureau (EEB).

Financial support is provided by Environmental Agency of Abu Dhabi (EAD).



To learn more about the project, please check the following website:

www.building-bridges.rec.org

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INTRODUCTION

The aim of this publication is to share some positive examples of how the Aarhus Convention has helped the 'Parties' (the Member States and other entities which are legally bound by the Convention) in three areas: access to information, public participation and access to justice in environmental matters.

The booklet addresses each of these three areas: each of them shows some good practices regarding the effective implementation of the rights established by the three pillars of the Aarhus Convention.

The content of each case described reflects the opinion and the position of some environmental NGOs that are active in the framework of the European ECO Forum. A consultation process was organized specifically to collect some good practices related to implementing the Aarhus Convention principles. After having reviewed many contributions, the European ECO Forum elaborated this short overview so that positive results can be compared and the public can benefit from the wider experience of what has and can be achieved.

It is hoped that the booklet will be of particular relevance in Latin America and the Caribbean region, where governments and civil society organizations are presently facing important challenges in the creation of a regional instrument on the application of Principle 10 of the 1992 Rio Declaration on Environment and Development, which promotes access to information, public participation and access to justice in environmental matters. They, and others like them, could find inspiration, and maybe some suggestions, in this booklet, through the good results reached in the UNECE region thanks to the Aarhus Convention.



FOREWORD: How Aarhus makes a difference

“... THE CONVENTION HAS HAD A TRANSFORMATIVE EFFECT THROUGHOUT MUCH OF EUROPE AND CENTRAL ASIA”.


During the 1990s, a combination of pressure from civil society and the foresight of certain European governments led to the creation of a unique international instrument on environmental democracy: the Aarhus Convention.

A product of the ‘Environment for Europe’ process which brought the two halves of Europe together after the collapse of Communism, the Convention was built on the recognition that public involvement generally leads to better decision-making. Building on Principle 10 of the 1992 Rio Declaration on Environment and Development, it acknowledges that the public have rights – to information, to participation and to justice. All three aspects need to be respected and guaranteed.

Thanks to its legally binding nature and the level of detail and ambition in its provisions, the Convention has had a transformative effect throughout much of Europe and Central Asia. Even in countries with reasonably well established democratic traditions, it has provoked significant changes. The most

obvious example is the European Union which, being a Party to the Convention in its own right, had to introduce new directives on information and participation in order to be in line with the Convention.

This is not to say that the Convention is a perfect text – like most intergovernmental agreements, it is a pragmatic compromise reached between negotiating parties starting with widely divergent views – but it has made a real difference. And by changing the law, the Convention has started to change the practices and also the culture. However, changing something as fundamental as culture – effectively, challenging the deep-rooted tendency of institutions and those who work for them to hang onto power – does not happen overnight. Members of the public are frequently faced with governmental authorities who are reluctant to discuss with them or even recognize that they have any valid experiential, ethical, scientific or legal contribution to make. Implementation therefore remains a major challenge.



In this regard, the Convention itself has some useful structures. One of its innovative features is a participatory compliance mechanism, whereby any member of the public may submit a complaint to an independent compliance review body about any Party's compliance with the Convention. A decade of experience has shown this to be an effective means of bringing to light cases of non-compliance which almost certainly would not have been exposed without such a mechanism. The findings of the Compliance Committee combined with a growing body of jurisprudence at national and EU levels show on the one hand that there are problems with the implementation of the Convention, but on the other that there are means available to challenge those failings, and that they are being applied.

One may assume that most of the time, public authorities comply with the Convention's requirements and that it is quietly making a difference to the day-to-day practices of public authorities. The cases where one becomes aware that the Convention makes a difference

are those where a public authority initially fails to comply and is then brought into line by use of the available appeals mechanisms.

In this booklet, we present a few such cases to give a flavour of how the Convention has made a difference. Hopefully it will provide some inspiration for governments and NGOs in other regions, in particular those from the Latin American and Caribbean region, who are exploring the option of strengthening environmental democracy through a regional instrument.



Jeremy Wates

Secretary General of the European
Environmental Bureau
Former Secretary to the Aarhus Convention
(1999-2011)

**“..BY CHANGING THE LAW,
THE CONVENTION HAS
STARTED TO CHANGE
THE PRACTICES AND ALSO
THE CULTURE”.**



1

**THREE
PILLARS**
OF THE AARHUS
CONVENTION

Three Pillars of the Aarhus Convention

The Aarhus Convention was adopted by governments from the UNECE region¹ in the Danish city of Aarhus on 25 June 1998. As of December 2014, it had been ratified by 47 Parties including the EU which is a Party in its own right. The Convention guarantees important rights to the public.



It is composed of three pillars:

- The first one defines the right for the public to have access to environmental **information**;
- The second one establishes the right of the public to **participate** in decision-making procedures which may have a significant impact on the environment;
- The third one defines the rights of the public to have access to **justice** when and if the rights to information or participation mentioned above have not been guaranteed, or when a national law related to the environment has not been respected.

The right to have **access to information**

The Convention recognizes the right for the general public to have access to environmental information held by public authorities without an interest having to be stated. Information requested should be made available to the public as soon as possible and in any case within one month (two months for some defined exceptions). The Convention also clarifies the cases in which a request for access to information may be refused, e.g. to protect the confidentiality of the proceedings of public authorities, public security, the confidentiality of commercial or industrial information which is not related to the emissions, intellectual property rights, personal data and the interests of a third party supplying information, among others, where disclosure would adversely affect those interests. However, these and other exemptions are to be interpreted in a restrictive manner, taking into account the public interest served by disclosure. Public authorities may charge for information but not more than a

¹ The UNECE region covers all the countries of Europe and Central Asia as well as the United States, Canada and Israel.

‘reasonable amount’. The reasons for any refusal of information must be given, and the refusal must be provided in writing if requested.

Apart from setting some rules about the handling of information requests, the information pillar also requires public authorities to collect environmental information, manage it in a transparent and accessible way and publicly disseminate it. One particularly significant development in this regard was the adoption in Kiev in 2003 of a Protocol on Pollutant Release and Transfer Registers (PRTRs). The PRTR Protocol requires its Parties to establish publicly accessible online registers containing information on the emissions and transfers of a wide range of pollutants from a similarly wide range of potentially polluting types of activity, based on mandatory annual reporting by the companies responsible.

The right to participate in the decision-making process

The right to participate in the decision-making under the Convention is provided for in three different kinds of decision-making processes:

- Decision-making processes on specific activities or projects that potentially have a significant effect on the environment are addressed under Article 6;²
- Decision-making processes to develop plans, programmes and policies related to the environment are addressed under Article 7; and
- Decision-making processes through which the public administration will elaborate laws and regulations are addressed under Article 8.

The most specific obligations established by the Convention apply with respect to project-level decision-making processes. These include timely, adequate and effective notification of the public concerned, reasonable timeframes for participation, the right for the public concerned to have access free of charge to information relevant to the decision-making and to submit whatever comments it wishes, and the obligation on the public authority to take the public comments into account and to issue a reasoned decision. These requirements apply to a lesser extent in relation to the more strategic levels of decision-making.

² A separate procedure for public participation in decision-making on GMO-related procedures has been introduced under a new article 6 bis and annex I bis through an amendment to the Convention but this has not yet entered force.



The right of access to justice

This pillar was put in place to enforce the rights established by the two other pillars together with relevant environmental provisions established at national level. It is extremely important to ensure a prompt implementation of the environmental law.

The access to justice pillar can be seen as the last step in ensuring the accountability of public authorities to the public. It aims to provide the public with assured grounds for final recourse to justice with a view to ensuring the correct implementation of the environmental law. Public authorities also have the possibility of enlisting the support of the public in that task.

Specifically, the Convention obliges Parties to provide the public or public concerned with access to review procedures in relation to information requests which have not been handled correctly and in relation to project-level decision-making in which public participation is provided for. In addition, the Convention recognizes the public's right of access to administrative or judicial procedures where any alleged violations of environmental law can be challenged. All of these procedures have to be fair, equitable, timely and not prohibitively expensive, and to provide adequate and effective remedies. Parties should also consider the establishment of appropriate assistance mechanisms, to remove or reduce financial and other barriers to access to justice.

Applying the three pillars

In the following three chapters, we provide examples of how these three pillars have made a difference. Where public authorities act in accordance with the Convention, which we can assume happens much of the time, there is often no proof that they are doing so as a result of the existence of the Convention. Therefore, the most cases described here generally involve an initial failure by public authorities to act in accordance with the Convention, followed by a challenge to that failure which invokes the provisions of the Convention or its implementing legislation. Such challenges may take the form of administrative or judicial appeals at domestic level; or they may take the form of communications to the Compliance Committee, which is described in Chapter 5.



2

ACCESS TO
INFORMATION

Moldova: Implementing a Programme for Change

Eco-TIRAS, a Moldovan NGO, in 2008 initiated a case against the governmental agency for forestry citing its unwillingness to provide information about public forest rent contracts.

At the same time Eco-TIRAS sent a communication to the Aarhus Convention Compliance Committee which led to a finding of non-compliance. This in turn resulted in a set of recommendations approved by the fourth session of the Meeting of the Parties (MOP-4) in 2011. These recommendations provoked the development and the adoption of a National Action Plan to implement the Aarhus Convention in the Republic of Moldova. It was approved by the Government. The plan includes many legislative, institutional and other initiatives which have already been partly realized.

The action has highlighted some of the difficulties. From one point of view, it is possible to say that it has not changed much of substance after the MOP-4 decision. For example, Moldova still has no clear system of collection, storage and access to environmental data. Registers of environmental data have not

been established yet. A clearer future pathway is apparent. This issue could be solved by the adoption of the Law on public access on environmental information which was proposed by NGOs. Then there is the question of cost barriers. A major part of the environmental information held by the public authorities remains available only after the payment of a substantial amount of money, often beyond the capacity of the public. Monitoring of the development of the situation should be one of the Aarhus Convention Compliance Committee priorities.

The Aarhus Convention Compliance Committee can now establish stronger links with communicants. It can examine these elements in order to evaluate the effectiveness of the measures undertaken by the Parties. This will help ensure future action for the correct implementation of the Aarhus Convention.

For more information please visit:

www.unece.org/env/pp/compliance/ComplianceCommittee/30TableMoldova.html and

www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fourth-meeting-of-the-parties-2011/the-republic-of-moldova-decision-iv9d.html

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Greece: The Long Road to Information / From Oil Spills to Information Spills

The Long Road to Information

The study on a road junction in Chalkidiki: that is all a Greek citizen wanted to see. Little did he know how long the road to the road study would become. He first asked the Directorate of Public Works of the Central Macedonia Region of Greece, using the standard procedure. Despite ample reminders, no reply was forthcoming. A public prosecutor's request also met with a refusal to cooperate. Then the Ombudsman investigated the case, citing the Aarhus Convention provisions and the related Joint Administration Decisions (incorporating Aarhus principles into the Greek legal system) as well as those of the Greek Administrative Procedure Code (which also provides deadlines and procedure for access to documents). A long period of correspondence followed between the Ombudsman and the administration responsible. After the threat of disciplinary action against some of the civil servants, the administration finally provided all related documents.

From Oil Spills to Information Spills

The Greek Ombudsman also investigated another information blockage. This involved the information denial by the Petroleum Installations Directorate of the former Ministry of Development (now under the Ministry of Environment) to provide data it received from 'Hellenic Petroleum SA'. This company submitted the data to the public authority to get permission to upgrade its premises at the Eleusis area, close to Athens. The information requested had already been taken into account for the upgrade approval and was expressly mentioned in the text of the ministerial decision adopting the approval. The administration refused to give this information, asking the interested parties to specify their interest.

However, existing legislation (Directive 2003/4/EC, N. 3422/2005, JMD 11764/653/2006³) recognizes that citizens have the right to environmental information without invoking any special interest, reflecting the equivalent provision of the Aarhus Convention.

The Greek Ombudsman insisted that the requested information could not be classified as an industrial secret. This was an argument which had been put forward by the administration in its effort to justify its refusal to provide the requested documentation. However, the Ministry of Environment accepted the Ombudsman's opinion and provided all requested documents.

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³ Joint Ministerial Decision on Access to Information incorporating Aarhus principles.

Tajikistan: No Mercy for Mercury

Tajikistan is facing a major problem of mercury pollution caused by mining companies and industrial processes. This is exacerbated by the lack of a strategy for the management and the disposal of mercury-containing medical, electronic and other types of waste. Lack of qualified management and control has resulted in mercury pollution penetrating the soil in many places.

The project 'Enhancing the environmental policy of Tajikistan by reducing mercury pollution and protection of human health', conducted by Foundation to Support Civil Initiatives (Dastgirie Center), furthers two Aarhus Convention goals: enabling access to information and participation of NGOs in decision-making processes.

Project activities included: assessment of mercury emission sources based on expert data; measuring the impact of mercury emissions on the environment and health of the local population (using laboratory tests, official health statistics and surveys of the local population; conducting investigations and

opening collection points for used energy-saving lamps in every district of Dushanbe; developing and implementing measures to reduce the risk of mercury contamination in medical practice; raising awareness on the risk of contamination by mercury waste; creating a working group to develop policy recommendations to reduce mercury pollution; organizing a conference "Strengthening environmental policy by reducing mercury pollution to increase human health in Tajikistan"; developing a needs assessment and subsequent recommendations.

Several of these activities relied on use of the Aarhus Convention rights. The results of the project and the conference were shown on the first public television channel 'Shabakai Yakum' (evening newscast from 28.06.2013) and the newspaper 'Daydzhess-press' (20.06.2013). Activities on mercury waste management were covered in national newspapers: 'Evening Dushanbe' (29.01.2013) 'Bulbs can be exchanged', 'Asia-Plus' (No. 14, 18.02., 2013), 'Energy-saving lamps: what magnitude of the threat?'

The participants at the conference passed a resolution that has now been presented to the public authorities, the parliament, the Academy of Sciences and international environmental NGOs. The participants also recognized the importance of developing technology to properly manage and dispose mercury waste. This project stimulates the political will of Tajikistan to sign a new global agreement on mercury (Minamata Convention).

These are positive results achieved so far thanks to the Aarhus Convention and the citizens' rights that it recognizes.

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Kazakhstan: Talking Toxic Truths

From 2003 to 2014, the Analytical Environmental Agency 'Greenwomen' collaborated with international and national organizations to conduct a series of activities on chemicals. They raised awareness in different target groups to promote the objectives of 2020 'A Future without chemicals!' This work entailed:

- developing and distributing five educational modules on Chemical Safety (harmful effects of asbestos on human health, the implementation of Strategic Approach to International Chemicals Management (SAICM), the promotion of the PRTR Protocol in Kazakhstan, chemical conventions, etc.);
- conducting webinars on toxic substances,

- a pilot PRTR in Kazakhstan together with the European ECO Forum and the Ministry of Environmental Protection of Kazakhstan. This work involved not only different CSOs and relevant experts but also governmental officials and representatives from different industries in the Eastern part of Kazakhstan.

Preparation of the pilot PRTR enabled us to work more closely with industrial facilities and make them aware of the need to provide information about emissions to citizens in a clear and transparent manner.

These activities were based on the Aarhus Convention to which the Republic of Kazakhstan is a Party since January 2001.

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Spain: Fighting Fishy 'Facts'

Protecting the oceans and the seas requires having access to environmental information. In its work, Oceana Europe requires, in particular, fisheries information. Spanish administrations, however, tend not to provide access to fisheries information, claiming that it is not environmental information. This often makes it necessary to fight for it in the Courts.

The first case brought by Oceana Europe before the Spanish National Court, against the Ministry of Rural and Marine Affairs, was on allowing access to the list of Spanish vessels having special permits to land fin sharks on board, and access to the scientific report prepared by the Spanish Institute of Oceanography on the content of heavy metals (mainly mercury in fish and fisheries products). The State lawyer contended that the scientific report was confidential, and that the list was exempt from the Aarhus Convention as it was obliged to protect personal data. However, the State did not apply the information exclusions in a restrictive way, nor did they weigh the general public interests served by disclosure,

as provided by the Aarhus Convention. In addition, Oceana only requested the name of vessels, which is not regarded as personal data. In its ruling, the Spanish National Court recognized the right of Oceana to have access to the information requested. It ordered the defendant to provide that information.

A second case was brought on access to data regarding three fishing vessels presumed to practise Illegal, Unregulated and Unreported (IUU) Fishing. The request was sent to the Secretary for Agriculture, Farming, Fisheries and the Environment from the Canary Island. That request received no answer. So a case was brought before the Canary Island Supreme Court. Although the Lawyer representing Canary Island alleged that the requested information was not environmental information, the Supreme Court ruled that there was no doubt that the fisheries information requested was environmental information, obliging the defendant to provide Oceana with that information.

Despite the difficulties, thanks to the Aarhus Convention, Oceana has access to environmental justice and to the environmental information necessary to carry out its work in favour of the oceans and the seas.

For more information please visit:

http://elpais.com/diario/2011/07/01/sociedad/1309471203_850215.html

<http://oceana.org/es/eu/prensa-e-informes/comunicados-de-prensa/el-ministerio-niega-a-oceana-datos-publicos-de-contaminacion-de-pescado-por-mercurio->

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PUBLIC

PARTICIPATION

Hungary: A Backstop Ensures Future Progress

The compliance mechanism of the Aarhus Convention, together with its high prestige and peer review system, forms a strong tool in the hands of environmental civil society in Hungary opposing the Government's plans to limit participatory rights in Hungary.

The case described here was one of the first to come before the Aarhus Convention Compliance Committee. In 2003, the Hungarian legislator enacted a law that declared all highway construction a public interest but made changes to the ancillary procedures for permits, lowering the level of public participation.

When a Hungarian NGO (Clean Air Action Group) filed a communication on the matter to the Compliance Committee, the Committee responded: 'while the contested new Hungarian legislation (...) reduces the opportunities for public participation in decision-making (...) as well as the opportunities for access to justice (...), it does not, prima facie, fall below the minimum level of public participation and access to justice required by the Convention'. Consequently, the

Committee did not deem Hungary to be non-compliant. Nevertheless, it urged 'Parties to refrain from taking any measures which would reduce existing rights of access to information, public participation in decision-making and access to justice in environmental matters, even if such measures would not necessarily involve any breach of the Convention'.

This expression of the non-regression principle in the case law of the Compliance Committee has helped in a number of instances in Hungary. Later, after the foregoing recommendation, both the European Commission and the Court of Justice of the EU (the latter in a number of recently published judgments) confirmed that there is public interest in disclosure, participation and justice in environmental matters. Reference to these interpretations, combined with the possibility of bringing an issue by the civil society before a UN or EU decision-making body, has been a powerful tool since 2010 to deter the government from making legislative proposals that would further limit participatory rights.

While it has been successful so far, it is also expected that the Aarhus Convention will continue to have such an impact in the future.

For more information please visit:

www.unece.org/env/pp/compliance/Compliancecommittee/04TableHungary.html

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Moldova: All's Well with the Local Well

When the renovation of a 100-year-old public well at the entrance of the municipality of Gelesht (Moldova) took place, about three thousand local citizens came together to prove that they are not indifferent to what is happening around them.

The organisation **TERRA-1530**, together with the local public administration and other stakeholders, prepared and approved a Local Action Plan for Nature Conservation at a meeting of the local Council of the Gelesht municipality in 1999. It included proposals to maintain the structure of the well.

This was the result of the implementation of article 7 of the Aarhus Convention, which ensures 'public participation concerning plans, programmes and policies relating to the environment', guaranteeing an opportunity for all to participate. This experience showed that the public can play a positive role in the approval as well as the implementation of plans.

The well was in very poor condition due to the low number of local residents and a lack of funds from the local administration. This started to change with the help of the local environmental organizations. At the request of the Public Administration, NGOs drafted and submitted a small project proposal to the Environmental Fund of the Ministry of Nature Protection. In parallel, an initiative group of the most respected people of Gelesht was established to collect funds and prepare lists of volunteers to help with the renovation of the well. Once the Environmental Fund had been allocated about 3000 Euros, the renovation could begin. When more finances became necessary, regular citizens once again stepped in to help. Because the well was close to a road, many travellers stopped to make a contribution to the ongoing work.



With all these efforts, the well can again be used and local citizens can take pride in it. This action also became the first step in the development of the Local Action Plan for the Conservation of Nature. Moreover, the collaboration of the local public administration, non-governmental organizations, business organizations, high schools and many other stakeholders, was recognised in the national contest 'Best practices in municipalities of the Republic of Moldova', organised with the financial support of the European Commission.

For more information please visit:

<https://plus.google.com/photos/110680175450376016747/albums/5725269049685602721>

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ACCESS TO
JUSTICE

Belarus: Stopping Illegal Building with Aarhus Arguments

In August 2004, a group of Minsk citizens challenged a decision made by the Minsk Executive Committee: contracting the construction company “Aresa-Service” to design a group of houses on the territory of Sevastopolsky Park.

The complaint made by the citizens indicated that the decision of the Executive Committee was made in violation of the environmental protection regulations, in particular of Article 43 of the law ‘On Environmental Protection’. In accordance with this provision, economic and other activities located in rural areas should take into account environmental protection requirements and sanitary, fire, and construction regulations. These provisions had, in this case, not been respected. Furthermore, the land plot granted to the “Aresa-Service” was located in a landscape/recreational area. In accordance with the Building Code of Belarus, construction is forbidden on areas identified in the town-planning documentation as devoted to and guaranteeing the development of landscape/recreational zones. In addition to this, a section of the land granted for construction was a part of the water protection zone of the Slepjanka water system.

The Transitional Regulation on water protection zones and riverbanks of water bodies and rivers in Minsk stipulates that the water protection zone area can be only used for community health care and recreation, establishing parks, field parks, hydro-environmental purposes, and recreational sports facilities.

The complaint emphasized that specified decisions violated the legislation, and the Executive Committee had affected the public right to a healthy environment. The court refused to open an investigation, claiming that this complaint was not subject to review in court. Subsequently, this decision was appealed by the public to a superior court, which also refused to consider the case.

This dispute was the first example of citizens of Belarus appealing to the court and referring to the Aarhus Convention in their complaint. It is clear that the refusal to start proceedings on this complaint is in non-compliance with the provisions of Art. 9 paragraph 3 of the Aarhus Convention. This guarantees the public’s right of access to justice in order to ensure the respect of environmental laws.

As a result of the citizens’ actions and a number of appeals to government bodies, the Prosecutor General’s Office sent a recommendation to the Executive Committee in February 2005. It aimed to end the violations of the environmental protection law on the territory of Sevastopolsky Park in Minsk. The relevant decisions of the Executive Committee were overturned. The construction on the territory of the park was stopped. The reference made by the citizens to the Aarhus Convention in their appeal was a big step forward in the implementation process of this fundamental international agreement.

For more information please visit:

S.A.Balashenko, E.V.Laevskaya. Judicial protection of the right to a healthy environment: problems of theory and practice// Sudovy vestnik. 2006. No.4. P. 34-37.

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Germany: Bear Fight Brings Better Access to Justice

In 2006, the German federal government announced that the ratification of the Aarhus Convention was complete in Germany, apparently in the belief that its legal system was in line with the requirements of the Convention. This view however become no longer tenable, particularly after the brown bear entered on the scene. The 8 March 2011 judgment of the European Court of Justice in the Slovak Brown Bear case (see below) and subsequent court decisions in Germany changed this perspective.

The federal government came to this new realization, and is currently working on new legislation to improve access to justice in environmental matters. Regarding the other two pillars of the Aarhus Convention – access to information and public participation – there have also been clear improvements since 2010. Thus in 2013, the Bundestag passed a law to improve public participation.⁴ Access to information has also been the subject of many detailed improvements. Most striking, however, are the positive changes in access to justice.

Until recently, under German law only those who claimed that their own rights had been infringed had standing to bring a legal action (Code of Administrative Court Procedure §42). The establishment of environmental law representative actions remedied this for the 236 currently recognized environmental organizations in Germany. However they have to conform to certain exhaustively listed administrative procedures. For the most part, these are procedures that have to be undertaken during Environmental Impact Assessments or the preceding public participation process. In other situations, third parties and recognized environmental organizations have not been able to go to court to challenge violations of environmental law.

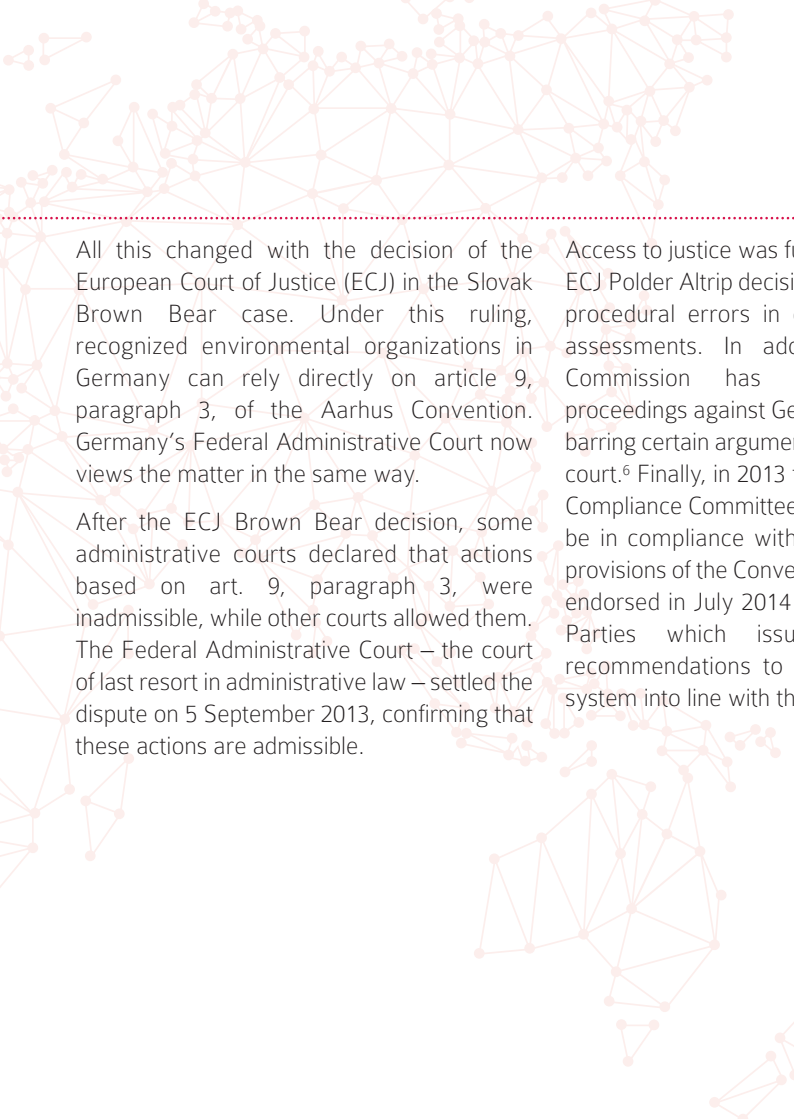
⁴ Law passed 31.05.2013 – Bundesgesetzblatt Teil I 2013 Nr. 26 06.06.2013 S. 1388.

⁵ ECJ, judgment dated 07.11.2013, Case C-72/12.

⁶ Infringement Proceedings no. 2007/4267

⁷ www.unece.org/env/pp/compliance/Compliancecommittee/31TableGermany.html

⁸ www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/cece_mp_pp_2014_2_add.1_eng.pdf page 66



All this changed with the decision of the European Court of Justice (ECJ) in the Slovak Brown Bear case. Under this ruling, recognized environmental organizations in Germany can rely directly on article 9, paragraph 3, of the Aarhus Convention. Germany's Federal Administrative Court now views the matter in the same way.

After the ECJ Brown Bear decision, some administrative courts declared that actions based on art. 9, paragraph 3, were inadmissible, while other courts allowed them. The Federal Administrative Court – the court of last resort in administrative law – settled the dispute on 5 September 2013, confirming that these actions are admissible.

Access to justice was further improved by the ECJ Polder Altrip decision⁵ on the relevance of procedural errors in environmental impact assessments. In addition, the European Commission has begun infringement proceedings against Germany over provisions barring certain arguments from being raised in court.⁶ Finally, in 2013 the Aarhus Convention Compliance Committee found Germany not to be in compliance with the access to justice provisions of the Convention.⁷ This finding was endorsed in July 2014 by the Meeting of the Parties which issued a number of recommendations to Germany to bring its system into line with the Convention.⁸

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THE COMPLIANCE **COMMITTEE**

The Compliance Committee

The Compliance Committee was established in 2002 at MoP-1 through Decision I/7. It is composed of nine members 'of high moral character and recognized competence in the fields to which the Convention relates' serving in a personal capacity. Thus it is an independent organism. One of its main functions is to conduct a review procedure when a potential violation of the Convention is brought to its attention through a communication from the public. Any member of the public, including an NGO, may submit such a communication to the Committee (thereafter being referred to as the 'communicant' in the context of the case).

The first step for the Committee in the consideration of a communication is to determine whether it is 'admissible', which involves deciding whether it meets the formal requirements of a communication (e.g. that it is not irrelevant to the Convention, and is not anonymous or manifestly unreasonable). Thereafter, if deemed admissible, the Committee will proceed to an examination of the substantive merits of the communication, gathering all the facts and argumentation in a three-cornered discussion involving the communicant and the Party concerned. This generally involves a physical hearing during a meeting of the Committee in which both the communicant and the Party concerned can present their views. In such hearings, NGO experts from the European ECO Forum often assist the communicant in the presentation and the explanation of the facts

The Committee then draws up its findings and, where appropriate, recommendations, consults over them with the communicant and the Party concerned and then finalizes them.

The nature of non-compliance can have different origins:

- a general failure, by a Party, to take the necessary legislative, regulatory or other measures to implement the Convention;
- failure of the legislation, regulations, other measures or jurisprudence to meet specific Convention requirements;
- specific events, acts, omissions or situations demonstrating a failure by public authorities or courts to comply with or enforce the Convention.

At the end of the procedure in front of the Compliance Committee, if the Party is found in non-compliance, 'Recommendations' will usually be published. Whereas the findings explain the opinion of the Committee with respect to the meaning of the Convention's provisions, the recommendations suggest steps to be taken by the Party in order to ensure full compliance with those provisions.

Recommendations from the Committee may be made directly to the Party concerned, with its agreement. Otherwise, the findings and recommendations are submitted to the MoP for consideration at its three-yearly meetings. To date, the MoP has always endorsed the findings of the Committee and has made recommendations to Parties found to be in non-compliance.

The number of Parties found in non-compliance is growing, particularly in relation to cases which involve:

- transboundary public participation processes,
- private actors with public functions and responsibilities, and
- public participation in relation to informal procedures for decision-making.

The Compliance Committee meetings are open except when the Committee is preparing its findings in respect of compliance by specific Parties. Requests can be made to the Secretariat to be admitted as an Observer.

**"ANY MEMBER OF THE
PUBLIC, INCLUDING AN
NGO, MAY SUBMIT [..]
A COMMUNICATION
TO THE COMMITTEE."**



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LEARNING

FROM THE
AARHUS
EXPERIENCE

Learning from the Aarhus experience

The Aarhus Convention was adopted and signed in 1998. The experience gained in the years since then by UNECE countries can be useful in different ways. In particular, it can be useful in order to highlight the weak points of the Convention's text. Since Parties to the Aarhus Convention are not constrained from establishing stronger provisions enabling access to information, public participation and access to justice at domestic level, they can use this experience to remedy these weaknesses developing their national legislation. Similarly, governments engaged in developing other regional instruments as in the LAC region may also benefit by learning not only from what works well under Aarhus but also from areas where there is room for improvement. This chapter gives a few suggestions.

Regarding public participation in the environmental decision-making process, for decision-making on types of activities falling within Annex I of the Convention, a fairly well defined set of public participation requirements set out in Article 6 apply. However, for activities

that are not listed in Annex I or are listed but fall below the relevant size thresholds, the Convention is rather weak and ambiguous, leaving too much discretion to the Party concerned (see article 6.1 b). As Annex I does not provide a comprehensive list of all environmentally significant activities and as some of the thresholds given for those activities that are listed are very high, there can be some environmentally significant activities for which the Convention provides only a limited guarantee of public participation possibilities.

Second, the Convention provides that it is only the procedures opened by a 'public authority' that are the ones for which the participation of the public is guaranteed. There is a problem in terms of effectiveness if we consider that many times decisions which have an impact on the environment are taken by institutions acting in a judicial or legislative capacity. These are excluded from the definition of public authorities. It is true that the national parliament plays its role in defining such decisions, but a wider public could bring extensive benefits to

the outcome of these procedures. Representative democracy should not be seen as a substitute for participatory democracy; rather the two can complement each other.

A third weakness of the Convention is that the possibilities for the public to challenge violations of national law related to the environment (article 9, paragraph 3) are limited, in two ways: first, the Convention gives excessive (albeit not unlimited) discretion to the Party to determine who will have 'standing', and second, the Convention only requires that administrative *or* judicial procedures should be available to those having standing, not both.

Finally, in terms of autonomy and the long term view, it is important to ensure at UNECE level a financial scheme based on mandatory contributions by Parties. This would help to establish and implement a long term plan to develop the Aarhus Convention. To date, the Convention has relied upon a voluntary scheme of contributions.



WHAT DO
STAKEHOLDERS
SAY ABOUT
THE AARHUS
CONVENTION?

What do Stakeholders **say** about the Aarhus Convention?

Jonas Ebbesson, Chair of the Aarhus Convention Compliance Committee:

‘The involvement of governments and civil society and non-governmental organizations has been fundamental for the development of the Convention. It was clear during the negotiations. It has been clear during all the meetings of the parties and also in the work of the Compliance Committee. The Compliance Committee would not have had this trust, this development and this jurisprudence if it hadn’t been for the NGOs. They insist on keeping an eye on the Committee. They insist on critically reviewing what we in the Compliance Committee are doing. And they are also providing very constructive information and ideas on how to make the Convention better and more vital.’

Dr. Florian Wild, Head of Division, Federal Office for the Environment, Switzerland:

‘I am very glad that Switzerland is now a full member of the Aarhus Convention. The instruments of the Convention to guarantee access to information, public participation and access to justice are very important for environmental democracy. In the future it will be very important that the principles of the Convention are taken over by other regions in all the world. That would be good for its environment and population.’

Andriy Andrushevych, Resource & Analysis Centre “Society and Environment”, Ukraine:

‘I am very happy to see that the 5th meeting of the Parties to the Aarhus Convention is endorsing all the Compliance decisions in relation to a number of specific cases. One of the countries found in non-compliance is Ukraine, my country. The meeting of the parties is sending a strong message to Ukraine. This is right time to do something to make sure that Ukraine brings itself back into compliance with the Convention.’

“

Professor Noriko Okubo, Osaka University in Japan:

‘We are working in order to implement principle 10 of the 1992 Rio Declaration in Japan and Asian Countries in general.’

Barbara Ruis, UNEP Legal Officer:

‘We are very excited to see that in other regions of the world there is such an interest in principle 10.’

Carole Excell, World Resource Institute, USA:

‘I am here at MoP-5 to support the Latin American and Caribbean partners; to talk about the Principle 10 Declaration for the LAC region. We would like the European Parties of the Aarhus Convention to support the process, both with financial and technical assistance and exchanges. The Aarhus Convention is really a model for the region, and we are really excited to learn more. We brought partners here from Jamaica, Ecuador, Chile and Costa Rica to talk about the process. We hope that there will be support and enthusiasm for another region of the world to learn about environmental democracy and how to implement it. Then we will really have changes on the ground.’

Daniel Barragan, Ecuadorian Center for Environmental Law and Danielle Andrade, Jamaica Environment Trust:

‘We want to embrace what is the best of Aarhus; an approach that supports the engagement of civil society with their governments; technical work of working group on critical issues; capacity building of civil society and government institutions. It is critical that we learn from each other if we believe environmental democracy is essential for promoting sustainable development, democracy and a healthy environment around the world.’

Carlos de Miguel, Chief, Unit of Policies for Sustainable Development, UN ECLAC on behalf of Alicia Bárcena, Executive Secretary of UNECLAC:

‘We are at a crucial moment. The Governments of the Latin American and Caribbean region are to agree in November of this year on the nature and contents of a regional instrument on Principle 10 – some of them have already publicly expressed their will of adopting a legally binding agreement while others are conducting national consultations. The cooperation and exchange of information with our sister regional commission, the United Nations Economic Commission for Europe, and the signatory countries of the Aarhus Convention, would be paramount and greatly appreciated. This is the right moment to get involved in this regional process, in line with the Almaty Guidelines, and help maintain the current impulse and the political will strong.’



**Ms. Mariamalia JIMÉNEZ COTO,
Desk Officer for Environment and
Sustainable Development, General
Direction of Foreign Policy, Ministry
of Foreign Affairs and Worship,
Costa Rica:**

‘It has been a great opportunity to participate on this Meeting of Parties and learn more from the Aarhus Convention. This experience will truly enrich our own process in Latin America and the Caribbean.’

**Ms. Constance NALEGACH, Chilean
Focal Point of the Principle 10 LAC
Declaration, Ministry of Environment:**

‘This is the first time Chile launches a process for an environmental instrument, and we do it under the firm conviction that greater inclusion, equity and regional integration are possible. As Chairs of this process, we hope to conclude an ambitious regional instrument. We must retain the momentum and the political commitment gained so far. Your contributions [as Aarhus Convention Parties] are therefore invaluable.’

**Vera Barrantes from the United
Nations Institute for Training
and Research (UNITAR):**

‘If you work together,
you will be able to go further.’



GLOSSARY and useful links

The Aarhus Convention – UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

“Party” – a Contracting Party to this Convention, unless otherwise indicated in the text (these are States but also regional economic integration organization, like the EU)

“Public authority” – government bodies and persons or bodies performing government functions in relation to the environment at national, regional and other levels; any other natural or legal persons having public responsibilities or functions or providing services in relation to the environment; institutions of any regional economic integration organization (such as EU)

“Environmental information” – any information in written, visual, aural, electronic or any other material form on the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its


components, including genetically modified organisms, and interaction between these elements; factors, such as substance, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the environment and cost-benefit and other economic analyses and assumptions used in the environmental decision-making; the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of environment

“The public” – one or more natural or legal persons or their associations, organizations or groups

“The public concerned” – the public affected or likely to be affected by, or having an interest in, the environmental decision-making; non-governmental organizations promoting environmental protection and meeting requirements under national law shall be deemed to have an interest

Link to human rights – preamble of the Convention recognises that the adequate protection of environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself. The Convention also recognises that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations

Promotion of sustainable and environmentally sound development – the Parties to the Convention affirm the need to protect, preserve and improve the state of the environment and to ensure sustainable and environmentally sound development



Three “pillars” – three parts of the Convention, namely access to information, public participation and access to justice in environmental matters

Convention is the floor not the ceiling – Parties may introduce measures for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by the Convention. The Convention also makes it clear that existing rights and protection that go beyond those of the Convention may be preserved

Some abbreviations used in the publication:

UNECE – United Nations Economic Commission for Europe

UNEP – United Nations Environment Programme

UNDESA – United Nations Department for Economic and Social Affairs

UN ECLAC – United Nations Economic Commission for Latin America and Caribbean

PRTR – Pollutant Release and Transfer Register

MOP – Meeting of Parties

MOPP – Meeting of Parties to the Protocol (on PRTRs)

ACCC – Aarhus Convention Compliance Committee

OECD – Organisation for Economic Cooperation and Development

EU – European Union

ECJ – European Court of Justice

GMO – Genetically modified organism

NGO – Non-governmental organisation

CSO – Civil society organisation

REC – the Regional Environmental Center

EEB – the European Environmental Bureau



Some useful links:

Aarhus Convention Secretariat, United Nations Economic Commission for Europe (UNECE)

www.unece.org/env/pp/welcome.html and
www.unece.org/env/pp/prtr.html

United Nations Environment Programme (UNEP) www.unep.org

United Nations Institute for Training and Research (UNITAR) www.unitar.org

UN ECLAC:

www.cepal.org/rio20/principio10/default.asp?idioma=IN

The EU and the Aarhus Convention:

<http://ec.europa.eu/environment/aarhus/index.htm>

European PRTR: <http://prtr.ec.europa.eu/>

European Court of Justice:

<http://curia.europa.eu/>

OECD on PRTRs:

www.oecd.org/chemicalsafety/pollutant-release-transfer-register/

The Aarhus Convention Clearinghouse:

<http://aarhusclearinghouse.unece.org/>

National Implementation reports:

<http://apps.unece.org/ehlm/pp/NIR/qwery.asp?LngIDg=EN>

The Regional Environmental Center (REC), Participatory Governance Topic Area:

<http://rec.org/topicarea.php?id=13> and

Building Bridges between Regions project site: www.building-bridges.rec.org/

The European Environmental Bureau:

www.eeb.org/index.cfm/activities/governance-tools/aarhus/

Compliance Committee Case Law by the

European ECO Forum: www.participate.org



European Environmental Bureau works to promote environmental issues on a European and global level and to represent the demands of European citizens.

The EEB, set up in 1974, is Europe's largest coalition of grassroots environmental organisations, bringing together over 140 member organizations from more than 30 countries with a combined individual membership of 15 million environmentally concerned citizens. It provides expert insight into a large span and depth of environmental issues. These range from biodiversity to resource use, waste, nanotechnology, chemicals, ecolabel, and climate change and many others.

Our members meet regularly in working groups which focus on crucial environmental issues. We then work to promote their demands at European and global level. Our policy officers are in ongoing dialogue with the European institutions (Commission, Parliament and Council) and relevant departments of the United Nations (UNDESA, UNEP) and OECD. They constantly strive to improve or protect environmental laws in Europe and beyond.

For several decades, the EEB has sought to strengthen procedures enabling the public to have access to environmental information, participate in environmental decision-making and have access to justice in environmental matters. In the mid-1990s, the EEB was the lead organisation providing civil society input into negotiations on Sofia Guidelines and continued to play this role when the Aarhus Convention negotiations got under way. Since then the EEB has led the pan-European NGO campaign on implementation and improvement of the Aarhus Convention.



REGIONAL ENVIRONMENTAL CENTER

Regional Environmental Center for Central and Eastern Europe (REC)

is an international organisation with a mission to assist in addressing environmental issues. The REC fulfils this mission by promoting cooperation among governments, non-governmental organisations, businesses and other environmental stakeholders, and by supporting the free exchange of information and public participation in environmental decision making.

The REC was established in 1990 by the United States, the European Commission and Hungary. Today, the REC is legally based on a charter with over 30 signatories. The REC has an office network in 17 countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, the former Yugoslav Republic of Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia, Turkey. The head office is located in Szentendre, Hungary.

The REC actively participates in key global, regional and local processes and contributes to environmental and sustainability solutions within and beyond its country office network, transferring transitional knowledge and experience to countries and regions. The REC also supported the development, adoption and ratification of the UNECE Aarhus Convention and the PRTR Protocol and has contributed to its implementation in the EU, SEE, EECCA countries and in sharing the experiences in the Latin American and Caribbean as well as in other regions.

www.building-bridges.rec.org

“BUILDING BRIDGES BETWEEN REGIONS BY IMPROVING PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE”

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