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 session[1], 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 2018[2] 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

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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. Is there a requirement for the issuance of a *refusal in writing and stating reasons* for the decision? How is the applicant *informed* about the possibilities to appeal the decision?

In the case of information of importance for the protection of life or freedom of a person or threats or protection of public health and the environment, the deadline for response of an authority is 48 hours.

If a public authority refuses to inform the applicant whether it holds the requested information or whether it is otherwise accessible to it, refuses to allow insight in the document containing the requested information, refuses to issue or to submit to the applicant a copy of the document (depending on what has been requested), or fails to do so within the general statutory deadline of 15 days. It is a complaint against the so-called "silence" of authorities.

A complaint can also be lodged with the Information Commissioner against a decision of a public authority denying an applicant's request or against a conclusion rejecting his/her request from formal reasons.

According to the Law on the General Administrative Proceeding Act, every decision of the public authority has mandatory element, the instruction of the legal remedy (for example: appeal).

Every citizen of Serbia can be informed to appeal the decision by web site the Information Commissioner.

2. What are the time limits to appeal a decision on access to environmental information? What are the most frequently used grounds for appeal? Are there any issues concerning who has standing in such cases? 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? 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 general time period for filing an administrative appeal is 15 days as of the day of information party about the first instance decision and if a public authority does not issue a decision within the set time limit, the appeal may be lodged after the expiration of the deadline and at the latest within the one year time limit. The appeal has a delayed effect, the decision cannot be executed until the time limit for lodging an appeal expires only provided by the law on the General Administrative Proceeding Act.

A complaint can also be lodged with the Information Commissioner against a decision of a public authority denying an applicant's request or against a conclusion rejecting his/her request from formal reasons. The deadline for lodging a complaint in this case is 15 days from the date of submission of a decision or a conclusion to an applicant. An applicant must enclose with such complaint a copy of his/her request and a copy of the decision or conclusion of a public authority against which the complaint is lodged.

Upon recommendation of the Ombudsman, the institution can, with a view to be in line with the law, issue a new decision, thus annulling, revoking or altering its effective decision. If the institution does not find it should comply with the Ombudsman recommendation, it must notify the Ombudsman immediately about that.

An applicant is an aggrieved party who is not provided with the information from the authority and is always authorized to file a request for initiation of misdemeanor proceedings, to the Misdemeanor Court and at the same time to make an appeal to the Commissioner.

An applicant can file a complaint with the Administrative Court within 30 days of the date of submission of a ruling. And in the exceptional cases, 60 days may be provided by the law on the General Administrative Proceeding Act.

An applicant can also file charges with the Administrative Court if he/she is not satisfied with the Commissioner's decision passed following his/her complaint.

Only non-appealable administrative acts can be challenged before the Administrative Court. Therefore, final administrative acts are always non-appealable, as well. Final administrative acts can be challenged only by extraordinary legal remedies.

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

The Information Commissioner is autonomous and independent in the exercise of his/her powers. In the exercise of his/her powers the Commissioner shall neither seek nor accept orders or instructions from state bodies or other persons. The Commissioner shall have the same salary as a judge of the Supreme Court, other labor rights, in accordance with law, and the right to reimbursement of costs incurred during the discharge of his/her duties. The Commissioner may not be held liable for an opinion he/she expressed or a recommendation he/she made while performing his/her duties; in the event of a legal proceeding initiated over an act of crime committed in the exercise of his/her functions, he/she may not be detained without the consent of the National Assembly (according to the the Law on Free Access to Information of Public Importance).

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

The decree on the amount of the necessary expenses for issuing a copy of documents containing information of public importance as well as the book of costs which determines the necessary amount for expenses for issuing copies of documents containing information of public importance, stipulates that of the amount of these necessary costs exceeds the amount of 4,500 euros, the applicant is obliged to make a deposit in the amount of 50% before issuing the information.

Costs of court proceedings are regulated in the Law on Civil Procedure of the Republic of Serbia, free legal aid is the constitutional right of every citizen. The draft Act on free legal aid is in parliamentary procedure and should be adopted by the end of the year.

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 Commissioner shall reach a decision promptly and within 30 days from the submission of the complaint at the latest, upon giving the public authority and, if necessary the applicant, the opportunity to reply in writing. An administrative dispute complaint may be lodged against a Commissioner's decision.

An administrative dispute complaint should be applied in 30 days from the day of the delivering decision to party. Average time limit is from 6 months to one year within the Administrative Court brings a judgement in information cases.

6. Are decisions of courts and other review bodies in information cases in writing, publicly available, binding and final? If the appeal is successful, how is the independent body's/court's decision enforced; by ordering the public authority to disclose the information; by disclosing the information directly; by suing the public authority if they persist in refusing to disclose the information or by any other means?

The decisions and conclusions of the Commissioner shall be obligatory. The enforcement of the decisions and conclusions of the Commissioner shall be procured by the Government of the Republic of Serbia if necessary. In 2017, administrative and obligatory implementation of the Commissioner's decision became unmanaged due to the refusal of the jurisdiction and cooperation with other state bodies in the delivery of the necessary data for the implementation, as well as due to the different interpretation of the relevant forms.

Such a situation has been expressed since the beginning of the implementation of the new law on the General Administrative Procedure, which prescribes very high penalties that the Commissioner should, in the process of administrative execution in the form of penalties predicate to the authorities as executors, for the purpose of making a decision.

The Administrative Court will impose a fine in the amount from 250 euros to 850 euros to the head of the authority that failed to act on the verdict.

7. Can disciplinary, administrative or criminal sanctions be exercised against the public officials if disclosure of environmental information is refused unlawfully? Would it be possible for the applicant or other members of the public to be a party to such proceedings?

Whoever denies or gives false information on the state of the environment and phenomena that are necessary for the assessment of environmental hazards and taking measures for the protection of human life and health, shall be punished by a fine or imprisonment of up to one year. There is also an offence liability and disciplinary responsibility of a civil servant. So, that's a probable yes.

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?

So far, such cases are rare due to the non-environmental ENGO activities as well as the interested public, there is still a low ecological awareness of citizens.

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

I do not know of such cases.

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?

One of the main barriers is not yet the recognition of ENGO or interested public of active legitimation by the Administrative Court which should change in the immediate future.

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?

The new Law on Mediation (formerly The Law of Mediation) which is in force since 2015 has new solutions compared to the old Law on Mediation, a radical change that agreement may have the power to enforce, if it contains a statement that the creditor accepts the agreement as executive, and if the signatures of the parties and the mediator certified by a public notary. This means that the creditor, when a dispute adjudication agreement was concluded as an enforceable document, will not have to go again to the court if the debtor does not pay owed, but will be able to collect the debt directly on the basis of the signed agreement. This alternative method of dispute adjudication will be possible for commercial, consumer, or property disputes in the environmental protection matters which was not regulated by the old Law.

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.

Very poor practice of these types of cases as well as the court practice in this regard.