



Presentation for AC Task Force Meeting, March 2021

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The weakening of access to justice in Slovenia in 2020

In Slovenia, the beginning of the Covid pandemic in March 2020 coincides with the change of government – the prime minister resigned and a new coalition and government was formed. In the last period prior to this change environmental NGOs established continuous communication with The Ministry of the Environment and Spatial Planning. This was in the form of a special council of 11 environmental NGOs representatives who communicated with the minister. They were appointed by all interested environmental NGOs in a democratic process. Legislative regulation was not perfect but it enabled more and more environmental NGOs to gain the status of acting in public interest, which was the condition for access to justice in certain procedures. **There were 30 NGOs with the status in the area of environmental protection, 47 in the area of nature conservation and 11 in the area of spatial planning, at the time.**

Under the new government the position of environmental NGOs and access to justice has seriously deteriorated. The process is still ongoing. What happened?

1. In April the **Act on Intervention Measures to Contain the COVID-19 Epidemic and Mitigating its Consequences for Citizens and the Economy**¹ set specific provisions for environmental impact assessment (EIA) procedures and access to justice for NGOs (integral permit = building permit and environmental consent). The **new additional conditions for NGOs** to gain the status in public interest in the area of environmental protection and nature conservation were set (regarding number of members and employees) and these conditions should already be **fulfilled for the last two years for an NGO to be a party in the (integral) EIA procedure**. Out of 77 NGOs with the status in public interest in the area of environmental protection and nature conservation, we managed to collect data for 56. Only 9 NGOs or 16% of all of them met the new conditions. **The NGOs that don't fulfill these conditions would drop out of the currently ongoing procedures**, where they were already a party. More information is available on the [webpage of Justice & environment](#) (in Slovene language [here](#)). There was also a provision that a **construction can begin immediately after the integral permit is final in the administrative procedure** (there is only one instance of this procedure), regardless of the possible procedure at the Administrative Court. The provisions of the whole intervention act were

¹ Zakon o spremembah in dopolnitvah Zakona o interventnih ukrepih za zajezitev epidemije COVID-19 in omilitve njenih posledic za državljane in gospodarstvo (ZIUZEOP-A), Official Gazette RS 61/2020, <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-0901?sop=2020-01-0901> – Article 42 referring on the integral procedure regulated in the Building Act.

meant to be valid only during the Covid crisis and they expired at the end of May, but the next act on intervention Covid measures has extended the validity of (only) these **environmental provisions till the end of 2021**². Three NGOs **challenged the act at the Constitutional Court** in the beginning of May; in July, the Court **suspended the implementation of the challenged provisions** until the final decision is adopted (more info in Slovene language [here](#)). The Court didn't reach the final decision yet. The only provision that is still valid from this "Covid intervention act" and the Constitutional Court didn't address, is the shortening of the deadline for filing a suit to the Administrative Court against an integral permit – **from the usual 30 days, to 15 days**.

2. In the beginning of June, the amendments to **Nature Conservation Act** were adopted³ with two major changes of the position of nature conservation NGOs:

- **new, additional conditions for gaining the status in public interest** in this area were introduced – the associations should have at least 50 active members, the institutions should have 2 full time employees with suitable education and experiences. But there was also a provision for NGOs to adapt to these conditions in the period of 6 month;
- **access to justice was almost deleted: previously the association** with this status had the right to act in the interest of nature conservation **in all administrative procedures and judicial proceedings** (this regulation was valid from 1999). **Now, they can act in the interest of nature conservation in administrative procedures and judicial proceedings as the law stipulates. But the Nature Conservation Act doesn't contain any other provisions about access to justice.**

3. Additionally, the new versions of three major acts are in the process of adoption (not adopted yet):

- **the new Building act**⁴ (public consultation was in August)⁵ that introduces the same **additional conditions** for NGOs to be a party in the integral procedure (EIA and construction permit) as in the Nature Conservation Act;
- **the new Spatial Planning Act**⁶ (public consultation was in October)⁷ deleted the only **provision about access to justice – Article 58, but it was deleted after public consultation**. The Article 58 includes A2J regarding the spatial plans/acts for all individuals affected by the plan, and also to all NGOs with the status in public interest in the fields of

² Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (Zakon o interventnih ukrepih za omilitve in odpravo posledic epidemije COVID-19 (ZIUOOPE)), Official Gazette RS 80/2020, <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-1195?sop=2020-01-1195> – Article 2.

³ Zakon o spremembah Zakona o ohranjanju narave (ZON-E), Official Gazette RS 82/2020, <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-1235?sop=2020-01-1235> – Article 3, referring on the Article 137.

⁴ Still valid is the Building Act (Gradbeni zakon), Official Gazette RS 61/17, 72/17 – popr., 65/20 in 15/21 – ZDUOP), <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7108>.

⁵ Published on <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11546>.

⁶ Still valid is the Spatial Planning Act (Zakon o urejanju prostora), Official Gazette 61/17, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7341>.

⁷ Published on <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11662>.

environment protection, nature conservation, spatial planning and cultural heritage. The scope of the challenge is narrowed mostly to land use. The Article is in force since 2018. After the deletion of this Article, the only access to justice will be (again) only the Constitutional Court.

- **the new Environmental Protection Act⁸** (in public consultation in January 2021)⁹ proposes **several crucial reductions of A2J for NGOs**. The **new additional conditions for gaining this status were set** as in the Nature Conservation Act. On the other side, **the right for NGO to be a party in certain procedures is deleted** (Environmental impact assessments, Environmental permits - IED permit and Environmental liability procedure). For affected individuals, the right to be a party remains. The NGO **will only have the right of filing a complaint at the end of the procedure or challenging it** at the Administrative Court.

Conclusion: The new formal criteria for NGOs to gain the status in public interest are set unnecessarily high. Many of the NGOs will not meet the new criteria. The access of justice rights of NGOs, some of them established 20 years ago, are being revoked or limited. This presents a serious regression of this right in Slovenia.

⁸ The valid is the Environmental Protection Act (Zakon o varstvu okolja), Official Gazette RS, št. 41/04, 17/06 – ORZVO187, 20/06, 49/06 – ZMetD, 66/06 – odl. US, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108/09, 108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/15, 102/15, 30/16, 61/17 – GZ, 21/18 – ZNOrg, 84/18 – ZIURKOE, 158/20; <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1545>.

⁹ Published on <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11911>.