

1. Echoes from organizations working in the field

We are convinced that the Committee will pay particular attention to the opinions of organizations active in the field, in particular those of Kazakhstan¹.

In each of their approaches, the 2 organizations finally arrive at similar conclusions, namely:

- While video can have advantages in certain cases, it poses a whole series of difficulties and limits which pose problems for effectively ensuring the full participation of the public concerned. One of the two organizations is very clear on this point, the video is unable to provide an adequate alternative.
- On the other hand, the use of video is encouraged by the 2 organizations as a complement to normal hearings. One of them also encourages not to abandon this means when the health situation has completely returned to normal.

Also the logical conclusion of these difficulties to rely only on the technical means of video is that the first option must be to postpone the hearings to a more appropriate period, so that they can fulfill their objectives and ensure the full participation of all the public concerned.

2. First try to postpone within a reasonable timeframe.

The need to postpone public hearings and not change the normal operating rules is provided by the particularly striking example of Georgia, as described by Green Alternative and Georgian Young Lawyers 'Association (GYLA)².

Georgia has taken the decision to modify the current procedures for public participation during the state of emergency, by abolishing the hearings, for reasons of public health.

« the amendment to the Government Resolution of March 26, 2020, defined that the ongoing administrative procedures for issuance of scoping opinions and environmental decisions in the Ministry of Environmental Protection and Agriculture will be completed without public consultation meetings; Public participation in the decision-making process and the possibility to submit opinions and remarks will be provided only in written and/or electronic form, as established by the Environmental Assessment Code”.

Such changes break the bonds of trust in the democratic processes of public hearings and can be considered as real breaches of the obligations of the Convention. These Georgian organizations therefore clearly call on Georgia not to change its rules and to properly carry out the hearings necessary for decision-making by postponing them to a more appropriate period.

We are confident that the Committee will have access to all of the documents from the organizations just cited which are available to it.

¹ See the Convention's web site: <https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppccassistance/accca20202-kazakhstan.html> From observer (European EcoForum) ; From observer (Socio-Ecological Fund).

² See Annex A1 : *The Government takes advantage of the state of emergency and restricts the public participation in the environmental decision-making on controversial projects.*

3. The challenge of marginalized populations' participation

The question of the participation of the public concerned, coming from marginalized sectors of the population, is not only a question of technical alternatives to hearings. It arises for all forms of public participation. A recent report on the marginalization of Roma people in Europe highlights this need³.

(P. 4) "Environmental racism against Roma communities is of particular relevance for policymakers in the EU, member states and candidate countries given that it raises concerns around fundamental and human rights. "

Unequal exposure to environmental burdens is one of many dimensions of antigypsyism, that is, the racially motivated discrimination and exclusion of persons stigmatized as 'gypsies' in public perceptions. This report shows that environmental racism against Roma communities is a structural and widespread problem in the countries researched in the EU and its immediate neighborhood. Spatial segregation plays a decisive role in enabling environmental racism. It often coincides with less favorable environmental conditions. The majority of Roma communities in Central and Eastern Europe live in segregated settlements on the outskirts of smaller towns, isolated villages, or urban or semi-urban ghettos that are regularly deprived of basic environmental necessities and are more prone to environmental hazards. "

Such a marginalization has an impact not only on their environmental situation, but also on their capacity to participate in environmental decision-making process. This is a challenge for the implementation of the Aarhus Convention, as the study points to it:

(p. 4) "PUSHED ASIDE. The Roma communities affected by discriminatory patterns are often denied access to information and the right to participate in decision-making in environmental matters that impact their lives. There is very little public concern over unequal environmental burden-sharing across the EU and in candidate countries. European policymaking does so far not adequately address the strong correlation between the location of environmental burdens, the lack of environmental services and the ethnic background of the most impacted residents.

³ See Annex A3:Heidegger, P.; and Wiese, K. (2020). Pushed to the wastelands: Environmental racism against Roma communities in Central and Eastern Europe. Brussels: European Environmental Bureau

- This research is the result of a collaborative effort between the European Environmental Bureau (EEB), the European Roma Grassroots Organisations Network (ERGO) and the Environmental Science and Technology Institute at the Universitat Autònoma de Barcelona (ICTA-UAB). The report also draws on 32 representative cases of environmental racism against Roma featured in the Environmental Justice Atlas (<https://ejatlas.org/featured/roma>).

(p. 13) *Environmental rights and the Aarhus Convention*

“The EU is a party to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), a key instrument in protecting environmental rights. (...)

Currently, there is hardly any assessment in how far Roma communities across the EU have equal access to information, are equally granted the right to participation in environmental decision-making and can access courts in environmental matters. For example, research on the accessibility of the justice system in Albania based on the perceptions of 360 individuals showed that Roma have been reluctant to seek access to the legal system due to a low level of information about it, long bureaucratic procedures, corruption, discrimination and the poor quality of free legal aid for the poor.⁵³ The identified patterns of environmental injustice suggest that Roma communities may regularly not enjoy their full procedural and environmental rights, are often marginalised in environmental decision-making while seldomly seeking justice through the courts.”

The conclusions of this study are confirmed by the recent call of UN Special Procedures to the Government of Bulgaria to stop hate speech and racial discrimination against the Roma minority in its response to COVID-19, and halt police operations targeting Roma neighborhoods during the pandemic⁴.

The lack of participation of Roma people in environmental decision-making process is one of the example where changes in the hearings and in public participation process can aggravate an existing marginalization.

4. If it is necessary to use video exceptionally

In exceptional cases, if there is no other means than to use video to ensure public participation, this must be exceptional, limited and proportional, as required both by the Convention and by all instruments of fundamental rights. Furthermore, these means cannot be used to call into question environmental protection objectives or the deadlines for achieving protection objectives. The reason for the Covid19 pandemic would then only be a bad pretext. In any event, such modifications would require additional consultations, which would also include public hearings.

Very useful and well-detailed details can be found in the submissions to the Committee for this consultation from the Center for International Environmental Law and the Environmental Law Office of the Irish Environmental Network⁵.

⁴ See Annex A3 : *Bulgaria / COVID-19 response: “Stop hate speech and racial discrimination against the Roma minority”*

⁵ Voir le site <https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppccassistance/accca20202-kazakhstan.html>

5. Fundamental rights in the context of the Covid crisis

The implementation of the provisions of the Aarhus Convention in the context of the Covid-19 crisis joins that of the instruments of international human rights law.

A particularly detailed analysis was provided by the organization Article 19⁶. It bluntly recognizes that in a particular situation, certain fundamental rights may be restricted. In a particular situation some fundamental right can be restricted

(p. 5) As a constituent part of freedom of expression, the right of access to information may also be restricted, but restrictions must be provided by law, pursue a legitimate aim, and be necessary and proportionate. Responding to a public health crisis is one of those legitimate aims but that does not give countries authority to waiving freedom of expression rights in total as stated by the Special Rapporteur on Freedom of Expression because “they also advance public health policies.”⁷

(p. 6) It should be re-emphasised that the right to information is a fundamental human right and, as such, any restrictions must be legal, legitimate, necessary, and proportionate. Any restriction must be exceptional and proportionate to the aim of protecting public health. Any limitations should only last for the duration of the crisis and should be reviewed regularly.

However, with regard to open meetings, normally held by government bodies, it is recalled that,

(p. 8) Many governmental, national and local, and intergovernmental bodies have held closed meetings of their councils, committees, councils and commissions. Certain limits to the requirements of public meetings during the pandemic are inevitable. Nonetheless, the need for accountability requires that governments maintain their public meeting laws to the greatest extent possible during the crisis, particularly because in many cases public meetings are a legal requirement for the adoption of deliberations. This is particularly crucial in the decision-making processes of government bodies that take decisions on this matter.

⁶ See Annex A4: Article 19, *Ensuring the Public’s Right to Know in the COVID-19 Pandemic*, May 2020, London.

⁷ UN Human Rights Council, *Disease pandemics and the freedom of opinion and expression: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/HRC/44/49, 23 April 2020, https://freedex.org/wp-content/blogs.dir/2015/files/2020/04/A_HRC_44_49_AdvanceEditedVersion.pdf

Information elements for the Aarhus Compliance Committee

Finally, the UN Special Rapporteur on human rights and the environment, Prof. David Boyd, recalled⁸ that COVID-19 should not be used as an excuse to weaken the environment:

"In light of the global environmental crisis that preceded COVID-19, these actions are irrational, irresponsible and endanger the rights of vulnerable people."

His statement comes after a number of governments announced that they were lowering environmental standards, suspending environmental monitoring requirements, reducing the enforcement of environmental legislation and restricting public participation.

"Such political decisions are likely to cause accelerated deterioration of the environment and have negative impacts on a wide range of human rights, including the rights to life, health, water, culture and food, as well as the right to live in a healthy environment",

said Prof. Boyd, as a UN expert.

⁸ Voir Annexe A5 : D. Boyd, *COVID-19: "Not an excuse" to roll back environmental protection and enforcement*, GENEVA, 15 April 2020.

In view of the above references, it seems to us that we can summarize the following points to remember:

- **Video should remain an option as a supplement to regular hearing, in particular to ensure the participation of concerned members of the public who face difficulties to attend (long distances, disabilities, etc)**
- **Video can difficultly be an alternative to public hearing, because**
 - **Not sure about the availability of the adequate technology for all of the public concerned.**
 - **This inequality in access to functional TIC infrastructure can induce discrimination for different categories of participants, who suffer of lack of resources or social marginalization.**
 - **Not sure that all of the public concerned, as required by the Convention, is equally and adequately informed about the hearing.**
 - **Difficulties to ensure correctly on the screen that the expression comes does come from the public concerned.**
- **Therefore, the first option is to postpone such hearings to a more appropriate period and add video conference if it can help ensure the full participation of the public concerned.**
- **Video conferences should be held only if there is a justifiable exceptional imperative.**
 - **Then must fulfill the same conditions as those of the hearings in their usual form and ensure the full participation and taking into account of all the public concerned.**
 - **In any case the technical reasons chosen to hold this consultation differently from normal practice cannot justify the non-inclusion and non-consideration of any part of the public concerned.**
- **It should be noted that since acceptable modifications must be exceptional, limited and proportional, as required both by the Convention and all fundamental rights instruments, the modified time limits must remain limited. It is not a question of calling into question environmental protection objectives or deadlines for completion. The reason for the Covid19 pandemic would then only be a pretext and not a real cause. Moreover, such modifications would, for the most part, require additional consultations, including public hearings.**
- **We can see today, at the current stage of the COVID pandemic in the UNECE region, that peaks of contaminations affect social life for a limited period of time and that hearings can be held afterwards with proper security measures, just like a wide number of other professional or social activities. This is possible and requires to use appropriate facilities.**

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