

## REPORT

### **Aarhus Convention Task Force on Access to Justice**

Geneva/online, 27-28 April 2022



#### **General information**

The Aarhus Convention Task Force on Access to Justice was held in hybrid format in Geneva and via Zoom from 27 to 28 April 2022. There were various NGOs present, inter alia from Austria, Belgium, the Czech Republic, France, Hungary, Ireland, North Macedonia, and the UK. Information material and all relevant documents can be accessed via the [meeting webpage](#).

#### **Agenda**

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27 April 2022

## 1. Opening and adoption of the agenda

Mr. Luc Lavrysen, Chair of the Access to Justice (A2J) Task Force, opened the meeting welcoming all physical and online participants. He referred to the challenging times due to the military attack on Ukraine as one of the Parties to the Convention. He appealed to strongly condemn this intervention and expressed his regret that some colleagues were not able to attend the meeting due to the war.

Regarding the meeting agenda, he noted that the thematic sessions of Wednesday would focus on A2J related to spatial planning and in energy-related cases. A part of item 3 regarding stocktaking would focus on Decision VII/3.

The [agenda](#) was adopted.

## 2. Thematic focus

### a. Access to justice in cases related to spatial planning

**Nato Macharashvili**, Acting Head, Legal Support Division of the Georgian Ministry of Environmental Protection and Agriculture, presented online on access to justice in the field of spatial planning in Georgia. There are two different stages for review and approval (first for the concept and then for the plan). Cases of appeal are rare and litigation cases and court decisions often take a long time.

**Tina Janjatovic**, Senior Legal Adviser of the Serbian Ministry of Environmental Protection, presented online about A2J in cases related to spatial planning in the Republic of Serbia. Planning documents include urban and spatial plans. There is an early public insight procedure which lasts for 15 days. Every legal or natural person has the right to initiate a procedure for assessing the constitutionality of a planning document before the Constitutional Court and/or can file a complaint with the protector of citizens. As case examples, she mentioned a project at the river Jadar and the spatial plan of the municipality of Backa Palanka.

**Chloe Galea**, Senior Officer of Legal Affairs, Environment and Resources Authorities, Malta, presented in person about A2J in cases related to spatial planning in Malta. Cases can be brought to the Environment and Planning Review Tribunal (EPRT), to the Administrative Review Tribunal (ART), and to the civil court. She presented a specific case of the Sliema Local Council and regarding the central link project (regarding the planning of roads). Although a right to appeal was neglected, the EPRT suggested to introduce such a right. In the Moviment Graffiti case, the court of appeal decided that denying A2J for a lack of participation in the previous procedure is unlawful if a project is subject to EIA/IPPC assessment.

#### *Discussion:*

In a small country like Malta, there seem to be a lot of cases compared to the larger countries Georgia and Serbia. In Georgia, the legal interest seems to be the key factor, in Serbia the only way of A2J is via the constitutional court. In Malta, the tribunal makes it easier to bring cases, as the costs are much lower. Also, the possibility to appeal is clearly laid down in Maltese legislation. Courts in Malta generally rely on national legislation (and not the Aarhus Convention directly). The court of appeal

seems to broaden the right of appeal compared to the restrictive approach of the tribunal. As it is part of the judiciary and not to the legislator, a guidance document is, however, rather not possible. If a person has not participated in the previsions procedures, there are other instances to appeal in Malta.

**Faustino Gudín**, Judge and Professor at the University Alcala de Henares, presented in person on A2J in Spanish spatial-planning cases and the Spanish instruments for the protection of the environment. There are legal obstacles to the demolition of illegal works to restore the ecological balance disturbed. Environmental NGOs have a right to legal aid/free A2J, but it is up to the consideration of the committee. Also, there is a loophole regarding injunctive relief of NGOs, as they mostly cannot afford the payments. He addressed the case regarding the M4 highway through Madrid, where the project was sliced into 4 little parts and a small NGO appealed.

**Natasha Dokovska**, Journalists for Human Rights, presented in person on A2J in North Macedonia. Everyone who wants to initiate an EIA procedure should submit a notice of intent to the Ministry. In practise, however, this procedure is usually not followed. There are 350.000 requests for the legalization of illegally constructed buildings, 97% of these requests are without EIA. The tenant's council representatives exercise the right of A2J, but most often without success.

**Alison Hough**, European ECO Forum, provided an online statement on pressing issues related to BREXIT, which NGOs are facing in Northern Ireland. She focussed on "The Level Playing Field" of environmental law in Northern Ireland /UK, litigation challenges and A2J standards. The main part of environmental legislation with cross-broader relevance is not covered by the Protocol. There have been repeated intentions in Northern Ireland and Ireland to lower A2J standards.

*Discussion:*

There is no system to make the developer pay if it is obvious that there was a breach of law in Spain. If the company has an urban license this cannot be overdrawn. The costs of the demolition in the specific case of a hotel would have been too high.

Regarding cross-border A2J in Northern Ireland, there are already very significant issues in respect of waste – including a slurry spreading where the impact of "dumping" it has in some instance not been properly assessed or consulted or licences granted for intensive agricultural facilities in Northern Ireland – despite even international law obligations such as under the Espoo Convention. Mining is another area where serious concerns are emerging, particularly given impacts to water, but the visibility of proposals and consents is an issue. The quiet but often deeply damaging effects on aquaculture in the jurisdictionally contested cases is another area of concern and has been even prior to Brexit. Another area expected to be problematic is Energy.

The chair read out relevant passages of [document AC/TF.AJ-14/Inf.4](#) summarizing the outcomes of the Task Force. No objections were noted.

**b. Access to justice in energy-related cases**

**Ksenija Dimec**, County Court of Rijeka, Croatia, presented in person on successful A2J in energy-related cases in Croatia. Parties can initiate procedures against administrative decisions at the administrative court, as next level there is one High Administrative Court in Croatia. She presented the case of the

wind farm Vratarusa II, a high administrative court judgement from May 2020 and the case of the (small) hydro power plant Primislje, where a big project was sliced into several pieces to avoid EIA.

**Lorena Çabej**, Seconded Judge at the Albanian Supreme Court, presented in person on case-law regarding energy-related cases on hydropower plants in Albania. Plaintiffs must live or have a life closely to the area where the project is located. The presented case will also be published in the A2J database and will be accessible through the Aarhus clearinghouse.

*Discussion:*

In the judiciary sector, there are no capacity building events on Aarhus-related document, but Croatian NGOs seem to be well informed.

*The chair closed the meeting for the first day.*

## 28 April 2022

The chair welcomed all participants to the morning session.

**Marito Chakryan**, Advisor at the Armenian Ministry of Environment, shared her experiences from Armenia. Solar energy production is currently considered a priority, hydropower only the second priority due to the negative effect it has on ecosystems. She presented the assessment procedure and decision-making framework on energy-related matters. Key public authorities are the government, the ministry of environment and the “Environmental I act Expertise Center” (SNCO). Currently many people have little or no access to electricity and energy supply.

**Pierre-Louis Lefever**, Head of the General Environmental Law Office of the French Ministry of Ecological Transition, presented in person on the French experience in the field of A2J. Some energy-producing projects are subject to complex permitting procedures, including sea-based power sources. Regulatory acts can be subject to legal recourse by courts.

**Christiana Mauro**, Guta Environmental Law Association presented in person on crime and ultrahazardous activities in the energy sector. She focussed on two cases regarding the StocaMine Deep Depository in France and the Paks II NPP in Hungary. In the StocaMine, a fire destroyed the facility and made visible the hazards of toxic waste. It is located directly above one of the largest ground water resorts of Europe. Regarding Paks II, according to a study from Austria, the Paks II site is non-compliant with nuclear safety law due to seismic hazards. Concerns were already raised in the siting procedure, but were not taken into account (as the relevant persons were not qualified to participate in the procedure). The EU taxonomy also does not offer means of A2J.

**Priska Lueger**, ÖKOBÜRO and Justice and Environment (J&E) presented online on options to challenge national energy and climate plans (NECPs) and strategic environmental assessment (SEA) decisions in different EU Member States. Regarding NECPs, A2J options exist in Bulgaria, Estonia, Romania, and Spain, while no realistic options to challenge NECPs in Austria, Croatia, Hungary, and Slovenia. Only in Spain and Slovenia, the NECP was subject to an SEA so far. The SEA decision can be challenged in Bulgaria, Slovenia, Spain, Romania, and Estonia under certain circumstances – mostly based on administrative procedure or dispute acts.

*Discussion:*

The NECP in Belgium has a very unclear status, it is doubtful that it can be considered an administrative regulation. Because this is a constitutional matter, a change to this status would require a 2/3 majority. For those plans for which SEA is provided, it can only be challenged together with the decision.

There is an appeal against the NECP planned by Friend of the Irish Environment, asking about the level of detail required to anticipate environmental damage. This could be important for other states as regards the level of participation required. The judgement should be published in July.

[Document AC/TF.AJ-14/Inf.4](#) summarizing the outcomes of the Task Force was amended as follows:

[The task Force] “(c) Noted that a regular analysis of energy-related cases could help to address challenges and improve the procedures for public participation in decision-making *and access to justice* in this area *and invited the Task Force to discuss the methodology for this analysis.*

(d) Called on Parties to take the necessary legislative and other measures to remove existing barriers in access to justice in energy-related cases with regards to standing, timeliness and limited scope of review, *compensation of damages, costs and assistance mechanisms, use of scientific assessments* and other issues highlighted by the speakers.”

### 3. Stocktaking of recent and upcoming developments

**Hristo Stoev**, State Expert at the Bulgarian Ministry of Environment and Water, presented online how access to review procedures works in Bulgaria. Administrative acts may even be challenged if the possibility for administrative contestation has not been exhausted. In administrative matters, there are two-instance court procedures. Environmental cases are handled under the common administrative procedure.

**Nathalie Sabbagh**, Principal at the Ministry of Environment of Denmark, presented in person on the situation in Denmark. Review options include a Parliamentary Commissioner (watchdog), legal remedy, administrative supervision and remonstrance, and judicial review, which is performed outside the administrative process.

**Adam Daniel Nagy**, European Commission (EC), presented in person on the amendment to the EU Aarhus Regulation. Standing for individuals and groups will only be applicable as of 29 April 2023. There was a statement issued during the co-decision process, in which the EC committed to several actions to implement the state aid findings on case C-128. For the national level, the EC adopted a communication on A2J.

*Discussion:*

Under the light of the open procedure, it should be noted that there are still deep concerns regarding the compliance of Bulgaria with A2J provisions.

The revised guidance on state aid for climate, environmental protection, and energy, which also encompasses A2J, excludes state aid for nuclear energy from the scope of applicability. Under the light

of the implementation of C-128 (state aid) this is surprising and could not be explained by the representative of the EC, as it falls under the scope of another DG.

**Luka Djordjevic**, Environmental Law Clinic, presented online on developments and systematic challenges in public participation and access to justice. He focussed on the “Euro Lithium Balkan” case and the “Veliki Crljeni” case.

**Sebastian Bechtel**, ClientEarth, presented online on A2J at EU level. He highlighted different barriers in EU member states: (1) lack of and restrictions to legal standing, (2) prohibitive costs, and (3) insufficient standard of review. He discussed A2J as a human right and argued that better implementation and enforcement is crucial. There have been several unsuccessful attempts to introduce A2J on EU level (e.g. regarding the horizontal Directive, single-use plastics, drinking water, or the EU climate law).

**Attracta Ui Bhroin**, Irish Environmental Network, provided an online statement regarding the costs of legal review in Ireland. She highlighted the importance of Ireland for the global environment with its large marine areas.

**Carol Day**, Solicitor, Royal Society for the Protection of Birds provided an online statement supporting and adding onto Attracta Ui Broihn’s concerns with a view from Northern Ireland. She also touched upon planned amendments which might affect the right to adequate and effective remedies negatively.

**Natasha Dokovska**, Journalists for Human Rights provided a statement in person on A2J in the field of urban planning in North Macedonia.

**Ruzanna Ghazaryan**, Dalma-Sona Cultural-Educational, Social-Environmental Fund, provided a statement in-person on the A2J situation in Armenia.

NGOs commented on the [draft questionnaire on Measures to enable effective access to justice in environmental matters](#) and suggested that also obstacles be included. It has been clear that there are many open issues in the field of A2J, so it would be good to look closer into the aspects of SEA. The following proposals for additions were expressed regarding MOP Decision VII/3:

1. legal remedies and standing related to A2J in spatial planning and energy issues (paras 2 and 14a(i) )
2. access to justice for SEAs (para 14a(i))
3. developments in SLAPPs (para 5 and 14d)
4. invite selected parties to report on progress of Action Plans ahead of October 2024 deadline
5. Cross-border A2J issues (para 14a(i) and (e) )

The Task Force took note of the statements and decided to undertake a survey to collect possible solution and practises.

#### 4. Tools to promote effective access to justice

The agenda item was introduced in person by **Adam Daniel Nagy**. Regarding electronic tools, he referred to the work of the Access to Information Task Force. He also presented the EC’s e-Justice

portal which was created together with J&E and COWI. Not only secondary law, but the whole framework was considered. NGOs, but also judges and national Aarhus contact points were consulted to ensure quality of the factsheets.

**a. dissemination of information on access to review procedures, collection of relevant data and statistics and access to relevant case law using e-justice initiatives, modern digital technologies and other tools**

**Firuz Boboev**, Deputy Head of the Department of Legal information and Systematization, National Centre of Legislation under the President of the Republic of Tajikistan presented online on the A2J situation in Tajikistan.

**Frederik Hafen**, European Environmental Bureau, presented in person on experience and good practise regarding e-justice. Concerns arose, e.g., around limited access in some cases, “timely” justice, and procedurals guarantees. There are shortcomings regarding online access in Hungary and the Czech Republic when it comes to accessibility of laws and judgements. Austria was highlighted as a best practise example.

The chair reiterated the importance of training on the Aarhus Convention and the integration of A2J and risks for the environment in these training. E referred to a judicial colloquium organised by UNECE and UNEP, which took place back-to-back with the Task Force meeting.

**b. specialization of judiciary and other legal professionals in environmental law**

**Vedalini Bhadain**, Chairperson of the Mauritian Environment and Land Use Tribunal (ELUAT), presented in person on environment and land-use. The ELUAT is called upon to hear appeals on environmental and land-use matters (spatial planning). The law provides that the tribunal elaborates with as little practicalities and formalities as possible, parties do not need to be represented by attorneys. It has been referred to as a “tribunal of the people” for being very open.

**Anahit Manasyan**, member of the Commission on Evaluation of the Performance of Judges in Armenia, provided a statement in person on practical experience from Armenia. She would welcome it to have a specialized tribunal or court on environmental matters. The administrative court currently does not have any specialized groups of judges.

**Marianna Bolshakova**, Regional Coordinator at the Environmental Law and Governance United Nations Environment Programme provided a statement in person on latest developments and findings regarding the update of the A2J guide.

**Malgorzata Kwiedacz-Palosz**, ClientEarth, presented online on the involvement and specialization of public interest lawyers within the EARL project carried out by ClientEarth and J&E in cooperation. The project focussed on increasing awareness and the knowledge on A2J of CSOs, public interest lawyers, and judges. She shared practical learnings and take-aways from the project: There should, inter alia, be specific trainings for lawyers, and judges among speakers, for judiciary will then have more interest in participating.

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**Arthur Vakhitov**, Ecoforum of Uzbekistan, provided a statement in person on the progress towards getting a party to the Aarhus Convention taking place in Uzbekistan.

**c. measures to discourage strategic lawsuits against public participation (SLAPP)**

The Chair noted that the national implementation reports did not contain any information on SLAPP.

**Csaba Kiss**, Justice & Environment, presented in person on measures to discourage strategic lawsuits against public participation. He presented the coalition against SLAPPs in Europe (CASE). Members are NGOs working on environmental issues, but also freedom of speech more general. The coalition collects cases (570 cases from the last 10 years). The European Parliament agreed that action needs to be taken to face SLAPP and a legislative process was started by the EC (the roadmap is already available), the current draft only covers cross-border issues.

At the Aarhus exMOP in June, the Meeting of the Parties will elect the special rapporteur for the RRM.

**Pauline McHenry**, Oakleaf Solutions, provided a statement online of why anti-SLAPP actions are crucial from the perspective of Northern Ireland. Members of the public are currently not warned against the potential risks connected to litigation.

**Magdolna Toth Nagy**, Guta Environmental Law Association, provided an online statement on the issue of SLAPPs across the region. She named different examples of legislation favouring SLAPP or putting a burden on members of the public practicing their A2J rights.

*Discussion:*

**Adam Daniel Nagy** highlighted the anti-SLAPP measures in progress on EU level.

The European ECO Forum proposed to add a focus on measures to discourage SLAPP to the outcomes [Document AC/TF.AJ-14/Inf.4](#). Also, the *necessity for cooperation* between the Special Rapporteur and the Task Force was noted (instead of “opportunity”).

**5. Other business**

No other issues were raised.

**6. Closing**

The Chair of the Task Force closed the session. The summarized outcomes will be sent out to the registered participants shortly after the meeting.

The chair thanked all participants and especially the interpreters.