

# FIFTH AARHUS WORKSHOP

## Human Rights, European & National Climate Laws and the Importance of the Aarhus Convention

7 September 2021

9.00 to 13.00



# Workshop Team



**Larissa Donges**

Moderation



**Polona Valič**

Moderation



**Senka Šifkovič Vrbica**

Speaker



**Kathleen Pauleweit**

Speaker



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# Welcome

**Dr Vasilka Sancin**, Associate Professor at University of Ljubljana &  
Director of Centre for International and Business Law

# Agenda I

9.15	Presentation 1 <b>Human Rights &amp; Aarhus Convention in the European Union</b> with subsequent round of questions (Dr Vasilka Sancin)
10.00	Presentation 2 <b>Access to Justice for Climate: Landmark Ruling by the Federal Constitutional Court &amp; its Relevance for the Supranational Legal Order</b> with subsequent round of questions (Dr Roda Verheyen, LL.M.)
10.15	<i>5-min. break</i>
10.20	Keynote <b>Environmental NGO Perspective on Slovenian Presidency of the Council of the European Union regarding Environmental Matters</b> (Mag Senka Šifkovič Vrbica)
10.30	Presentation 3 <b>Implications of the Amendment to the Aarhus Regulation &amp; EU Climate Law</b> with subsequent round of questions (Sebastian Bechtel, LL.M)

# Agenda II

10.45	Panel Discussion 1 <b>Expectations on upcoming MOP 7 &amp; EU's Compliance with the Aarhus Convention</b> with subsequent round of discussion (Mag Tanja Pucelj Vidovič, Matthias Sauer, Alistair McGlone)
11.30	<i>10-min. break</i>
11.40	Panel Discussion 2 <b>Public Participation &amp; Access to Justice on EU &amp; Member State Level</b> with subsequent round of discussion (Dr Maša Kovič Dine, Dr Maria Alexandra, Aljoša Petek)
12.25	The way forward (Kathleen Pauleweit, LLM)
12.40	End of the workshop
<i>till 13.00</i>	<i>Questions &amp; Answers</i>

# About CIEL, PIC, IPoP & Umanotera

- The [Center za mednarodno in poslovno pravo](#)/Centre for **International and Business Law** is since 2015 a partner in the European Climate - KIC project **Pioneers into Practice**
- [PIC - Pravni center za varstvo človekovih pravic in okolja](#)/Legal centre for the protection of human rights and **environment** is a legal centre for the protection of human rights and the environment with a strong focus around the implementation of the Aarhus Convention in Slovenia and in the European Union. It coordinates the **network of Environmental defenders**.
- The [IPoP – Inštitut za politike prostora](#)/Institute for **Spatial Policies** is an advocacy, consulting and research organisation in the field of sustainable spatial and urban development, supporting communities towards sustainable urban development. IPoP is the coordinator of NGOs for sustainable spatial planning in Slovenia - Mreža za prostor.
- [Umanotera – Slovenska fundacija za trajnostni razvoj](#)/The **Slovenian Foundation for Sustainable Development** has been the leading NGO in the field of sustainable development since its beginning 25 years ago. Umanotera is also a coordinator of a national network of NGOs working in the field of sustainable development – **Plan B for Slovenia**.



# About UfU

- NGO and scientific institute
- Offices in Berlin & Halle (Saale)
- around 40 employees, four departments
- Regional, national, EU & international projects
- Further information:  
<https://www.ufu.de/en/>

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# European Implementation of the Aarhus Convention in the Digital Age (EU-AarKo)



- Duration: 4/2020 - 12/2021
- Further information:
- <https://www.ufu.de/en/projekt/eu-aarko/>

Presentation 1

# Human Rights & Aarhus Convention in the European Union

**Dr Vasilka Sancin**, Associate Professor at University of Ljubljana &  
Director of Centre for International and Business Law

# HUMAN RIGHTS & AARHUS CONVENTION IN THE EUROPEAN UNION

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**PROFESSOR DR.VASILKA SANCIN,**

CENTRE FOR INTERNATIONAL AND BUSINESS LAW (SLOVENIA)

FIFTH AARHUS WORKSHOP

7. SEPTEMBER 2021



# STRUCTURE OF THE PRESENTATION

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- How are human rights relevant for the discourse on the Aarhus Convention?
- What are the different features of this relationship in the EU context?
- Why is it important that the EU citizens and NGOs have access to EU mechanisms that can conduct a legal review of their complaints?
- What next?

# HUMAN RIGHTS & AARHUS CONVENTION (AC)

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- The acts of the EU in the environmental sphere impact profoundly the people within and beyond the jurisdiction of its Member States
- Growing body of jurisprudence on human rights and the environment before human rights bodies (domestic courts, regional courts – e.g. ECtHR, IACtHR – and UN human rights treaty-based bodies – e.g. UN Human Rights Committee) litigating human right violations caused by conduct contributing to environmental degradation and climate change
- AC is the first environmental treaty envisaging a right of individuals and civil society organisations (CSOs) to gain access to relevant environmental information, participate in environmental decision-making that can have effect a variety of their human rights and have access to legal remedies – without these rights a number of basic human rights remain manifestly exposed to potential violations at the EU level

# HR AND AC IN THE EU CONTEXT

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- In addition to the Member States, the EU is a party to the AC in its own right
- EU is a regional international organisation with its own legal personality
- EU (institutions) enjoy(s) immunity before domestic courts – no action against them can be admitted
- EU is a supra-national organisation – Member States have transferred to it the exercise of a significant part of their sovereign rights in many areas – also the ones affected by environmental changes (most of the EU environmental matters are within the shared powers of the EU and its Member States)
- Individuals and CSOs have restricted access to the CJEU – no *actio popularis*

# AVAILABILITY OF LEGAL REVIEW FOR COMPLAINTS IN ENVIRONMENTAL MATTERS

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- Individuals cannot complain of their human rights being affected by the conduct of EU institutions in the environmental area before their domestic courts – consequently, a similar development as with the environmentally inspired human rights (strategic) litigation against the EU is not possible before domestic courts of its Member States
- “Safe heavens” for environmental actions/omissions within the competence of the EU – incentive for transferring more powers to it to the detriment of the environment?
- Mechanisms available at the EU level: internal review and actions before EU courts – uncharted waters: assessment of admissibility of individuals' complaints, development of standards for assessment + effective remedies?

# THE WAY FORWARD

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- Significant improvements in the amended version of the Aarhus Regulation:
  - compliance of EU legal order with obligations under the AC could provide an important momentum for the EU to confirm it can lead by example in environmental matters
  - Still to be translated into practice
- The modalities of access of individuals to internal review need to be further clarified in practice
- Individuals need to be able to meaningfully exercise their rights under the AC in the EU context – removal of practical and financial barriers (right to an effective remedy)
- The steps for further improvements to be charted after the October 2021 Meeting of the Parties to the AC

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THANK YOU FOR YOUR ATTENTION!

Q & A

Contact:

[vasilka.sancin@pf.uni-lj.si](mailto:vasilka.sancin@pf.uni-lj.si)

# Questions

**Human Rights & Aarhus Convention in the  
European Union**

Presentation 2

# **Access to Justice for Climate: Landmark Ruling by the Federal Constitutional Court & its Relevance for the Supranational Legal Order**

Dr Roda Verheyen, LLM, Environmental Lawyer of Rechtsanwälte  
Günther Partnerschaftsgesellschaft



**Order of 24 March 2021 - 1 BvR 2656/18 and others**

**The German Federal Constitutional Court's landmark  
decision on the Climate Change Act**

Dr. Roda Verheyen, September 2021

# Big Win on 29th April – unanimous decision of 23rd March published

Rechtsanwälte Günther



Bundesverfassungsgericht



The Federal Constitutional Court   Justices   Proceedings   Decisions

Please note that the President of the Federal Constitutional Court issued an **order regarding entry to the Federal Constitutional Court building** for persons visiting the

## German climate change law violates rights, court rules

© 29 April

Climate change



REUTERS

Germany's climate change laws are insufficient and violate fundamental freedoms by putting the burden of curbing CO2 emissions on the young, its highest court has ruled.

## German climate law is partly unconstitutional, top court rules

Germany will have to improve its emissions targets from 2031 following a complaint by a coalition of climate activists, including Fridays for Future.



Key  
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# The right to a self-determined future: The German Constitutional Complaint – Basic Law (*Grundgesetz*)

- Art. 1 (Human Dignity)
- Art. 2 (Health and Life)
- Art. 12 (Vocation)
- Art. 14 (Property)



Empfänger: Mrs Dr  
Extension: 040-27  
Email: drzewiecki

Constitutional complaint *Neubauer and others*, supported by  
Greenpeace e.V. and Germanwatch e.V.

**Summary:**  
**Insufficient protection level of the Federal Climate Protection Act and failure to implement climate protection measures no longer constitutionally acceptable**

The complainants argue that individual provisions of the Federal Climate Protection Act are incompatible with their rights guaranteed in the Basic Law and therefore unconstitutional. In particular, the complaints point to the inadequate reduction target of - 55% by 2030 (compared to 1990) which is backed up by



## Legal Basis and Claim in the German Constitutional Case:

- The German Climate Change Act (Dec. 2019) is insufficient (reduction pathway does not lead to 1.5° or even 2° C, budget is exceeded)
- Legal Argument: Duty to Protect and Active Interference:
  - The guarantee of human dignity under Article 1 of the Basic Law is affected because the generation of the complainants is deprived of any options for action to protect itself – need to remain in control of tipping points – “do as much as you can”
  - Reduction pathway of the Act and omission to reduce GHG more quickly violates the fundamental right to life and physical integrity (Art. 2.2 of the Basic Law) against risks of a life-threatening nature
  - Using Urgenda /Art 2 and 8 ECHR as interpretation of German Basic Rights

- Applicants must substantiate, what fundamental rights may be infringed and that they are personally, directly and presently affected by the challenged law.
- Aarhus does not apply
- The court:

“The legislator might have violated its duty of protection by affording insufficient protection against health impairments and risks to life caused by climate change. It is true that climate change is a genuinely global phenomenon and could obviously not be stopped by the German state on its own. However, this does not render it impossible or superfluous for Germany to make its own contribution towards protecting the climate”

Nor are the constitutional complaints an inadmissible *actio popularis*. The mere fact that very large numbers of people are affected does not exclude persons from being individually affected in their own fundamental rights (see VG Berlin, Judgment of 31 October 2019 – 10 K 412.18, para. 73....) In constitutional complaint proceedings, it is not generally required that complainants are especially affected – beyond simply being individually affected – in some particular manner that differentiates them from all other persons (unlike the case-law on Art. 263(4) TFEU, cf. GCEU, Order of 8 May 2019, Carvalho, T-330/18, EU:T:2019:324, para. 33 ff....

## Key findings

**1** The fundamental right to life and physical integrity in the constitution (Article 2 (2), first sentence) also includes a duty of the state to actively protect life and health from the dangers of climate change. This is not a fundamental right of future generations, but of persons alive now and during their lifetime. However, the state has a wide margin of discretion, and there is no infringement of the duty to protect (from the impacts of climate change) at this point in time.

**2** The provision on environmental protection in Article 20a of the constitution is not a fundamental right enforceable by individual persons. But it does impose a constitutional duty on the state to achieve climate neutrality. This duty to protect the climate is justiciable and limits political discretion. It does not take precedence over other constitutional rights and principles, but the legal weight in the balancing process increases as climate change progresses.

Source (partially) ECOLOGIC

## Key findings

**3** The Climate Change Act is unconstitutional insofar as it does not sufficiently protect persons against future curtailing of their rights that could become necessary as climate change progresses (due to climate change mitigation measures). Based on Germany's targets, the emission levels that the Climate Change Act allows until 2030 would use up a large part of the total emissions budget that is available until 2050. Therefore, there is a risk that fundamental rights will be severely curtailed from 2030 onwards.

**4** The state has a duty to take precautions today in order to protect fundamental rights post 2030 as well. It has to initiate the transition to climate neutrality sufficiently early so that those concerned by the measures can plan ahead. It also has to set emission levels for the time after 2030 earlier than 5 years ahead, periodically and transparently

Source (partially) ECOLOGIC

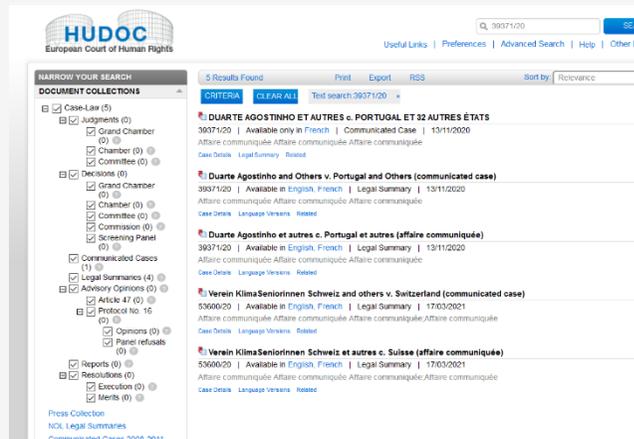
## What about the EU?

People's Climate Case, Case C-565/19 P Armando Carvalho & Others v EP and Council:

... if everybody is affected, nobody can go to court ... (upholding Plaumann - ECJ, C-25/62)



# What about the ECHR ??



**Swiss Ladies (CH)**  
**Duarte et. al. ( 33 Contracting States)**  
**Arctic (Nor)**



# Questions

**Access to Justice for Climate: Landmark Ruling by the Federal Constitutional Court**

# Slovenian Presidency of the EU Council

**Mag Senka Šifkovi Vrbica**, Environmental Lawyer at Institute  
for Spatial Policies (IPoP)

## EEA (2019), The European Environment – state and outlook 2020 Next 10 years

„Achieving the goals of the 2030 agenda for sustainable development and the Paris Agreement will require **urgent action** in each of these areas during the **next 10 years**. To be clear, **Europe will not achieve its sustainability** vision of ‘living well, within the limits of our planet’ simply **by promoting economic growth and seeking to manage harmful side-effects with environmental and social policy tools**. Instead, **sustainability needs to become the guiding principle** for ambitious and coherent **policies and actions** across society. Enabling transformative change will require that **all areas and levels of government work together** and **harness the ambition, creativity and power of citizens, businesses and communities**. In 2020, Europe has a unique window of opportunity to lead the global response to sustainability challenges. Now is the **time to act**.“

Presentation 3

# **Implications of the Amendment to the Aarhus Regulation & EU Climate Law**

**Sebastian Bechtel, LLM**, Environmental Democracy Lawyer  
at ClientEarth Brussels

A person wearing a red jacket and a patterned knit hat is seen from behind, raising their right fist in a crowd at night. The background is blurred with city lights and other people, creating a bokeh effect. The overall mood is one of protest or solidarity.

# EU Climate Law & Aarhus Regulation

**ClientEarth**

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# EU Climate Law

Key aspects:

## 1. Ambition:

- Climate neutrality by 2050
- 55% net emission reductions by 2030

## 2. Governance:

- 5 “climate mainstreaming” assessments
- Establishing the basis / assess every new measure / progress control
- New scientific body (EUBCC)



# Some thoughts

- Useful regulatory approach + EUBCC with great potential
- 55% net target by 2030 disappointing
- Impact will largely depend on “Fit for 55” package (implementation)
- Could aid climate litigation efforts by enshrining binding goals in EU Regulation (though collective)



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# Aarhus Regulation amendment

A 13 year long saga (almost) at an end ...



# The issue

- Aarhus Regulation: internal review -> access to EU courts
- Currently: applies only to acts of individual scope = mostly certain chemical authorizations



**ClientEarth**

# A big win

- Extension to acts of general scope = non-legislative acts with legal and external effects
- Examples:
  - Glyphosate approval;
  - PCI list approval;
  - Decisions regulating real driving emissions tests for motor vehicles;
  - Decisions setting total allowable catches (TACs) of certain fish stocks.



**ClientEarth**

## Some caveats

- Does not apply to legislative acts;
- State Aid decisions excluded – Commission to prepare study by end of 2022 (+ EC proposes to move decision to next MOP);
- Standing for individuals but very restrictive.



# Impact

- Substantially greater possibilities to challenge acts of EU institutions/bodies, at least for NGOs;
- Focus now on scope & standard of review applied by CJEU.



**ClientEarth**

# Some resources

## EU Climate Law:

- [Blog post evaluation](#)
- [Assessment from the Green group in the European Parliament](#)
- [Overview of the Fit for 55 package](#)

## Aarhus Regulation:

- [ClientEarth PR with links to resources](#)
- [Text as agreed in trilogues](#)
- [Commission statement on state aid](#)
- [Council draft decision for EU MOP position](#)

# Thank you!

Sebastian Bechtel

Environmental Democracy Lawyer

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# Questions

**Implications of the Amendment to the Aarhus Regulation  
& EU Climate Law**

# Panel Discussion 1

**Expectations on upcoming MoP 7 & EU's Compliance with the Aarhus Convention**

# MoP 7 & EU's Compliance with the AC



**Mag Tanja Pecelj Vidovič**

Focal Point for Aarhus  
Convention at the Ministry of  
the Environment and Spatial  
Planning



**Matthias Sauer**

Head of Unit of Federal  
Ministry for Environment,  
Nature Conservation and  
Nuclear Safety



**Alistair McGlone**

Director at Alistair McGlone  
and Associates Ltd



**Mag Tanja Pecelj Vidovič**

Focal Point for Aarhus  
Convention at the Ministry of  
the Environment and Spatial  
Planning

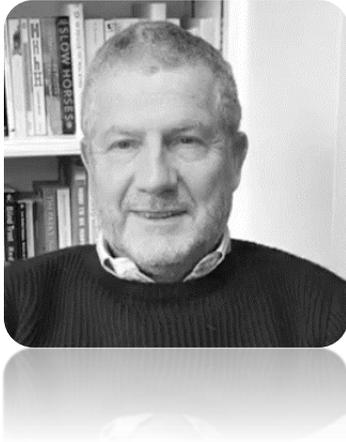
1. Among all the Parties to the Aarhus Convention, the European Union is the only Party with a legal status of an international organization.
2. With the adoption of the amendments to the Aarhus Regulation, the EU has taken a big step, hardly imaginable a few years ago.
3. Post-MOP: Still on the path of reinvention of checks and balances in cases of complex decision-making.

1. The political compromise between the EU Parliament, the Council and the Commission on the amendment of the EU Aarhus Regulation is an important step forward that will strengthen access to justice in environmental matters on the EU level and that will demonstrate the ongoing support of the Aarhus Convention by the EU.
2. At the same time this political compromise has shown that the Member States need more time to fully understand the legal and practical implications of an extension of the review mechanism on state aid decisions as requested by the Compliance Committee.
3. The upcoming MOP 7 will be an excellent opportunity to highlight the importance and the practical application of the rights granted by the Convention even in times of a global pandemic.



**Matthias Sauer**

Head of Unit of  
Federal Ministry for  
Environment, Nature  
Conservation and  
Nuclear Safety



**Alistair McGlone**

Director at Alistair  
McGlone and  
Associates Ltd

1. The findings by the Compliance Committee should be adopted with minimal or no amendment. The MOP must “endorse” them, in particular regarding Case C32 and C128.
2. It is imperative to avoid a repeat of the events at the last MoP, at which the EU blocked the endorsement of the C32 findings.
3. The EU should champion accountability and the international rule of law to avoid damaging its reputation as a global leader in environmental forums.

# Panel Discussion 2

**Public Participation & Access to Justice on EU & Member State Level:** Is Climate & Environmental Litigation the Last Resort for European Citizens & NGOs to enhance Environmental Good Governance in the Human-Rights based European Legal System?

# Public Participation & Access to Justice on EU & Member State Level



**Dr Maša Kovič Dine**

Assistant Professor at  
University of Ljubljana



**Dr Maria Alexandra de  
Sousa Aragão**

Professor at University  
of Coimbra, Portugal



**Aljoša Petek**

Environmental Lawyer at PIC -  
Legal Centre for the Protection  
of Human Rights and the  
Environment

1. Access to environmental information and public participation phases are key for environmental governance.
2. Proper planning and approval procedures that enable active citizenship prevent legal disputes in court and also long-term financial costs of environmental degradation.



**Dr Maša Kovič Dine**

Assistant Professor at  
University of Ljubljana



**Dr Maria Alexandra de  
Sousa Aragão**

Professor at University  
of Coimbra

1. When everything else fails... litigation is the last desperate attempt.
2. Is litigation the correct tool?  
Court litigation produces *inter partes* effects but the entire population, future generations and nonhuman beings will benefit from the desired outcome.
3. Litigation is a lottery. Are there alternatives: predicting the results - is it worth the effort?, trial by jury – citizen juries, mixed environmental courts with law-trained judges and science-trained judges, alternative dispute resolution, ...



**Aljoša Petek**

Environmental Lawyer at PIC - Legal  
Centre for the Protection of Human  
Rights and the Environment

1. Maintaining the status quo and business as usual has so far determined worldwide and Slovenian climate (In)action and endangered the future of younger generations.
2. Climate and environmental litigation is necessary to enforce existing law and punish non-compliance.
3. Serious cooperation for environmental protection between older and younger generations should be improved and the youth should be enabled to effectively participate in environmental matters.

# Questions

**Public Participation & Access to Justice  
on EU & Member State Level**

# The Way Forward

**Kathleen Pauleweit, LLM**, Research associate at the Department Environmental Law & Participation of the Independent Institute for Environmental Issues – UfU e.V.

# Important Dates

EU Council Presidency	2020	Events	Location
Croatia	11 May	1 <sup>st</sup> Aarhus Workshop	<i>virtual</i>
	30 June	2 <sup>nd</sup> Aarhus Workshop	<i>virtual</i>
Germany	17 Nov.	3 <sup>rd</sup> Aarhus Workshop	<i>virtual</i>
<b>2021</b>			
Portugal	24 March	4 <sup>th</sup> Aarhus Workshop	<i>virtual</i>
Slovenia		Adoption of the amended Aarhus Regulation	/
	<b>7 Sept.</b>	<b>5<sup>th</sup> Aarhus Workshop</b>	<b><i>virtual</i></b>
	16 Sept.	UN Dialogue on International Democracy Day	<i>virtual</i>
	13 Oct.	MoP 7 side event: New Aarhus Regulation	<i>virtual</i>
	<b>18-21 Oct.</b>	<b>7<sup>th</sup> Aarhus Convention Meeting of the Parties (MoP)</b>	<b>Geneva / hybrid</b>
	21 Oct.	Joint High-level Segment under the MoP and PRTR-Protocol	Geneva / hybrid
	22 Oct.	4 <sup>th</sup> Meeting of the Parties to the PRTR-Protocol	Geneva / hybrid

# Thank you!

## The Aarhus Convention supports our future.

### INFORMATION – PARTICIPATION - PROTECTION

This workshop is financially supported by



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REPUBLIKA SLOVENIJA  
MINISTRSTVO ZA OKOLJE IN PROSTOR

**Umwelt  
Bundesamt**



Federal Ministry  
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and Nuclear Safety

# Contact

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