

**Justice and Environment Statement under Agenda Item 3(c): Access to Justice
Made at the 22nd Working Group of the Parties to the Aarhus Convention**

Thank you, Chair, and good afternoon to everyone,

This statement is on the behalf of the network Justice and Environment.

Decision VI/3 noted that challenges remain in the full implementation of the third pillar...so we wanted to speak to those challenges, or the main barriers that still exist regarding access to justice since the MOP in Budva, in some of the Member Organizations of our network. Some of these barriers are old, some of them are unfortunately new, or take on a heightened importance concerning other troubling developments, including the harassment of environmental defenders and shrinking of civic spaces that are happening at the same time. But we would also like to report on some progress made, as it is important to both highlight progress and problems; it's incumbent upon us NGOs to not only criticize, but indeed give credit where credit is due.

Austria has had some incredible breakthroughs in access to justice since the MOP – particularly in the wake of the CJEU decision in *Protect* last December. After years of fighting for standing rights in environmental cases, in February, the Highest Administrative Court ruled that NGOs now have the right to challenge air quality plans. Administrative Courts have also granted standing in some nature protection case and water law cases. But the path to compliance is neither certain nor clear, particularly for those falling areas outside of the scope of EU law, and significant barriers remain, potential prohibitive costs in ELD cases, and possibly other areas, being just one example.

In contrast to these positive developments in Austria, the situation in Bulgaria has worsened recently, this despite the issuance of a caution to this Party at Budva, as the legislative stripping of the cassation court of competence on EIA cases for infrastructural projects of national interest we reported on as pending back at the MOP are now in force. Not only that, but there has since been a first one instance court decision for which there is now no possible review, authorizing a major motorway through the Kresna Gorge, one of the most biodiversity-rich regions in Bulgaria.

In Croatia our colleagues have faced SLAPP suits as a result of their decade-long campaign to save a natural area behind Dubrovnik from a golf resort. The developers are suing for damages in amounts that could force this NGO to close.

In Czechia while there has been some progressive development in terms of case law in the past years, major legislative reforms in 2017 likely significantly restrict judicial review rights. What is more, the length of procedures, especially taken together with the enormous difficulties in obtaining injunctive or similar relief means that many wins may only ever be on paper. The D8 Highway is one such example of this, in which the NGOs ultimately won – the underlying EIA was illegal, yet it was too late for the building permits to be revoked and the real-world result was the highway project was built.

Even in Estonia, a country which many of us colleagues in J&E have long envied, barriers were

identified: These dealt mostly with (1) possible scope of review (what arguments can be considered) problems and extremely high standards to receive injunction relief, which can in combination with other factors be an enormous problem in ensuring effective and adequate remedies.

For Germany 2017 was certainly an exciting year, with huge legislative changes opening up access to justice rights. Notwithstanding this progress, there are a number of gaps and exclusions and there are understandingly a number of inconsistent and difficult interpretations of this new law that need to be addressed.

All of this goes to show that, yes progress has been made and that can and should be celebrated at this important anniversary of the Aarhus Convention. Yet significant barriers persist, new ones appear and old ones can reappear. Thus we must never be complacent, and we call on the Parties to take determined steps now to ensure access to justice is finally granted.

Thank you for your attention.