

Economic Commission for Europe

Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Task Force on Access to Justice

Eleventh meeting

Geneva, 27 and 28 February 2018

Item 2 of the provisional agenda

Access to justice in cases

on the right to environmental information

Information paper N4 revised

QUESTIONNAIRE

Access to justice in cases on the right to environmental information

At its sixth session¹, the Meeting of the Parties to the Aarhus Convention set out the mandate of the Task Force on Access to Justice to promote the exchange of information, experiences, challenges and good practices relating to the implementation of the third pillar of the Convention with special attention to information cases. Available information sources such Aarhus Convention national implementation reports and e-justice initiatives provide very basic overall description of existing framework but do not go in the details about its elements such as scope of review, time limits, remedies, costs and etc.

To overcome the information gaps, the Aarhus Convention Task Force on Access to Justice will carry out a survey to collect more detailed information, examples of legislation provisions and case law relevant to access to justice in cases on the right to environmental information. The survey could be an important contribution to identifying good practices, addressing key challenges, populating the jurisprudence database and fostering capacity-building efforts to support work in this area. The survey outcomes will lay the ground for advancing the implementation of article 9, para. 1, of the Aarhus Convention and contribute to the monitoring of SDG 16 targets 16.3 and 16.10.

A draft questionnaire was discussed at the eleventh meeting of the Task Force on Access to Justice in Geneva in Geneva on 27-28 February 2018² and thereafter revised by the secretariat in consultation with the Chair in the light of the discussion at the meeting and further comments received.

The present questionnaire is distributed to a selection of institutions specialized in information cases in a representative number of Parties from different subregions. In addition, representatives of judiciary, judicial training institutions, other review bodies, non-governmental organizations and stakeholders are welcome to contribute with input on any issue in the questionnaire.

The outcomes of the survey will be synthesized with information from the national implementation reports to a report which will be discussed at the next meeting of the Aarhus Convention Task Force on Access to Justice in Geneva in 2019 and further reported to the subsequent meeting of the Working Group of the Parties to the Aarhus Convention.

Those who want to take part in the survey are kindly invited to complete and return the questionnaire to the following email address: **aarhus.survey@un.org** with the subject line "11TFAJ survey from [name of country, organization]" for processing **before 1 October 2018**. Kindly be informed that the completed questionnaires will be posted on the website of the twelfth meeting of the Task Force.

¹ See para. 14(a) (i) of decision VI/3 of the Meeting of the Parties adopted at its sixth session (Budva, Montenegro, 11–13 September 2017) available from http://www.unece.org/env/pp/aarhus/mop6_docs.html

² More information is available from <http://www.unece.org/env/pp/aarhus/tfaj11.html>

CONTACT INFORMATION

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Questions concerning access to justice in cases on the right to environmental information:

1. Please indicate time limits for public authorities holding environmental information to respond to requests for environmental information.

Without undue delay, but no later than eight working days after filing of the request or after the day the applicant removed imperfections of the request and no more than 15 working days, if the information is given to the blind person. (Art. 17 Para 1 of Act No. 211/2000 Coll. on free access to information and on amendments and supplements to certain acts (Freedom of Information Act)).

The obliged person shall be entitled to extend the period for serious reasons by a maximum of eight working days and by a maximum of fifteen working days, if the information is given to the blind person.

Is there a requirement for the issuance of a refusal in writing and stating reasons for the decision?

There is a general requirement in administrative procedure that all decisions have to be reasoned.

If the obliged person fails to satisfy the request, even partially, it shall issue a written decision to that effect within the statutory period. (Art. 18 Para 2 Freedom of Information Act)

How is the applicant informed about the possibilities to appeal the decision?

The obliged person shall instruct and inform the applicant how to file appeal against the obliged person's decision rejecting the provision of requested information.

Parties to the proceeding may file appeal against the obliged person's decision rejecting the provision of requested information within fifteen days from the delivery of a decision note or the expiration of the period for compliance with the request under Section 17. The appeal shall be filed with the obliged person that issued should have issued the decision. (Art. 19 Para 1 Freedom of Information Act)

2. *What are the time limits to appeal a decision on access to environmental information?*

Parties to the proceeding may file appeal against the obliged person's decision rejecting the provision of requested information within fifteen days from the delivery of a decision note or the expiration of the period for compliance with the request under Section 17. The appeal shall be filed with the obliged person that issued should have issued the decision. (Art. 19 Para 1 Freedom of Information Act)

What are the most frequently used grounds for appeal?

Ministry of Justice of the Slovak Republic can not provide a response to this question, because it does not dispose of decisions on environmental information.

Are there any issues concerning who has standing in such cases?

There are any issues. Who has standing in such cases, is stipulated by law.

To what body and in which form is the appeal made; recourse for review within the public authority or to the higher authority; Information Commissioner, Ombudsman or any other independent and impartial body; or directly to court of law?

The decision on the appeal against the decision of the obliged person shall be made by the superior of the obliged person that issued or should have issued the decision. If it is a decision of municipal authority, the decision on the appeal shall be made by the mayor (city mayor). It shall be possible to file an appeal against the decision of a central body of the state administration, which will be decided by the head of a central body of the state administration.

There isn't any Information Commissioner or Ombudsman as such authority.

If appeal to the review body other than a court of law is available in any form, does that request suspend the time limits to appeal to the court? Is there a requirement of exhaustion of administrative review procedures prior to bringing the case to court?

The appeal shall be filed with the obliged person that issued or should have issued the decision. The decision on the appeal against the decision of the obliged person shall be made by the superior of the obliged person that issued or should have issued the decision. (Art. 19 Para 2 Freedom of Information Act)

The appellate body shall decide on the appeal within fifteen days from delivery of the appeal by the obliged person. If the appellate body fails to make decision within this period, it shall be deemed that it issued the decision rejecting the appeal and confirming the contested decision; the decision shall be regarded as delivered on the second day after the expiration of the period for the issuance of a decision. (Art. 19 Para 3 Freedom of Information Act)

Parties to the proceeding may file the appeal to the court against the appealed body's decision rejecting the provision of requested information. The defendant in this case is the appeal body (second-instance body).

3. *If appeal is made to an independent body mentioned above, how is the independence and impartiality of that body ensured?*

The independence and impartiality of Slovak courts is guaranteed by The Constitution of the Slovak Republic.

The independence and impartiality of an independent body mentioned above is guaranteed by Act No. 205/2004 Coll. on the collection, storage and dissemination of environmental information and on amendments and supplements to certain acts, by Freedom of Information Act and by Act No. 162/2015 Coll. on administrative judicial procedure.

4. *What costs (fees, charges) are connected to review before the court of law or other review bodies in these cases?*

The appeal or the review of a decision under Freedom of Information Act is exempt from fees.

The judicial fee for review of decisions issued in administrative procedure is 70 euros.

5. *What is the average time needed for the court of law or another independent and impartial body to decide an information case, i.e. from the introduction of the appeal to the notification of the decision? If the national rules of appeal require administrative reconsideration before the appeal is submitted to the court of law or another review body, that time should also be also separately specified.*

The appellate body shall decide on the appeal within fifteen days from delivery of the appeal by the obliged person. If the appellate body fails to make decision within this period, it shall be deemed that it issued the decision rejecting the appeal and confirming the contested decision; the decision shall be regarded as delivered on the second day after the expiration of the period for the issuance of a decision. (Art. 19 Para 3 Freedom of Information Act)

Ministry of Justice of the Slovak Republic doesn't have information about average length of judicial proceeding in cases on the right to environmental information, but according to Art. 193 of Act No. 162/2015 Coll. on administrative judicial procedure and Art. 9 Para. 4 of the Convention on access to information, public participation in decision-making and access to justice environmental matters (The Aarhus Convention) judicial review of decision rejecting the provision of environmental information must be timely and must ensure effective remedy.

6. *Are decisions of courts and other review bodies in information cases in writing, publicly available, binding and final?*

Yes, they are.

If the appeal is successful, how is the independent body's/court's decision enforced; by ordering the public authority to disclose the information;

Yes, there is possibility that court can order the public authority to disclose the information (Art. 193 of Act No. 162/2015 Coll. on administrative judicial procedure). The court can as well dismiss the review decision and return the case to administrative body with binding legal opinion.

by disclosing the information directly; by suing the public authority if they persist in refusing to disclose the information or by any other means?

No, the court can not disclose the information directly.

7. *Can disciplinary, administrative or criminal sanctions be exercised against the public officials if disclosure of environmental information is refused unlawfully?*

The administrative sanctions can be exercised against the public officials.

An offence is committed by a person who: a) intentionally issues and discloses untrue or inaccurate information, b) gives rise to the violation of the right to information by issuing decision, order or any other measure, c) breaches any other obligation stipulated in Freedom of Information Act. The offences under Freedom of Information Act shall be heard by district office. A general regulation on offences (Act No. 372/1990 Coll. About offences as) shall apply to offences and their hearing. (Art. 21a Freedom of Information Act)

Would it be possible for the applicant or other members of the public to be a party to such proceedings?

The court hearing are public and accessible to everyone.

8. Do you have any experience of situations/cases where individuals or ENGOs asking for environmental information have been penalized, persecuted or harassed in any way for their involvement?

Ministry of Justice of the Slovak Republic does not have such an information.

9. Do you have any experience of misuse or abuse of the right to environmental information and the consequences thereof?

Ministry of Justice of Slovak republic does not have such an information.

10. In your view, what are the main barriers in your legal system concerning access to justice for the members of the public in cases on the right to environmental information?

Ministry of Justice of the Slovak Republic does not have such an information.

11. Does your legal system provide with any innovative approaches concerning administrative and judicial review procedures in cases on the right to environmental information, for example concerning the requirement for the procedure to be expeditious, the use of alternative dispute resolutions (ADRs), costs, remedies, means for execution of review decisions on disclosure or use of e-justice initiatives?

All judgments of courts in the Slovak Republic are published in e-justice initiative on the Website of the Ministry of Justice of the Slovak Republic.

12. Can you please provide us with a short description of particularly important or innovative information cases, as well as cases which illustrate the main barriers concerning access to justice in these matters.

Ministry of Justice of the Slovak Republic does not have such an information.