

# GREEN VOICES: PUBLIC PARTICIPATION FOR CLIMATE ACTIVISTS

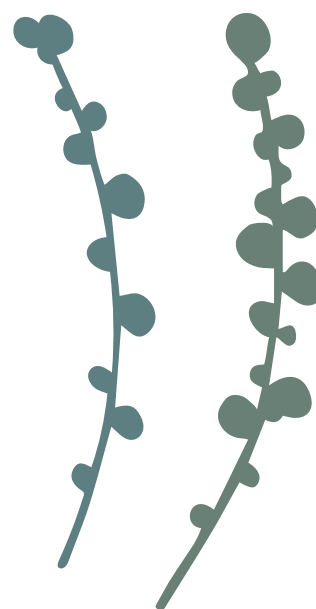


European Center for  
Not-for-Profit Law

## INTRODUCTION

The rise of a global climate movement has been accompanied by a crackdown on civic space for climate activists worldwide. Earlier, the European Center for Not-for-Profit Law (ECNL) and International Center for Not-for-Profit Law (ICNL) [published an analysis](#) of international human rights and civic freedoms violations in light of the rise of global climate movement. We see that states impose unnecessary and disproportionate restrictions on the right to protest, free speech, access to information and freedom of association – fundamental freedoms and rights that enable the public to participate in decision-making in environmental issues. This closing of civic space is even [more aggravated](#) since the start of the pandemic.

This follow-up paper provides a closer look into how the right to participation of climate activists and environmental groups in **Slovenia** and **Ireland** is hindered through legislative efforts by their government. We identified these cases as they are similar in the way that the Governments changed and/or attempted to change legislation to explicitly limit the participation of environmental civil society organizations (CSOs) and concerned public. We present European cases because it shows that the right to participation even within “strong” democracies and established civil society is being limited. This is also why it is important to have an understanding of *how* participation rights can come under pressure by European governments. Specifically, this paper looks at how participation rights of the climate activists and environmental groups in Europe are treated and marks the beginning of ECNL’s broader work on understanding the legal and policy challenges of the civic space of this particular group. This paper illustrates different ways in which countries, through law and practice, systematically undermine meaningful participation and hinder CSO ability to influence policies in areas of their work. We also provide an overview of how organized civil society, both in Slovenia and Ireland, is pushing back in order to learn from these efforts.



# KEY STANDARDS THAT SAFEGUARD THE RIGHT TO PARTICIPATION FOR CLIMATE ACTIVISTS AND ENVIRONMENTAL GROUPS

The right to participate in public affairs entails a deliberative process by which interested or affected people, CSOs, and government actors are involved in policymaking before a (political) decision is taken. It is a continuum of interaction between the government and the public, ranging from informing and listening at one end, to implementing jointly agreed solutions at the other, with dialogue, debate, analysis and evaluation in between. Overall, three main levels of public participation are identified: 1) access to information, 2) consultations and 3) active involvement of the public through dialogue and partnership. The International Covenant on Civil and Political Rights (ICCPR) and the European standards of the Council of Europe provide strong safeguards around the right to participation in public affairs and policy processes in general.<sup>2</sup>

With respect to environmental issues specifically, the [Aarhus Convention](#) establishes several specific rights for climate activists and environmental groups, both for individuals and their associations, which stipulates specifically how their right to access to environmental information should be interpreted, how they ought to take meaningful part in decision-making and their right to access to justice. This is not only on [national, but also regional level](#). The Convention further notes that environmental information should not only be made accessible upon request by individuals and CSOs (article 4), but public authorities should also ensure updated collection of relevant information and the proper dissemination, especially to those that are most likely to be affected by envisioned decisions (article 5). This also includes the responsibility to invest in developing mechanism that are needed to ensure this right (article 5- paragraph 8). Furthermore, climate change activists have the right to participate in decision-making in a broad scale of settings. This includes specific activities (article 6, paragraph 1(a)) that are related to for example production and processing of metals and happen in a broad range of sectors, such as energy, mineral, chemical industries, but also waste management (see annex 1 of the Convention for full overview of specific activities). In addition, public authorities have to ensure public participation in plans, programmes and policies related to the environment (article 7) and during the preparation



1 Among other international documents by [the UN Guidelines](#) for States on the effective implementation of the right to participate in public affairs.

2 As enshrined in international law: Article 21 of the Universal Declaration of Human Rights (UDHR); article 25 of the International Covenant on Civil and Political Rights (ICCPR); as well as in articles of other international treaties such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), and the Convention on the Rights of Persons with Disabilities (CRPD).

of executive regulations and/or generally applicable legally binding normative instruments (article 8). Also, any person who considers that their request for information or right to participation has been (partly) violated, has access to a review procedure before a court of law or another independent and impartial body established by law (article 9).

Other international documents also guarantee the right to participation in policies related to climate change such as the United Nations Framework Convention on Climate Change (article 6) and Stockholm Convention on persistent Organic Pollutants (article 10). One regional example is the Escazú Agreement, which is explicitly dedicated to guarantee the right to participate in environmental decision-making in the Latin American and Caribbean region.

## CASE STUDIES

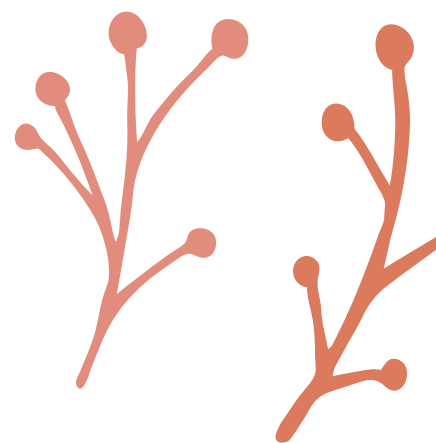
In the following section, we will look at how certain restrictions on the space of climate activists and environmental groups in Ireland and Slovenia have restrained them from meaningfully participating in relevant decision-making processes. We see that common restrictions entail:

- **Limited access to consultation on actual bills that concern the climate;**
- **Introducing new and stricter administrative requirements for participation (such as minimum number of members, prior involvement with a certain case, etc.);**
- **Difficulties to appeal to government decisions with a negative effect on climate and environment.**

## Slovenia

A recent report by [Greenpeace Europe and Liberties](#) exposed Slovenia as among those European countries where governments have been using the pandemic to crack down on criticism, including from climate groups. There are several legislative efforts by the Slovenian government that make it difficult for climate groups – both organized and grassroots – to participate in relevant decision-making processes.

In late April 2020, the Slovenian government [included in its coronavirus crisis stimulus](#) package provisions aimed at deregulation of construction legislation and speeding up of infrastructure investments during the economic recovery. Using the emergency situation as a reason, these changes were made rather quickly and without any public consultation. In other words: even though this is a relevant measure for climate groups in Slovenia who



are active on these issues and they have the right to have a say in these processes, they were hindered to participate in this decision-making process.

Furthermore, the provisions introduce new conditions for participation of the environmental CSOs depending on the type of legal form they are organized in, making it very difficult for CSOs to participate. Associations need to have **at least 50 active members**, which these climate groups need to prove through **paid membership fees and participation at general assemblies**. Climate CSOs that have the status of institute need to have at **least three fully employed staff with university education** in the field, while institutions or foundations need to have at least **EUR 10,000 in assets**. The conditions for all three legal forms apply **retrospectively, for two years back**. With the third corona crisis package that includes the same conditions, these provisions [will stay in force until the end of 2021](#).

In addition, in [May 2020](#), new restrictive criteria for the participation of nature protection CSOs in the procedures for permits and licenses have been introduced in the amendments to the Nature Conservation Act. These seek to tighten eligibility conditions for groups seeking the status of a nature conservation organization in public interest. Moreover, recently changes were proposed again to the Environmental Protection and Spatial Planning Acts. [The proposed legislation](#) removes judicial protection that could be used to challenge implementing spatial acts in court and aims to impose further restrictions for the participation of CSOs in administrative procedures. In practice, this would mean that only individuals demonstrating a legal interest – and not environmental and nature conservation CSOs in general – would be allowed to initiate an administrative dispute against spatial implementation acts. This law is currently under consultation. If passed, it would further restrict the ability for climate groups to participate in decision-making as they will be excluded from key environmental procedures and not be able to take part in environmental impact assessments.

These legislative efforts occur within a broader framework in which climate activists and organisations are attacked through smearing campaigns by the government. For example, the Minister for the Environment published personal financial information about Balkan River Defence's CSO Leeway Collective as well as financial information and posed direct accusations at their founder to challenge their work in public interest. In addition, major TV channels have invited the Minister to confront representatives of climate CSOs whereby the minister portrayed the climate groups as a problem for the realisation of major infrastructure projects and investments in the country, claiming they are misusing their status while benefiting from public funding.

# Ireland

At the end of 2019, Ireland's Minister of Housing [proposed a new Bill](#) - Housing and Planning and Development Bill 2019 - whereby he attempted to press for new planning legislation that would make it nearly impossible to challenge planning decisions in the courts and hold public authorities and the Government to account. The proposed Bill would add numerous challenging requirements and restrictions that will make it very hard for the public and environmental CSOs to achieve the necessary "standing" to take cases. The changes proposed in the Bill would also add to the complexity of the court process and increase the risks of exposure to significant costs to those seeking to challenge bad planning decisions.

More concretely, one of the legislative changes concerns the **new cost rules** which would expose people and groups to much higher costs if they lose in the courts, and significant uncertainty on costs. It will also make it much more difficult to hire lawyers without having to finance this themselves. This is not always possible for local communities or individuals, or for environmental CSOs seeking to protect some habitat or species. Another proposal concerns **the extension of the minimum time that a CSO must be in existence**, before it can challenge a planning decision, from 12 months to 3 years. This would rule out recently established CSOs that are concerned with local environmental issues from bringing challenges. This is particularly concerning for local groups who may have only recently formed due to concern with a developing local environmental issue that may be linked a development going through or about to go through the planning regime.

The Bill also proposed that **climate groups must have a minimum of 100 members**. This would exploit a capacity issue at most CSOs and would rule out most Irish environmental groups from bringing challenges, even looking at national environmental CSOs and foundations. It would also prevent many local environmental organisations from being able to act. Lastly, the bill aimed to **change standing rights requirements for applicants** from "sufficient interest" to "substantial interest" and add a requirement that they must be "directly affected by a proposed development" and "in a way which is peculiar or personal". This is in addition to a new requirement that the applicant must have had prior participation in the planning process.

This Bill has not passed, but it shows how attempts are being made to undermine public participation on climate and environmental issues. Another recent example in Ireland are the amendments made to the so-called [Forestry Bill 2020](#). Here, too, the government is [rushing this](#)



[proposal](#), which makes it almost impossible for environmental groups to participate in the decision-making process through for example consultations. Irish CSOs are also warning for the fact that if these amendments were to be adopted, [it will limit](#) the public's capacity to appeal forestry decisions. As appealing is an important tool that allows the public to give feedback to decisions made by the government, this amendment will hinder their right to participate on this issue.

## CIVIL SOCIETY RESPONSES TO LIMITATIONS TO PARTICIPATION

Civil society has defended its right to participate in environmental issues through different avenues. This included both engaging with legal mechanisms, and by taking it to the streets.

### *Appeals to institutions as first avenue to share opinions*

CSO advocacy networks that access public funds in Slovenia and Ireland have been formally organizing their efforts to counter the restrictions. In [Slovenia](#), a broader alliance of CSOs, including hundreds of experts and different stakeholders in environment, [sent appeals](#) to the government requesting not to introduce the proposed restrictive measures. In [Ireland](#), the Environmental pillar coalition consisting of 28 environmental groups, sent a direct letter to the Minister of State for Land use and biodiversity, to reconsider the consultation process and has encouraged through their website submissions to enable public consultations and engaged with local TDs and councillors.

### *Protests beyond COVID-19 limitations were used as a form of pressure*

In Slovenia, the first response by the affected environmental CSOs was to peacefully protest the restrictive proposals by sitting in front of the Ministry for environment and the Parliament. The [police dispersed](#) the peaceful protesters and took them to the stations and provided them with fines, without any necessity (e.g., they were not blocking the entrance, not shouting). Even though this has not stopped the adoption of the measures it has led to increasing the broader [support](#) by the ongoing anti-government cycling protests. The public that was taking part in those protests was [challenging](#) the government on the procurement of protective gear and ventilators during coronavirus. In support to the environmental CSOs, during the bicycle protest, several CSOs and individuals [created](#) banners on the importance of nature and activism.

### *Pressure on parliamentarians to support public concerns*

CSOs and the wider public tried to engage with the Parliament in various ways to influence the limitations in decision-making on

environmental issues. In Slovenia, Balkan River Defence [started the action](#) Flood of Emails to National Assembly Members (MPs), in which more than 5.000 people sent emails to all 46 MPs in 4 days against new articles in anti-corona package. As for the more direct limitation on the ability of CSOs to take part in decision making with the amendments in the National Conservation Act, they started the action Hail of emails to MPs, and the MPs voting received over 11.000 emails in just 4 days, which is a country record. Representatives from civil society were [invited](#) to parliamentary session as concerned public, yet they were not respectfully allowed to voice their concerns, which led to the adoption of the amendments. For the third anti-corona package measures, where the Government aimed to extend articles to disable CSOs and their voice in relation to construction of large-scale project CSOs organized [a petition](#) signed by 36.000 people in just 1 week. Yet the third package was adopted as well.

### ***Courts in support of public concerns over environmental harms***

Environmental groups are also using litigation as a tool to enforce more influence on environment related policies and laws by challenging the harmful practices by businesses and state to the environment. In [Slovenia](#), three CSOs swiftly submitted an appeal that challenged this situation in the Constitutional court. The complaint was prepared by the Legal-Informational Centre (PIC).

In July 2020, the Constitutional Court [based on the constitutional review](#) initiative submitted by coalition of CSOs temporary suspended the implementation of the anti-corona law articles.

In [Slovenia](#), in a case raised by environmental CSO Eko Krog, the Administrative Court asserted the right of CSOs to participate in the preliminary stage of permit proceedings if they can prove an investment would have significant environmental impact. In [Ireland](#), in the case known as the Climate Case Ireland, the Supreme Court ruled that the Irish government's broke the law, by preparing a national climate plan which is not ambitious enough to meet the country's own targets. The court has asked the government to revise its national climate policy considering in line with the legal obligations.

