



Access to justice on environmental matters and the Aarhus Convention

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Development,
aim,
main features

Convention on access to information, public participation in decision-making and access to justice in environmental matters



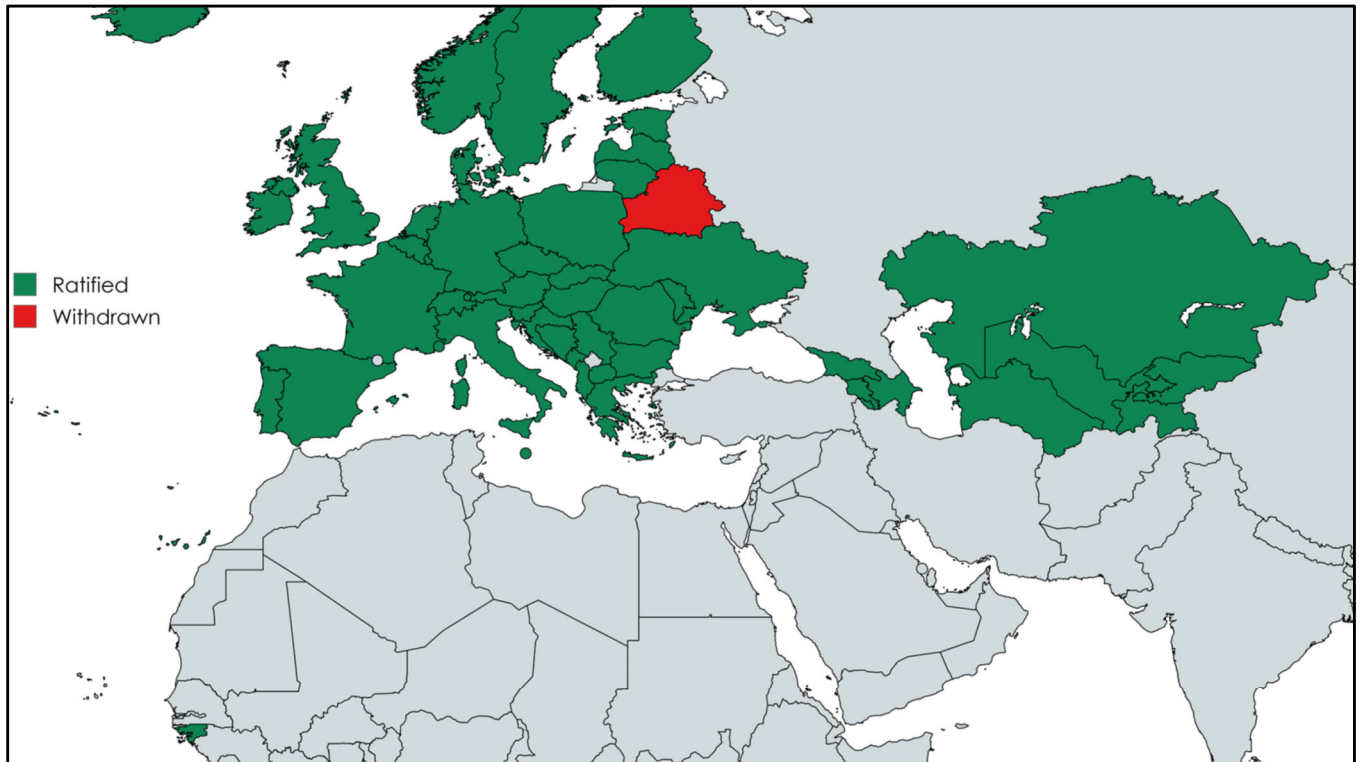
Very descriptive name. It can show us what it is about.

Aarhus Convention

Development

- Principle 10 Rio Declaration 1992
- Adoption 1998
- Entry into force 2001
- Today 47 Parties within UNECE, including the European Union and Guinea-Bissau

Its roots are in the UNECE, one of the regional bodies of the UN.



All the parties to the Convention, Guinea Bissau joined.
Belarus withdrew in 2022.
Russia, Canada and the US never joined.

Aim

The Aarhus Convention is the most ambitious venture in environmental democracy undertaken under the auspices of the United Nations. Its adoption was a remarkable step forward in the development of international law.

- Kofi Annan, Secretary-General, United Nations

Aim

Article 1 – Objective

In order to contribute to the **protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, [...]**

It is about the right of people to live in a healthy environment.

Aim

- Transparency
- Environmental Democracy
- Environmental Rights
- (Environmental Stewardship)

- Most scholars agree on the three first objectives.
- The fourth element, stewardship, is touched upon by the EC and the CJEU. The public needs to have the possibility to decide, because the environment belongs to everyone.

Main Features

- Treaty obligations to the public instead of other Parties
- Dual nature – environmental and human rights agreement
- High level of NGO participation
- Vertical component = participatory and judicial mechanism
- Diagonal component = public of all Parties included

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- The Convention from its conception to today has had a very significant NGO participation in the negotiations and all meetings, as well as in the implementation, for example in the compliance committee.

The three-pillar structure

Principle 10 of the Rio Declaration 1992

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate **access to information** [...]. States shall facilitate and encourage **public awareness and participation** by [...]. Effective **access to judicial and administrative proceedings**, including redress and remedy, shall be provided.

Access to environmental Information

Article 4 – Access to environmental information

- Passive dissemination of environmental information
- Just environmental information, not spatial/planning information
- Free of charge or reasonable amount
- Narrow grounds for refusal
- Effective remedies in case of refusal

Access to environmental information - The first pillar of the Aarhus Convention.

- passive: citizens need to ask for access
- If the authorities refuse, the person requesting has the grounds to go to court.

Access to environmental Information

Article 5 – Collection and dissemination of environmental information

- Obligation to collect relevant environmental information
- Active, transparent, effective dissemination of information
- Progressive adoption of electronic means
- No remedies in case of omission

Article 5 concerns active dissemination.

Public participation in decision-making

Article 6 – Public participation in decisions on specific activities

- Only applies to activities in annex I or activities with a significant effect on the environment
- Basic layout of public participation procedure
- Effective remedies for procedural issues

Second Pillar – Public Participation in decision-making

Public participation in decision-making

Article 7 – Public participation concerning plans, programmes and policies relating to the environment

- Applies to all plans and programmes relating to the environment
- Relevant paragraphs of Art. 6 regarding procedure apply

There is no explicit A2J provision with regards to plans and permissions.

Public participation in decision-making

Article 8 – Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments relating to the environment

- Softer language and obligations
- Applies to all executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment

- Softer in its obligations to Member States.

Access to justice in environmental matters

Article 9(1)

- Access to justice regarding requests for environmental information
- No additional standing requirements
- Review procedure before a court of law or similar

Third Pillar – Access to Justice in Environmental Matters

Access to justice in environmental matters

Article 9(2)

- Access to justice regarding substantive and procedural legality of any decision, act or omission subject to Article 6
- Standing requirement subject to sufficient interest or impairment of right
- Preferential standing for NGOs
- Review procedure before a court of law or similar

- It only refers to article 6, meaning procedural flaws in public participation procedure.
- The notion of stewardship comes forward again, NGOs don't need to have an impairment of rights.

Access to justice in environmental matters

Article 9(3)

- Access to justice regarding acts and omissions by private persons and public authorities which contravene national environmental law
- Standing requirement subject to national legislation
- Administrative or judicial review procedure

- This is the most discussed article.
- It gives access to justice very widely. It is interpreted very broadly.
- It doesn't matter whether the legal instrument was based on environmental law.

Access to justice in environmental matters

Article 9(4)

- Procedures under Art 9 (1) – (3) shall be
 - Fair
 - Equitable
 - Timely
 - Not prohibitively expensive
- Effective remedies, including interim relief, shall be provided

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- Basic principles for access to justice.
- Requirements as to the redress mechanisms provided.

The Aarhus Compliance mechanism

Legal basis and establishment

Article 15 – Review of compliance

The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention

- This was innovative. Usually agreements do not include such mechanisms.

Triggers

- **A Party** may make a submission about compliance by **another Party or concerning its own compliance**
- **The Meeting of the Parties** makes a referral to the Committee
- **The secretariat** may make a referral to the Committee
- **Members of the public** may make communications concerning a Party's compliance with the Convention

- Any party can make a submission.
- The Czech Republic made an inquiry about its own compliance.
- Most complaints are made by members of the public.

Special Rapporteur on Environmental Defenders

- MoP Decision VII/9 in 2021
- Protection of environmental defenders, Art. 3(8)
- 'Environmental defenders' anyone exercising their Aarhus rights
- Direct referral to ACCC possible

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- In 2021 the meeting of the parties decided to create a rapid response mechanism.

ACCC and MoP

- 9 Members serving in personal capacity
- Generally, five members of the ACCC per decision
- Procedure:
 - Admissibility
 - Response by Party concerned
 - Information gathering
 - Hearing
 - Preparation of findings
 - Follow-up on non-compliance by ACCC and MoP

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- No need to exhaust domestic remedies.
- There are no rulings, just findings.

ACCC/C/2015/128

(130) By failing to provide any procedure under Article 9(3) of the Convention through which members of the public are able to challenge decisions on State aid measures by the European Commission under Article 108(2) TFEU which contravene EU law relating to the environment, the EU also fails to provide an adequate and effective remedy regarding such decisions as required by Article 9(4) of the Convention.

- This is a case brought by an NGO, ClientEarth.
- They complained that the EU did not implement article 9 (3) of the Convention.
- State Aid decisions are exempt from Access to Justice. This is because the parties have access to national courts.
- The Compliance Committee were in line with the communicants.

ACCC/C/2015/128

(131) The Party concerned [should] take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under Article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with Article 9(3) and (4) of the Convention.