

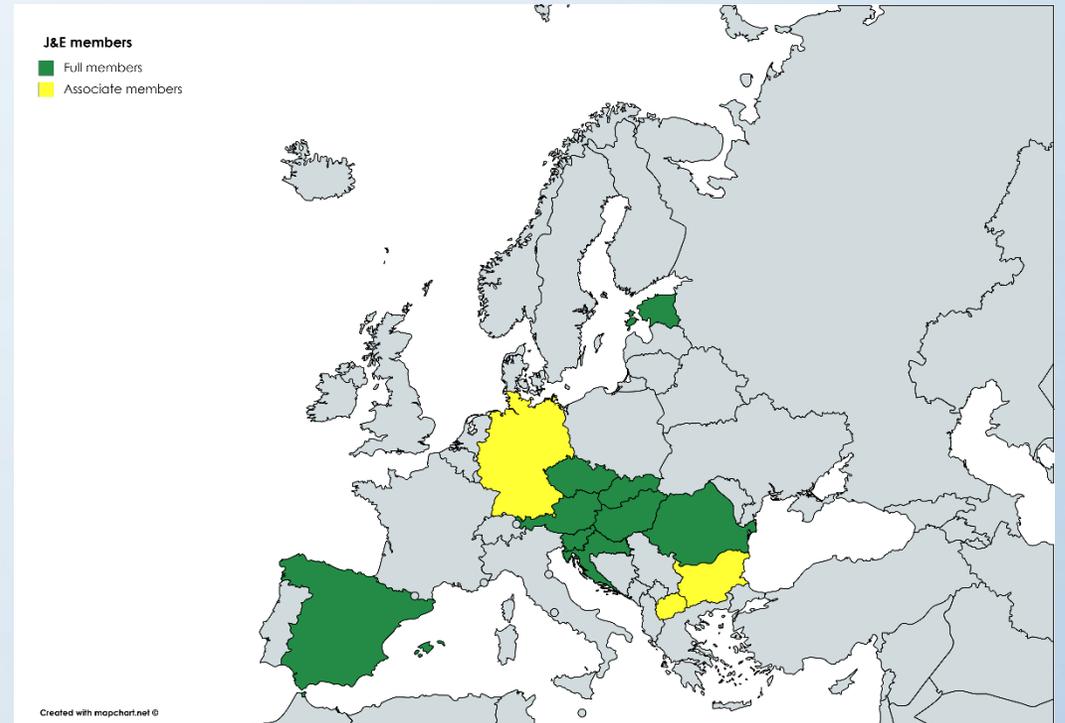


Recent developments regarding the implementation of the third pillar of the Convention

**Eleventh meeting of the Task Force on Access
to Justice under the Aarhus Convention**
27-28 February 2018
dr. Csaba Kiss, J&E

Justice and Environment

- Network of public interest environmental law NGOs
- Established in 2003
- Having 13 members, covering 12 countries (11 EU Member States)
- Active in access to justice in environmental matters since 2006



Activities of J&E

- Legal analysis, case studies, position papers, strategic complaints
- Topics covered: EIA, ELD, Natura 2000, Energy and Climate, Access to Documents, Access to Justice
- ATOJ:
 - ACCC/C/123
 - Commenting EC Communication on ATOJ
 - National watchdog and litigation



Austria

- Sustained problems regarding access to justice by environmental NGOs
- CJEU judgment in Case C-664/15
- Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that **a duly constituted environmental organisation** operating in accordance with the requirements of national law **must be able to contest before a court a decision granting a permit** for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in Article 4 of Directive 2000/60



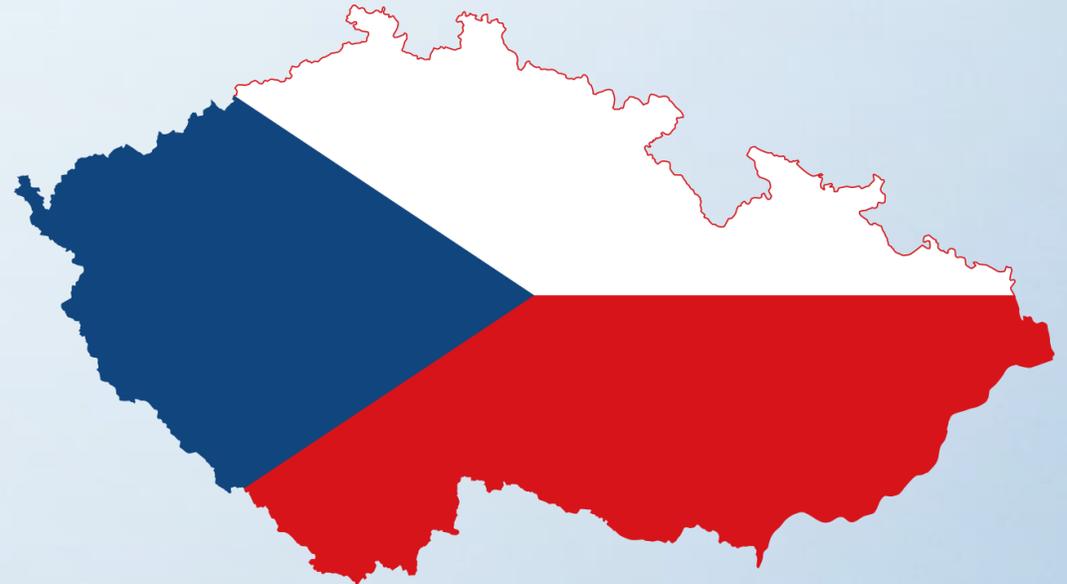
Bulgaria

- Amendment of the Environmental Protection Act in the summer of 2017
- Introducing an exception: a **one-level court review for strategic cases**
- **Decisions** of the first-instance court on the lawsuit against decisions of the Minister of Environment and Waters regarding investment proposals, their extensions or amendments, which are defined as projects of national importance by an Act of the Council of Ministers and projects of strategic importance **are final**



Czech Republic

- Extensive amendment of the Building Code since 1 January 2018
- **Limiting possibilities** of NGOs to participate in administrative proceedings **for projects that are not subject to EIA** but having impact on the protection of nature and landscape
- No longer possible to refer to the Nature Protection Act that had made participation of NGOs possible from 1992 in numerous environmental proceedings
- Question on how courts will apply restriction after recent years of progressive case law
- Example: end of 2017, individuals and NGOs **successfully challenged at the Supreme Administrative Court the air quality plan** for the most polluted area of CZ as not sufficiently specific and effective



Estonia

- Supreme Court of Estonia judgments
- Courts can only dismiss environmental actions without reviewing their content **in exceptional cases**
- This can only be done by courts if the contested act obviously does not in any way affect the applicant's rights
- The court can refuse to open proceedings if an action is not prospective, i.e. the applicant's desired goal can't be achieved, but even then it should be obvious



Germany

- Non-compliance with the Aarhus Convention according to Decision V/9h adopted at the MOP5
- CJEU judgment in Case C-137/14
- Amendment of the national Environmental Appeals Act on 23 August 2017
- For acknowledged environmental associations, **the right to appeal against violations of environmental law was extended but insufficiently**
- Amendment still excludes acts not relating to the permitting of projects e.g. regulatory acts
- Judgment of 12 December 2017 the Administrative Court of Schleswig ruled that such "regulatory acts with regard to emission limits of cars" can not be reviewed by acknowledged environmental associations



Hungary

- 1 January 2018, three major procedural codes entered into force: the Administrative Procedural Code, the Civil Procedural Code and a separate Code of Procedure for Administrative Lawsuits
- **No administrative appeal** in most of the cases
- Direct remedy to courts
- **No appeal against first instance judgments** in most of the cases
- More limiting legal standing in administrative cases, broader standing in court cases, fundamentally altered governance structure and processes



Slovakia

- Developing case law of new Code of Administrative Judicial Procedure
- **Strengthened the rights of the public to protect the environment**
- Enables the “interested public” to bring a case before the court (persons that have the right to participate in the administrative proceedings concerning environmental affairs)
- Alternatively, the “interested public” can claim that the public interest in the field of environmental protection was impaired
- Action can be brought before the court against administrative decisions, measures, and generally binding acts or the inaction of an administrative body
- Interim relief: may be asked when there exists a risk that the contested administrative decision, if executed during the court proceedings, could cause serious harm to the environment



Spain

- Legal aid for environmental NGOs in Spain
- Barriers to access to justice in Spain depend on each Autonomous Community (A.C)
- A.C of Aragón case: request for legal aid by environmental NGO was rejected by both the Commission for Legal Aid and the Supreme Court of Aragón
- Reason was the **lack of proof by NGO of insufficient economic means** to litigate
- NGO argument: environmental NGOs meeting the national requirements on standing should automatically be granted the right to legal aid
- Spanish Aarhus Focal Point expressed support for reviewing the current provisions on legal aid and the Spanish Ministry of Agriculture, Fisheries, Food and Environment is **working on the necessary legal amendments**



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Thank you for your
attention!

