THE ACCESS TO JUSTICE IN ENVIRONMENTAL ISSUES

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Abstract:
Access to justice in environmental matters means that people must be able to go to court if the authorities do not respect their rights and do not comply with the requirements of European Union environmental law. Environmental laws are meant to protect human health and nature. For the protection of the environment, the laws of the European Union generate rights for any of us. People have an important role to play in maintaining a quality natural environment.
Public authorities must comply with certain minimum requirements when responding to requests for information from the public.
Keywords: access to justice, environmental issues, damage, illegal actions, jurisprudence.

The formation and development of environmental legislation continues to be influenced by a number of determined external factors and the objective processes of globalization and internationalization of environmental issues.

The democratic green movement in Central and Eastern European countries only began to flourish in the early 1990s.

Among the debates and initiatives that took place, one of the most important issues that arose was the imperative recognition and consecration of information and public participation in environmental decision-making processes.

These two principles, that of information and that of public consultation, have their origins in the international environmental documents adopted at the 1990 Rio de Janeiro Conference.

The purpose of public participation in environmental decision-making is to protect the fundamental rights of present and future people, to live in a healthy and ecologically balanced environment and to protect the environment properly.

This process involves three correlative aspects: public access to environmental information, effective public participation in environmental decision-making, and access to justice in matters of quality of life and the environment. [1]

At the international level, the UN Human Rights Committee has been leading the way in interpreting the concepts of access to justice [2] on the occasion of the Interministerial Conference entitled "An Environment for Europe" (1998), held in Aaruhus, Denmark, an important document in the field was adopted, entitled Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. [3]

The Aarhus Convention (1998) created the legislative framework to ensure sustainable development and environmental protection. The Convention is an emblematic tool for democracy in environmental matters.

Definitely, this document has significantly contributed to the development and consolidation of international environmental law.[4] The importance of the Aarhus Convention stems from the fact that it reflects the relationship between the public and local authorities, containing obligations that signatory states have towards the public.

In order to incorporate the principles adopted by Aarhus, legislative measures have been adopted at Community level to ensure a harmonized framework at EU level for public access to information and its involvement in environmental decisions.[5]

The European Union has consistently introduced in many of its environmental regulations provisions on access to justice in conjunction with other fundamental rights and the right to a quality environment.

Based on the general rules (Article 37 of the EU Charter of Fundamental Rights), the requirements of a high level of protection and improvement of the quality of the environment should be integrated into Community public policies.[6]

Rules for the recognition and exercise of the right of access to justice are also laid down in harmonized EU secondary legislation. Certain provisions of the Convention can be found in the Directive on the pillar on access to information, in the Directive on the

pillar on public participation in decision-making and the pillar on access to justice, but also in the EC Regulation applying the Aarhus Convention to European institutions and bodies.

The environmental information is included in the information of public interest provided by Law 544/2001 on free access to information of public interest, managed by the Public Relations Departments within the central and local public authorities.

In 2019, the Ministry of Environment, Waters and Forests developed the Guide to Public Authorities for Public Access to Environmental Information.

In accordance with Article 5 (1) (c) of the Arhus Convention, in the event of any imminent threat to human health or the environment, caused by human activities or due to natural causes, all information which would enable the public to take precautionary measures or to mitigate the adverse effects caused by that threat and which is held by a public authority shall be disseminated immediately and without delay to members of the public who may be affected.

Access to environmental information is a right, but also an objective. This principle has been taken into account since the elaboration and adoption of the first Romanian Constitution (1991).

The framework law on environmental protection, respectively GEO 195/2005 (Official Gazette no. 1196/30 December 2005) approved with amendments and completions by Law 265/2006 (Official Gazette no. 586/2006) with subsequent amendments and completions, provides in Article 5: ,,The State recognizes the right of every person to a healthy and ecologically balanced environment, guaranteeing for this purpose – a) access to environmental information, in compliance with the conditions of confidentiality provided by the legislation in force....".

GEO 195/2005 improves the framework for access to information and for ensuring public participation in the procedures for issuing regulatory acts on environmental protection.

Environmental information may be provided to the public either ex officio or at its request. The communication of the information can be done by any available means, in the form requested by the applicant. The authority may provide the information in another form, if it considers it more reasonable, but must give reasons.

The communication of information is mandatory, and may be refused only under the following conditions: when there is an unreasonable or too general request, when the request relates to documents in preparation, when it is imposed by international relations, national security or public security.

The refusal to communicate the information must be in writing (or the form requested), be reasoned and given within a reasonable time (maximum one month).

If the public authority does not have the required environmental information, it has the obligation to forward the request to the competent authority and to inform the applicant about this issue.

With regard to public participation in environmental decisions, Annex 1 of the Aarhus Convention describes the types of activities for which the application of its text is mandatory. The activities they refer to are industrial and infrastructure.

The public consultation procedure can only be done through its correct and complete information on environmental decisions. Consultation of the public on environmental matters involves reasonable time limits for informing the public of important information in the decision-making for that activity and the free provision of information as soon as it becomes available.

In order to make the final decision, the public must benefit from the legal framework to submit comments, opinions or suggestions and take into account the outcome of its participation.

The Aarhus Convention establishes an obligation to ensure the right of the public to have access to justice in environmental matters. [7]

Access to justice is fundamental to establishing and maintaining the rule of law. Through access to justice, people can have their voices heard and exercise their legal rights regardless of whether these rights result from constitutions, statutes, common law or international instruments.

Access to justice ensures access to an equal level of human dignity. There is a link of mutual support between improving and facilitating individual and collective access to law and justice, on the one hand, and economic and social development, on the other. Improving access to justice requires exchanging information, raising awareness and disseminating good practice.

Through access to justice, individuals can protect themselves against rights violations and remedy wrongdoing, attracting the responsibility of the executive branch. This is an important element of the rule of law [8] and includes civil, criminal and administrative law.

Access to justice is both a process and an objective and is essential for people seeking procedural and substantive rights.

Access to justice in environmental matters is a package of safeguards that allows citizens, including NGOs, to go to a national court to verify whether an authority has complied with their rights and complied with legal requirements.

This procedure is free or very cheap. Access to justice is a right and an objective that is achieved both against private individuals and against public authorities who disregard environmental legislation.

In most countries, access to the courts is restricted. One way to ensure access to justice is to recognize the rights of NGOs to lodge environmental complaints. It is up to the national judge to verify whether the public authority has acted correctly.

Access to justice in environmental matters aims to ensure that the judge examines correctly the issues raised by citizens, but also by NGOs. Illegal actions taken by public authorities can harm citizens and the natural environment. The judge may order the public authorities to take action if the damage caused is serious.

Access to justice in environmental matters must include the possibility of issuing judgments suspending administrative acts or contested proceedings for illegalities as contrary to environmental protection legislation.

Conclusions

Failure to consistently enforce rights and requirements regarding requests for information from the public across the EU can hamper the progress of environmental protection and prevent citizens from enjoying the benefits of EU environmental law.

When a person considers that their right of access to information has been violated (for example, the request for information has been ignored, rejected or disregarded in an appropriate manner), this person must have access to justice, under appropriate conditions, in accordance with national law.

References

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