

Item 3 Access to Justice in Energy-Related Cases

Statement by Alexandros Kassapis, Youth and Environment Europe at the 15th Meeting of the Task Force on Access to Justice under the Aarhus Convention

The Energy Sector is the most polluting among all – fossil-fuel based energy production is responsible for 70% of GHG emission production in Europe. Besides causing climate change and adverse health related impacts, dependency on fossil fuel imports has also been an impediment to energy independence, with states having even weaponised its supply. Fossil fuels are a finite source of energy, which does not guarantee that current young and also future generations will have the same access to energy. We are deeply alarmed that during COP27, no agreement was reached on phasing out fossil fuels.

According to the latest IPCC report, “rapid and far-reaching transition across all sectors and systems is necessary”, considering that “there is a rapidly closing window of opportunity to secure a liveable and sustainable future for all”. The energy sector needs to necessarily and urgently undergo deeply entrenching transformations to adapt into a carbon-neutral world. The sixth IPCC assessment report explicitly highlighted that “the message in terms of urgency [...] is to stop burning fossil fuels as fast as humanly possible” and turn to renewable energy sources.

At the same time, energy has been a sector with which the ACCC is very familiar, as more findings and recommendations have been issued on it than any other sector.¹ Therefore, when large scale provisions on energy are introduced at an EU level, the Aarhus Convention and its provisions are highly relevant. Of the pillars, access to justice is very important as it includes crucial legal remedies which can address cases in which energy provisions are heading to a wrong track. Further considering that the interpretation of A2J has been ambiguous among the Aarhus provisions, there should be a very delicate treatment when it comes to access to justice in energy related cases and sufficient capacity building and cooperation to overcome the significant challenges on pre-existing longstanding traditional judicial and administrative systems.

It is also important to note that the CJEU interpretation did not give direct effect to Article

¹ https://unece.org/sites/default/files/2022-02/ACCC_Infographics.pdf

9(3) of the AC and issues with standing have been persistent, although the Convention has clearly expressed that the public in relation to access to justice should be interpreted as broadly as possible.

But moving back to energy, a transition to renewable energy is clearly defined in EU law, with ambition constantly scaling up to now agree on a 45% renewable energy production in the EU by 2030 under the REPowerEU Plan.

As many of you here are aware of, the latter accelerates the roll-out of RES and aims to strengthen the EU's energy independence in the light of Russia's attack on Ukraine. It is, however, of paramount importance to highlight that agreeing on a RES target is only the first of many steps that need to be taken to tackle climate change sustainably. We strongly support that energy supply in the EU should not only be renewable, but also have an overall positive impact on nature and communities. The Aarhus provisions are some of the most appropriately designed tools to ensure that,, and particularly its access to justice pillar.

Legislative proposals setting down the RES target, such as an amendment to the Renewable Energy Directive and the Council Emergency Regulation 2022/2577, have posed a serious threat on access to justice in energy-related cases. Provisions have been agreed on which favor renewable energy development over environmental protection and community engagement, in part by jeopardizing the provision for access to justice. It is vital that explicit laws ensure that the Aarhus toolbox remains open, as Margarida Martins from the EEB will also highlight in an intervention on this item.

Apart from our advocacy work targeted on youth, we want to particularly emphasize that local and indigenous communities should be secured the rights of public participation and access to justice in the energy transition.

A recent example of breach of human rights in the energy transition has been the construction of two wind farms in the Fosen region in Norway. Completed in 2020, the wind farms have been located on the lands that the indigenous Saami use for reindeer herding, which represents a central part of their life and culture.

Despite Norway's Supreme Court ruling that their construction violated the Saami's protected cultural rights, the turbines still run for 17 months. A lawyer who represents one group of herders claimed the consultation process between the government and herders

since the 2021 verdict has been “like talking to a wall. ... They have had 500 days and very little has been produced from their side”².

In early March 2023, after more than a hundred young Saami and climate activists had been protesting since February 23rd at the entrances to several ministries in Oslo, the government apologized to Saami people for the “human rights violations”, while the turbines are still running.

This example represents how, even though the climate goal of Norway of decarbonising is to be considered on track with the ambition of decarbonisation, it failed to take into account the interests of local communities, resulting in continuous exploitation of Saami lands and violations of their rights. We cannot accept such violations to happen again in the context of the green transition: scaling up renewables should not come at the expense of indigenous rights or biodiversity protection. Otherwise, we cannot talk about a just transition, nor of climate justice overall.

Reflecting the work of the EEB, renewable energy expansion can be broad and provide cross-cutting benefits and even potential ecological restoration effects (e.g. agri-PV, nature-friendly operations). Access to justice is vital to ensure that. Otherwise, we risk making renewable energy development a possible driver of adverse biodiversity impacts. This is the worst thing that could happen right now. As the EU has stated in its guidance to MS who are called to update their National Energy and Climate Plans within 2023, it calls for the promotion of nature-friendly design and financial, administrative and technical assistance to community projects. Provisions for access to justice could really support these plans, along with sharing best practices which could guide more member states to the most appropriate renewable energy solutions.

Among the most involved stakeholders, young people have a strong interest in ensuring the success of the energy transition. I have personally filed a lawsuit with 4 more young co-plaintiffs in the ECtHR directed against 12 states regarding their membership in the Energy Charter Treaty. This strongly shows how the youth cares about climate justice and even though it does not make use of Aarhus rights: this case indicates the necessity of a strong implementation of the latter to keep the door for access to justice open for the youth to bring forward future claims.

² <https://time.com/6259144/greta-thunberg-norway-protests-climate-activists/>

It is of paramount importance that ambitious and strong legal measures are implemented and effectively enforced at State level: access to justice exists to ensure vigilance, accountability and implementation of EU laws in an act of balance of renewables, the environment and communities.

It is extremely urgent to safeguard access to justice in energy related cases, especially in light of the acceleration the energy transition is going through: its fast pace leaves big gaps and errors, and the Aarhus Convention has a crucial role in filling them. We are not willing to see renewable energy shares going up at the expense of our environment and communities.

To ensure that Aarhus Rights are respected, protected and fulfilled in the energy transition, it is important to make provisions relating to access to justice available in every State party to the Convention, in order to balance developing renewable energy with the Aarhus rights;

- It is important for the EU and Member States to leave adequate time frames for public participation and the ability to review decisions in the REPowerEU and RED. From the RED proposal it seems this will not occur, hence violating Aarhus provisions. We are wondering how the AC Secretariat has acted on this and what could be done.
- We also want to highlight the crucial importance of community engagement in fulfilling the Aarhus provisions: States should include guidance for community engagement and foster stewardship of energy sources.

These measures will constitute the foundations of the future world which the youth and future generations will inherit, a future world for which we have to take great care. It is of utmost importance that the youth has a strong say and has the right to inherit a clean and healthy environment. The Aarhus rights and particularly access to justice have a critical role in ensuring that authorities' decisions will reflect best practices and a more equal consideration for fast and efficient renewable energy development, environmental protection and restoration and public participation and stewardship.

Thank you.