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Editorial

Is Aarhus Still a Progressive Force?

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The year 2020 will be remembered for the pandemic we are all experiencing first hand. Its effects are visible in many aspects of our lives, including academic productivity. This Journal registered a significant increase of submissions over the course of 2020, especially in concomitance with the first wave of the virus. This is why we decided to make the first issue of the 2021 Volume a double issue.

Among the various publications included in this double issue, there are three that focus on the Aarhus Convention.¹ Anna Berti Suman's manuscript focuses on the relationship between access to information, citizen sensing and public participation. Vasiliki (Vicky) Karageorgou's manuscript, instead, focuses on the interrelation between public participation and access to justice in the EIA context by building upon a recent *Flausch et al* Case² of the Court of Justice, about which we reported in the previous issue of this Journal.³ Magdalena Maria Michalak and Przemyslaw Kledzik's manuscript, finally, focuses on the

- 1 United Nations, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark 25 June 1998, UN Treaty Series 2161, 447.
- 2 Judgment of 7 November 2019, *Alain Flausch and others v. Ypourgos Perivallontos kai Energeias and Others*, C-280/18, ECLI:EU:C:2019:928.
- 3 *L. Squintani*, Case Law of the Court of Justice of the European Union and the General Court, JEEPL 2020 (17/2) 229-24.

parties right in proceedings for issuing and environmental impact assessment decision, by reviewing the Polish experience.

When looked at them conjunctively, these papers show the great effects that the Aarhus Convention is having on the environmental governance structures of the signatory states. During the first four lustra of its regulatory work, the Aarhus Convention stood undeniably as a driving force for environmental democracy in Europe, as Wates wrote in 2005 in this Journal.⁴ Despite many progresses in the regulatory frameworks of the signatory states, more are still to be expected thanks to the continuous work of refinement brought forward by the Aarhus Convention Compliance Committee, internationally, and by the Court of Justice of the European Union, as well by the national courts, in the European Union and national legal orders.

Still, Suman's plea for a progressive interpretation of the Aarhus Convention public participation pillar, made me think about another manuscript I had the pleasure to read in 2019, in which Aragão pleaded for a human right based interpretation of the participatory pillar of the Convention in order to foster an ecosystem services based approach to nature conservation.⁵ Both manuscripts show that a main stream interpretation of the Convention, or probably I should say a conservative reading of the Convention, does not suffice to encompass a reality in which the people – in Aarhus' jargon, the public – want to play a more active role in shaping the environment in which we live.

In my own research, I am also encountering more and more evidence about a mismatch between the Aarhus regulatory framework on public participation and people's preferences thereabout.⁶ Besides, together with Schoukens, I advocate for a progressive reading of the Aarhus participatory pillar in order to foster the participatory rights of weak societal groups, such a low educated.⁷

4 J. Wates, The Aarhus Convention: a driving force for environmental democracy, JEEPL 2005 2(1) 3–11.

5 A. Aragão, When feelings become scientific facts: valuing cultural ecosystem services and taking them into account in public decision-making, in L. Squintani, J. Darpö, L. Lavrysen & P.T. Stoll, Managing Facts and Feelings in Environmental Governance, 2019, pp. 53–80.

6 G. Perlaviciute and L. Squintani, Public Participation in Climate Policy Making: Toward Reconciling Public Preferences and Legal Frameworks, One Earth, 2020 2(4), 341–348. [https://doi.org/\(...\)j.oneear.2020.03.009](https://doi.org/(...)j.oneear.2020.03.009) and L. Squintani and G. Perlaviciute, Access to Public Participation: Unveiling the Mismatch between what Law Prescribes and what the Public Wants, in M. Peeters and M. Eliantonoi (eds.), Research Handbook on EU Environmental Law, In Edward Elgar Publishing 2020, 133–147.

7 L. Squintani and H. Schoukens, Towards equal opportunities in public participation in environmental matters in the European Union, in L. Squintani, J. Darpö, L. Lavrysen, and P.T. Stoll (eds.), Managing Facts and Feelings in Environmental Governance, Edward Elgar Publishing 2019, 22–52.

The question thus raises about where the Aarhus Convention stops being a progressive force, and starts being a conservative one. Of course, many manuscripts in this journal showed the important work that, thanks to the Aarhus Convention, is taking place about all the pillars of the Convention, but in particular the access to justice pillar.⁸ Karageorgou's manuscript confirms that there is still important work to perform under the public participation pillar. Yet, what if compliance with the access to information and public participation pillars results being insufficient to ensure a level of environmental democracy that is in line with the expectations of the public, or at least a part thereof? In other words, does full compliance with the Aarhus regulatory framework ensures behavioral and problem-solving effectiveness of this regulatory framework?⁹

From an academic perspective, it would be relevant to see a stream of publications investigating the boundaries of the Aarhus regulatory framework and to start a dialogue about the need, room, and forms of a possible modernization of the Aarhus Convention. This Journal would very much welcome manuscripts on this topic.

The other topics covered in this double issue array from forest protection, with Kathrin Böhling and Maria Fernanda Marques Todeschini's manuscript complementing the work of Savaresi and Perugini published in the 2019 volume of this Journal,¹⁰ to waste management, with David Hadrousek's manuscript focusing on the manner in which the Court of Justice dealt with the definition of waste in the *TPS-NOLO (Geobal)* Case,¹¹ an ever green in academic literature as well known. They range from forensic evidences in Poland, in Elżbieta

8 E.g. *Wates*, at note 4; *V.Koester*; Review of Compliance under the Aarhus Convention: A Rather Unique Compliance Mechanism, *JEEPL* 2005 2(1), p. 31–44; *J. Jendrośka*, Citizen's Rights in European Environmental Law: Stock-Taking of Key Challenges and Current Developments in Relation to Public Access to Environmental Information, Participation and Access to Justice, *JEEPL* 2012 9, p. 71–90; *J. Darpö*, Article 9.2 of the Aarhus Convention and EU Law, *JEEPL* 2014 11, p. 367–391; *Mariolina Eliantonio and Franziska Grashof*, Wir müssen reden! – We Need to Have a Serious Talk!, *JEEPL* 2016 13(3–4) 325–349; *L. Krämer*, Access to Environmental Justice: The Double Standards of the ECJ, *JEEPL* 2017 14, p. 159–185; *U. Gieseke*, The Aarhus Convention in Practice: Challenges and Perspectives for German Environmental Authorities, *JEEPL* 2019 20, p. 372–385.

9 For the difference between legal, behavioral and problem-solving effectiveness, see S. Maljean-Dubois, The Effectiveness of Environmental Law: A Key Topic, in S. Maljean-Dubois (ed.), *The Effectiveness of Environmental Law*, Intersentia 2017, 1–13, available at <https://www.eelf.info/home-7.html>.

10 A. Savaresi and L. Perugini, The Land Sector in the 2030 EU Climate Change Policy Framework: a Look At The Future, *JEEPL* 2019 16(2) 148–164.

11 Judgment of 14 March 2019, *Commission v Czech Republic*, C-399/17, EU:C:2019:200.

Małgorzata Zebek and Denis Solodov's manuscript, to the limited integration of environmental concerns into bilateral agreement of the European Union with third states, in Ludwig Krämer's article.¹² Finally, they space from an assessment of the limitations of tort law as a risk management tool in Herman Kasper Gilissen, Elbert de Jong, Marleen van Rijswijk and Annemarie van Wezel's manuscript, a topic hinted at in the Journal more times,¹³ to a reflection about the latest developments in the field of EU energy policy law in Ruven Fleming and Romain Mauger's manuscript, thus complementing the EU Green Deal assessment presented in the previous volume of this Journal.¹⁴

We could not think about a better way to start 2021. We wish the readers a pleasant reading!

¹² With attention to the constraints posed by the attribution principle in this regard, a topic addressed in *B. Vanheusden and L. Squintani*, Reconciling Conflicting Values: A Call For Research on Instruments to Achieve Quasi-Sustainability, in *B. Vanheusden & L. Squintani* (eds.), *EU Environmental and Planning Law Aspects of Large-Scale Projects*, Intersentia 2016, 385 ff.

¹³ *L. Squintani*, Tort-Law based Environmental Litigation: a Victory or a Warning?, *JEEPL* 2018 15(3-4) 277-280; *L. Squintani*, Addressing the (Lack of) Effectiveness of Environmental Law and the Gap between Law in the Books and Law in Action, *JEEPL* 2020 17(2) 133-135, and *L. Squintani*, Environmental Protection and Human Rights: Recent Developments and Recurring Questions, *JEEPL* 2020 17(3) 265-266.

¹⁴ *L. Krämer*, Planning for Climate and the Environment: the EU Green Deal, *JEEPL* 2020 17(3) 267-306.