



Most Common Mistakes/Violations of the Aarhus Convention Related to Spatial Planning

**“How to use the Aarhus Convention
for the Protection of Space and Nature”
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The Title

- Original title: Most common mistakes/violations of the Aarhus Convention **at the EU level** related to spatial planning
- Final title: no reference to EU
- No EU case law (?)
- Only ACCC case law
- No overall spatial planning regulation or directive in the EU
- Specific spatial planning for maritime matters
- Reference in some legislation (2002/49/EC ambient noise management)
- Aarhus Convention Art. 7 and Art. 8





Aarhus Convention

- **Article 7**

PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

- **Article 8**

PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken:

- (a) Time-frames sufficient for effective participation should be fixed;
- (b) Draft rules should be published or otherwise made publicly available; and
- (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.
- The result of the public participation shall be taken into account as far as possible.

Dalma Orchard



ACCC Case Law

- ACCC/C/2004/8 Armenia
- Modification of land use in the Dalma Orchards
- 5 government decrees adopted for the area
- No public participation in the decision-making
- Inadmissible lawsuit at regular court
- Some of the decrees specify not only the general type of activity that may be carried out in the designated areas but also the specific activity and even the names of the companies or enterprises that would undertake these activities. These elements are more characteristic of a type of decision falling within the scope of article 6 of the Convention.



ACCC Case Law

- ACCC/C/2004/8 Armenia
- The Convention does not establish a precise boundary between article 6–type decisions and article 7–type decisions.
- If no further permitting process is envisaged, then the question of compliance with article 6 arises more starkly.
- Rather, they seem to constitute a form of adopting decisions on plans for designation of land (art. 7) and to some extent a form of decisions mandating specific activities (art. 6).
- It is therefore the Committee’s opinion that the communicants should have had access to a review procedure to challenge the decisions



Joven Futura



ACCC Case Law

- ACCC/C/2008/24 Spain
- Development of a residential area near the city of Murcia covering 92,000 square meters to construct houses for young families
- Decision-making processes concerning the land use planning for and the implementation of the urbanization project in a residential area
- The communicant filed an administrative lawsuit seeking judicial review of the approval and requesting interim injunctive relief. The request for interim injunctive relief was denied.



ACCC Case Law

- ACCC/C/2008/24 Spain
- The legal nature of the decisions mentioned is not clear enough for the Committee to determine whether they are subject to the requirements of article 6 or article 7 of the Convention
- Their labels under the domestic law of the Party are not decisive but rather the issue is determined on the basis of the context, taking into account the legal effects of the decision
- The public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity



Vlora Bay



ACCC Case Law

- ACCC/C/2005/12 Albania
- On 19 February 2003, the Council of Territorial Adjustment of the Republic of Albania approved, through Decision No. 8, the site of an industrial and energy park immediately to the north of the city of Vlora and approved Decision No. 20 on the construction site of the Thermo Electric power Station (TES) in Vlora as well as approved the construction site for a coastal terminal for storage of oil and by-products and associated port infrastructure through Decision No. 9 (not examined).
- The communicant states that it submitted several requests for information regarding the plans for the industrial park to the Ministry of Energy and to the Ministry of the Environment, but that it has never received any answer from them.



ACCC Case Law

- ACCC/C/2005/12 Albania
- The public participation requirements for decision-making on an activity covered by article 7 are a subset of the public participation requirements for decision-making on an activity covered by article 6
- Because of the lack of adequate opportunities for public participation, there was no real possibility for the outcome of public participation to be taken into account in the decision.



ACCC Case Law

- ACCC/C/2005/12 Albania
- Once a decision to permit a proposed activity in a certain location has already been taken without public involvement, providing for such involvement in the other decision-making stages that will follow can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide “early public participation when all options are open”. This is the case even if a full environmental impact assessment is going to be carried out. Providing for public participation only at that stage would effectively reduce the public’s input to only commenting on how the environmental impact of the installation could be mitigated, but precluding the public from having any input on the decision on whether the installation should be there in the first place, as that decision would have already been taken.



Bulgaria



ACCC Case Law

- ACCC/C/2011/58 Bulgaria
- General Spatial Plans provide a basis for the overall planning of spatial development of municipalities or their sections: they determine the general structure and the prevailing purpose of the spatial development of the area and provide the framework for the future development of the respective areas
- General Spatial Plans are not subject to a review procedure before a court
- Detailed Spatial Plans provide details for the development of specific areas. These Plans are mandatory for the development projects and the permits which are necessary for the implementation of such projects.
- Some persons have the right to express an opinion on and have access to judicial review on Detailed Spatial Plans



ACCC Case Law

- ACCC/C/2011/58 Bulgaria
- General Spatial Plans do not have such legal functions or effects so as to qualify as “decisions on whether to permit a specific activity” in the sense of article 6, and thus are not subject to article 9, paragraph 2, of the Convention
- Bulgarian legislation effectively bars all members of the public, including environmental organizations, from challenging General Spatial Plans therefore, the Party concerned fails to comply with article 9, paragraph 3, of the Convention



ACCC Case Law

- ACCC/C/2011/58 Bulgaria
- Detailed Spatial Plans as acts of administrative authorities which may contravene provisions of national law related to the environment. In this respect, article 9, paragraph 3, of the Convention applies also for the review of the law and practice of the Party concerned on access to justice with respect to the Detailed Spatial Plans.



Croatia



ACCC Case Law

- ACCC/C/2012/66 Croatia
- Complaints about the lack of inspection control and public participation in the adoption of several waste management plans in the country
- What constitutes a “plan” is not defined in the Convention. The fact that a document bears in its title the word “plan” does not necessarily mean that it is a plan; rather it is necessary to consider the substance of the document
- Municipal waste management plans are plans within the purview of article 7 of the Convention
- The present arrangements under the law of the Party concerned are not sufficiently clear to ensure that the requirement of article 7 for a transparent framework is met



Czech Republic



ACCC Case Law

- ACCC/C/2010/50 Czech Republic
- CZ legislation: a considerable part of the members of the public, including NGOs, have no access to court procedures for the review of acts and omissions relating to the environment, including those relating to land-use plans
- Administrative Justice Code provides the possibility to judicially review measures of a general nature, such as land-use plans
- An environmental NGO is not entitled to file a lawsuit against the land-use plan
- The Committee finds that such a situation is not in compliance with article 9, paragraph 3, of the Convention



Charleroi



CJEU Case Law

- C-182/10 Solvay and Others
- Preliminary ruling procedure
- Actions seeking annulment of the decree of the Walloon Parliament of 17 July 2008 which ‘ratified’ the building consents for various works relating to Liège-Bierset airport, Brussels South Charleroi airport and the Brussels-Charleroi railway, that is to say, authorised them in view of ‘overriding reasons in the public interest’
- Can a project by legislative „ratification” be exempted from the obligation to perform an EIA?



CJEU Case Law

- C-182/10 Solvay and Others
- 2 conditions:
- the details of the project have to be adopted by a specific act of legislation
- the objectives of the directive, including that of supplying information, must be achieved through the legislative process
- when a project is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of the EIA directive must be capable of being submitted, under the national procedural rules, to a court of law or an independent and impartial body established by law, and
- if no review procedure were available in respect of such an act, any national court before which an action is brought would have the task of carrying out the review and, as the case may be, drawing the necessary conclusions by disapplying that legislative act



Thank You!



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