

Network News / December 2021

End of Year Newsletter & Holiday Greeting



EDITORIAL

Written by Željka Lejzak Gracin - Chairwoman of Justice and Environment (J&E)

This year was unfortunately testing us again, since the situation with COVID-19 was even worse, so it was quite hard to stay focused and motivated, and to even think about the development of the network. However, it seems that we somehow managed to do it this year; apart from implementing a big number of activities in different areas of our work, we welcomed two new full members: BlueLink from Bulgaria and Greek Helsinki Monitor from Greece, and one new associate member, Inter Environnement Wallonie from Belgium. We are very happy that our network is growing and surely our new members will bring new strength and fresh ideas for further development of J&E.



BlueLink is a foundation from Bulgaria with the mission to uphold civil society, democracy, shared European values and environmental sustainability. BlueLink strives to its purpose by supporting internet networking, public interest journalism, policy advocacy and research. Today

BlueLink is a well established hub of coordination, exchange of information and information technology innovation among environmental civil society organisations (CSOs) and groups.

[Greek Helsinki Monitor](#) (GHM) monitors, publishes, lobbies, and litigates on human and minority rights and anti-discrimination issues in Greece and, from time to time, in the Balkans. It also monitors Greek (and Balkan) media for stereotypes and hate speech. It issues press releases and prepares (jointly with other NGOs) detailed annual reports; parallel reports to UN Treaty Bodies; and specialized reports on ill-treatment and on ethno-national, ethno-linguistic, religious and immigrant communities, in Greece and Balkan countries.



[Inter Environnement Wallonie](#) is a federation which brings together nearly 150 associations (neighbourhood committees, naturalist organisations, international movements and networks of associations). All of them have in common the defence of the environment and the range of their actions is very broad: from awareness-raising and education to political lobbying, as well as the provision of services and expertise.

Unfortunately, we also lost one full member in 2021 as organisation AJÁ from Spain left J&E. We appreciate the great cooperation which we had with AJÁ for many years and are sure it will continue in some way in the future. Special thanks goes to Mr Eduardo Salazar Ortuno who contributed a lot to the network and we wish him all the best in his future work and life.

J&E TOPICS

AARHUS CONVENTION

J&E set quite ambitious targets for itself for the year 2021, and we started the implementation of our work plan with enthusiasm, and with a hope that this year will not be marked by fighting a global pandemic... Well, we were not quite right. However, we decided that we need to go on, and while we had to give up (again) our desire to meet in person with our colleagues, at least we didn't cancel our programmes and events completely, and hopefully we contributed to the protection of access rights.

First, we started monitoring the implementation of the European Green Deal (EGD) in terms of its pledges, with special regard to access to justice. Our national EGD monitoring reports will be available soon on our website.

In 2019 and 2020, we monitored cases concerning clean air in the Member States, i.e. lawsuits that were started in order to force polluters or the State to guarantee the quality of ambient air. From this knowledge, augmented with the updates of those cases, in 2021 we wrote a public guide - a “how to” on clean air cases. Find it on our website soon.



And here comes one of the activities that we picked up in 2020 and didn't regret it. Whoever deals with these kinds of cases nowadays, can feel being in the mainstream of legal developments. They are the so-called SLAPP cases - the Strategic Lawsuits Against Public Participation. These are vexatious lawsuits started by powerful companies or the State to silence people standing up in the public interest, by draining their resources. Luckily, the EU and the Council of Europe recognised the importance of this matter

and started legislative and consultative processes in this regard. We contributed with our national SLAPP monitoring reports to the work of the anti-SLAPP [NGO coalition called CASE](#).

2021 was a really busy year in the life of the Aarhus Convention. The European Commission finally submitted a legislative proposal to the European Parliament and the Council of the European Union to amend the Aarhus Regulation, the piece of EU legislation applying the Convention to the EU bodies. The process of drafting was a consultative one, and J&E participated actively, as part of a group of NGOs headed by EEB. The amendment was proclaimed, just days before the 7th Meeting of the Parties of the Convention in October, where some of us participated online, while some were present in person in Geneva. What we could see there were good signs, but there were also alarming signs, especially how the European Commission claimed preferential treatment for itself and how Belarus denied its responsibility for the harassment of its own environmental civil society.

In other news, we are following the development of the Environmental Governance Assessment Process or the implementation of the 8th Environment Action Programme. And last but not least, we decided that in case the Commission Communication on Access to Justice is not known to national stakeholders, and therefore has not made any impact on the Member State level, we will prepare a summary for them in their national language. We hope that in this way we can contribute to a better awareness of access to justice among legal professionals.



CLIMATE CHANGE

- **Climate mainstreaming of plans and projects**

The assessment of effects on the climate is still a very abstract topic for everyone involved in the process. In 2020, our work was focused on strategic environmental assessments of plans and programmes (SEA). This year, we evaluated the assessment of climatic factors regarding specific projects in the environmental impact assessment (EIA). For “mainstreaming” climate change, which includes the integration of climate content into all policies and activities, these are key tools for both, climate change mitigation and adaptation.

In an integrated document, we summarised our survey results from various interviews, input of legal experts, as well as an online survey and deduced recommendations. The J&E teams for climate and environmental assessments held a [webinar](#) to discuss our findings with participants from environmental NGOs, authorities and experts. Next year we are planning to create additional comprehensible documents based on the results and foster further discussion to follow-up on our work from previous years.



- **Fighting the climate crisis through litigation**

Under international and European law, individual states are obligated to act and proceed respecting protection of human rights and precautionary principle. Climate litigation has therefore become an increasingly important topic throughout the EU.

Past years, J&E has been supporting national NGOs in bringing climate cases to the court. We held a workshop for members of civil society and other stakeholders to exchange experiences in this field. Cases have been brought to court in Austria, Czechia, Estonia and Slovenia. Legal approaches and arguments differ. But whether from a constitutional, human rights, EIA or governance perspective – all cases try to tackle the same problem we are facing: the global climate crisis.

- **Advocating for effective national climate plans and strategies**

Climate plans and strategies are crucial elements to reach climate neutrality by 2050, concentrating energy and climate targets, as well as helping to plan and report on progress. In the beginning of 2021, J&E prepared a comparative study on how the process to finalise National Energy and Climate Plans (NECPs) was carried out in eight member states. The findings were distributed to national authorities and decision-makers. We are continuously monitoring NECPs and analysing transparency and public participation regarding their implementation. Monitoring of Climate Acts has also been conducted this year.



We are planning to continue the work with a broader focus on different strategic and legislative processes on a national level. Some states work on long-term strategies, others are planning to adopt or amend Climate Acts or rather focus on setting more specific steps towards climate neutrality. J&E experts will stay engaged and advocate for participative and transparent processes on a national level.

ENVIRONMENTAL ASSESSMENTS

Environmental Assessments is a topic which is continuously in the focus of not only environmental lawyers gathered in J&E, but also of numerous other environmental NGOs. Our network has been following this topic, namely different procedures envisaged in SEA, EIA, WFD and Nature Directives, for many years on the EU and national level, and with our activities, we are pushing for better implementation of those procedures. We were very active in 2021 and here is the summary of our activities.

- **Strategic Environmental Assessment (SEA)**

In a new publication called “Is the SEA “fit for purpose?””, we analysed the scope of the SEA Directive and its actual implementation in member states, and described best practices in implementing the Directive. Its focus is on public participation, screening, cumulative impacts and experts qualifications and independence, and it contains recommendations for improvement of the SEA procedure in those matters. The research is available on [the J&E website](#).

- **Water Framework Directive (WFD)**

We also issued a publication named “Is the WFD fit for purpose?”; a comparative analysis on the following aspects of the WFD art 4(7) assessments in Member States: public participation, screening, cumulative effects, independence and qualification of experts. The overall consensus of the surveys shows that the WFD has great potential, but that the results and public participation vary greatly depending on how much the methodology of the WFD is adhered to. Also, based on this research, J&E recommends that cumulative effects be properly assessed and that more on the [J&E website](#).

- **Appropriate Assessment (AA)**

In April 2021, we organised an event titled “How Covid-19 affected public participation?” jointly with EEB. As the COVID-19 pandemic didn’t improve this year, we thought that our event should somehow tackle public participation in environmental matters in this specific situation. Thus, besides the panel on appropriate assessment, we also held a panel on public participation during pandemic time and presented the first conclusions of the Comparative Study on EIA. Recording of the whole event, as well as presentations, can be found [here](#).



We also issued a publication on best practices in the implementation of appropriate assessment focused on public participation, screening, cumulative impacts and experts qualifications and independence. Check out [the publication](#).

- **Environmental Impact Assessment (EIA)**



We published a summary of our survey on the implementation of the new EIA rules. It’s a comparative study on the impact that the latest changes to the EIA Directive have had on the EIA practice in Member States. J&E members completed a questionnaire for this analysis and the study is available on [our website](#).

Related to the national work of our members, a lot happened in 2021 and there are strategic cases going on in Austria, Czechia, Hungary and Croatia.

NATIONAL NEWS



- **Austrian court revokes permit to shoot a wolf**

The Tyrolean Administrative Court recently revoked the permit to shoot a wolf in Tyrol. The wolf as a strictly protected species may only be shot if the narrow requirements of the Habitats Directive are met and there is no other option. Based on a complaint by environmental organisations (including J&E member ÖKOBÜRO and WWF Austria), the court found that the decision did not prescribe any measures that could guarantee that the correct wolf would be taken. The court also doubted that the removal of "any" wolf in a certain territory, regardless of its dangerousness, is in line with the European species protection law. Find out more [here](#) and [here](#).

- **Important but dubious victory in Hungary**

The district municipality wanted to develop a hill on the Buda side of Budapest into a cross country skiing track and a sledding spot where machines would produce artificial snow and a ratrak would manage the slopes. This would be highly damaging to the protected nature. Vedegylet Association, with the legal assistance of J&E Hungary (EMLA), filed a lawsuit against the screening decision of the environmental authority in June. In October, the court issued an injunction that stops all construction activities and the use of heavy duty vehicles in the area. Read more



on [our website](#).

- **More good news for nature in Austria**

Thanks to a complaint filed by ÖKOBÜRO and WWF, in October the administrative court in Tyrol [annulled the water permit](#) for a hydropower plant. The permit had been issued by the public authority even though it was known to the authority that the project could not be realised the way it was planned. Already during the administrative proceedings, it was known that along the projected route for the pressure pipeline of the hydropower plant avalanche protection structures had been built. Another victory for ÖKOBÜRO happened the same month, when the highest Administrative Court demanded reconsideration of permit for the hydropower plant planned on the Schwarze Sulm River. This project has been stirring up emotions since the early 2000s: The Schwarze Sulm is one of Austria's most ecologically valuable rivers and is also protected as a Natura 2000 site. [Find out more](#).



- **Coal power plants in Czechia**

In August 2021, new emission limits for large combustion plants came into force. The coal power plants had to either modernise to adhere to the lower limits or to ask the Czech



authorities for a derogation. According to the Industrial Emissions Directive, the derogation could be granted only where an assessment shows that the achievement of emission levels associated with the new limits would lead to disproportionately higher costs compared to the environmental benefits. But in reality, the plant operators often try to use the derogation to save money, even though the environmental benefits would outweigh the cost of modernisation investments. J&E member, the Frank Bold Society, participated in 16

proceedings regarding the derogations and represented environmental and health interests. Thanks to their participation, the derogations were usually stricter (i.e. lower emission limit value for a shorter period of time) than what the operators of coal power plants asked for.

- **Croatia: Golf company attacking freedom of speech**

The company Razvoj golf is [trying to intimidate](#) J&E member Zelena akcija/FoE Croatia in court and, under the threat of a large fine, stop them from further action in the public interest. In a criminal proceeding, Razvoj Golf is seeking the punishment of the responsible persons for the campaign in which FoE Croatia called for compliance with the law and court rulings regarding the construction of an apartment complex in Dubrovnik. This case is a typical example of what is called SLAPP (strategic lawsuits against public participation). A couple of hearings were held and the case is still pending.



- **Revision of the Bulgarian Recovery and Resilience Plan**



In June, J&E member Bluelink prepared recommendations for the revision of the draft National Recovery and Resilience Plan (NRRP). They were aimed, on one hand, at improving the planned projects, increasing the

budget of some of the measures, as well as including additional measures that are necessary and will directly lead to nature protection, and on the other hand, will help mitigate the effects of climate change. Read more [here](#).

- **Court in Estonia suspends the construction of a shale oil plant**

In May, the district court in Estonia [suspended the construction permit](#) of a shale oil plant issued by the local government in NE-Estonia for state-owned energy company Eesti Energia. The court's ruling is a result of the climate activists' additional appeal in the beginning of this year, finding that the SEA doesn't explicitly exclude the negative impact of the construction on the nearby Natura area. The [complaint](#), first of its kind in Estonia, filed by Fridays For Future, claimed that the construction permit issued for the shale oil plant is contrary to international climate and environmental agreements. The activists are represented in the court procedure by J&E member, the Estonian Environmental Law Center.



- **Disregard for public participation in Slovenia**

As J&E member PIC (Legal-informational centre for NGOs) [informed us previously](#), under the new government, the position of environmental NGOs and access to justice in Slovenia has seriously deteriorated. Furthermore, the adoption of the Slovenian long-term climate strategy has been marked by SEA procedure bypass, manipulation of public consultation and ignoring the right of civil society to participate in decision-making. The particular process of adopting the Strategy is in breach of the Aarhus Convention, the ESPOO Convention, the SEA Directive, the Slovenian Constitution and the national legislation. [Read the whole story](#).

Read more news from our network [HERE](#).



BIG LEGAL NEWS

- **Climate justice: victory against Shell!**

Probably the biggest news of this year is the climate case against Shell. In a historic judgment in May, Friends of the Earth Netherlands [have won](#) their legal case against the oil and gas giant. In the ruling, Shell has been ordered to change their policy to achieve 45 percent emission reductions by 2030. This is for sure an important precedent!

Furthermore, a Dutch [court ruled](#) in January that Shell is liable for Niger Delta oil spills and has to pay for damages in a case brought forward in 2008 by four Nigerian farmers and Friends of the earth Netherlands/Milieudefensie. This is a huge victory after 13 years of legal fights!



- **NGOs win historic victory against French state**

[A landmark ruling](#) in February has found the French state at fault for failing to take enough action to tackle the climate crisis. The decision by the French court will serve as a warning to other governments to do more to reduce carbon emissions in line with their public commitments. The case was filed in 2018 by a group of NGOs (including Oxfam and Greenpeace) and backed by over two million citizens. After that, in October, the Administrative Court of Paris found France [guilty of exceeding](#) its greenhouse gas emissions targets and ordered that it take immediate remedial action to repair the damage.



- **EU opens courtroom doors for citizen climate litigations**

In July, EU lawmakers [reached an agreement](#) on bringing the EU in line with the Aarhus Convention. EU countries and European Parliament negotiators agreed to broaden the list of those who can contest legal acts, beyond just NGOs, to include members of the public. They also agreed to widen the scope of the regulation to include administrative acts requiring implementing measures at the national and EU level. The Council of the European Union gave the [final go ahead](#) to the adoption of an amendment to the Aarhus Regulation in October.



- **Czechia sues Poland over illegal coal mining**

Earlier this year, [Czechia decided](#) to take Poland to the European Court of Justice for illegal mining activities in the Turov coal mine. They filed a complaint against Poland for expanding the life of this open-pit coal mine and demanded its immediate closure, arguing that it is lowering ground water supplies for nearby communities and contributing to air pollution. In June, The [European Commission](#) decided to join Czechia's case and the first hearing was held in November in Luxembourg. According to the European Environmental Bureau (EEB), it is the first legal case in EU history where one member state sues another for environmental reasons.



- **European National Human Rights Institutions Intervene in a High-Profile Climate Case**

In one of the first climate cases to be decided by the European Court of Human Rights, the European Network of National Human Rights Institutions has submitted this month a joint third-party intervention. The intervention, a first by national human rights institutions in an international climate case, highlights the urgency of reducing greenhouse gas emissions to avert dangerous climate harm in order to safeguard



the interests of current and future generations. The case is brought by a group of older women and their association against Switzerland. They allege that the State is not doing enough to cut greenhouse gas emissions, thereby exposing them to life-threatening heatwaves. [Find out more.](#)

2022 will again be a busy year for us, and we invite you to join us on our way. Follow our [website](#), [Facebook page](#) and [Twitter account](#) to get the latest updates.

The whole team of Justice and Environment wishes you very happy holidays and a healthy & much more positive 2022!

