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Commentary on Strasbourg Principles nos. 26-28: access to justice in environmental matters

On the global level, the first reference to the right to access to justice in environmental matters, dates to the nineties of last century. Principle 10 of the Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development (Rio de Janeiro, 3 to 14 June 1992) states that environmental issues are best handled with the participation of all concerned citizens, at the relevant level. It calls not only for access to environmental information, promotion of public awareness and participation in decision-making processes, but also for access to justice in the following terms: “*Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*” Furthermore in Agenda 21, adopted at the same conference, we can read that competent international organisations should establish judicial and administrative procedures for legal redress and remedy of actions affecting environment and development that may be unlawful or infringe on rights under the law, and should provide access to individuals, groups and organizations with a recognised legal interest (para 8.18). To catalyse and to accelerate action in terms of implementing Principle 10, governments adopted the non-binding Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters at the 11th Special Session of UNEP Governing Council/Global Ministerial Environmental Forum in Bali, Indonesia (26 February 2010).

At the regional level Rio Principle 10 was further developed for the UNECE Region in the so-called Sofia Guidelines of 1995, that lead to the conclusion of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25th June 1998), which now has 47 parties. Article 9 (3) of the Aarhus Convention requires the states concerned to provide access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which breach laws relating to the environment. The Convention uses the terms “which contravene provisions of its national law relating to the environment.” It includes not only domestic law but also binding European and International law (CJEU, 8 November 2022, Case C-873/19, *Deutsche Umwelthilfe (Réception des véhicules à moteur)*, ECLI:EU:C:2022:857, para 56; UNECE, Aarhus Convention implementation guide, Geneva, 2014, p. 197). Such access is to be provided to members of the public “where they meet the criteria, if any, laid down in

national law". Members of the public include natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups (Art. 2.4). Although States retain discretion as to the implementation of that provision, the words 'criteria, if any, laid down in its national law' cannot allow those States to impose criteria so strict that it would be effectively impossible for environmental associations to challenge the acts or omissions that are the subject of that provision (CJEU, 20 December 2017, Case C 664/15, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, EU:C:2017:987, para. 48).

A similar convention has been concluded for Latin America and the Caribbean: Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú, 4 March 2018). It now has 15 parties.

The Strasbourg Principles Nos. 26-28 apply those Aarhus and Escazú provisions logically to environmental human rights. They also stress the need to interpret human rights treaties in the light of international environmental law, that pursues a common goal. Adequate protection of the environment is indeed essential to human well-being and the enjoyment of basic human rights, including the right to life itself (Preamble of the Aarhus Convention).

Luc Lavrysen, June 2023