

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 as 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

Please provide name and contact data of the person who filled in the questionnaire:

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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?

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?

Answer to the fourth and fifth question in this section:

According to the Aarhus Convention, access to justice in cases on the right to environmental information, except court and inspection organs, is guaranteed also by independent and impartial bodies where public has the opportunity to initiate free-of-charge legal procedure of questioning and reviewing the work of public authority. The Protector of the Citizens of the Republic of Serbia represents one of the independent bodies, as a mechanism of legal protection in environmental matters, regarding protection of constitutional right to healthy environment and timely and full information about the state of environment³. According to the Law on the Protector of the Citizens, any physical or legal, local or foreign person who considers that their rights have been violated by an act, action or failure to act of an administrative authority may file a complaint with the Protector of Citizens⁴, after exhaustion of all appropriate legal proceedings. Exceptionally, the Protector of Citizens may initiate proceedings even before all legal remedies have been exhausted if the complainant would sustain irreparable damage or if the complaint is related to violation of good governance principle, particularly incorrect attitude of administrative authorities towards the complainant or other violations of rules of ethical behaviours of administrative authorities' employees.⁵

A complaint is filed in writing or orally on record. A complaint may be filed not later than one year from the day the violation of the right of citizen occurred, and/or from the date of the last action undertaken by the administrative authority in respect of the violation. The complaint shall contain the name of the administrative authority involved, description of the violation of the right, facts and evidence supporting the complaint, information about the legal remedies already used and data on the complainant.

³ Article 74 of the Constitution of the Republic of Serbia („Official Gazette of the Republic of Serbia“, No. 98/2006).

⁴ Article 25, paragraph 1 of the Law on the Protector of the Citizens („Official Gazette of the Republic of Serbia“, No. 79/2005 and 54/2007).

⁵ Article 25, paragraph 5 of the Law on the Protector of the Citizens („Official Gazette of the Republic of Serbia“, No. 79/2005 and 54/2007).

Appeal to the Protector of the Citizens is not a substitute for use of available legal remedies, nor does it postpone the time limit prescribed by law in which legal actions must be taken, such as addressing to the Commissioner for Information of Public Importance and Personal Data Protection or appealing to the court.

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 the Protector of the Citizens is reflected in a fact that, according to the Constitution of the Republic of Serbia and The Law on the Protector of the Citizens, the institution is organizationally and functionally separated from other state organs and does not depend on the will of executive bodies whose work is controlled. The Protector of Citizens is independent and autonomous in performance of his/her duties established under this Law and no one has the right to influence the work and actions of the Protector of Citizens.⁶The independence and autonomy is also ensured by guarantees in the law regarding the appointment and the end of the office, immunity, incompatibility of functions, financial autonomy and other questions.

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

Appealing to the Office of the Protector of the Citizens does not require payment of any fees or other dues.

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.

A time frame for treatment of complaint is not defined by law and depends on the circumstances of a particular case. The Protector of the Citizens endeavours to end the procedure of controlling the legality and regularity of the work of administrative authorities within one year from filing a complaint.

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?

If, upon determination of all relevant facts and circumstances, the Protector of Citizens determines that irregularities existed in the work of the administrative authority, he shall deliver a recommendation to the administrative authority on steps to be undertaken in order to rectify the noted irregularity⁷. The Protector of the Citizens informs the complainant and the relevant authority of an issued recommendation and makes it publicly available through his website. Recommendations and opinions of the Protector of the Citizens are not binding acts.

The administrative authority is obliged to inform the Protector of Citizens at latest within 60 days of the day it received the recommendation whether it proceeded pursuant to the recommendation and eliminated the irregularity, or about reasons why it failed to proceed pursuant to the recommendation.⁸

If the administrative authority fails to proceed pursuant to the recommendation, the Protector of Citizens may so inform the public, the National Assembly and the Government, and may recommend proceedings to determine the accountability of the official in charge of the administrative authority.⁹

⁶ Article 2 paragraph 1 of the Law on the Protector of the Citizens („Official Gazette of the Republic of Serbia“, No. 79/2005 and 54/2007).

⁷ Article 31, paragraph 2 of the Law on the Protector of the Citizens („Official Gazette of the Republic of Serbia“, No. 79/2005 and 54/2007).

⁸ Article 31, paragraph 3 of the Law on the Protector of the Citizens („Official Gazette of the Republic of Serbia“, No. 79/2005 and 54/2007).

⁹ Article 31, paragraph 5 of the Law on the Protector of the Citizens („Official Gazette of the Republic of Serbia“, No. 79/2005 and 54/2007).

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?

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?

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

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?

In our point of view, the main barriers in our legal system concerning access to justice in cases on the right to environmental information are problems with implementation of decisions of The Commissioner for Information of Public Importance and Personal Data Protection in general, as well as insufficient administrative and financial capabilities of administrative authorities which possess environmental information and which need to improve our information system on environmental protection.

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?

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.

When it comes to information system on environmental protection, the Protector of the Citizens started the procedure on its own initiative regarding fire outbreak at the landfill in Vinca in May 2017 and smoke that emitted in suburban settlements near Belgrade for over a month after the fire outbreak. The procedure of controlling legality and regularity of the work of Ministry of Environmental Protection, Environmental Protection Agency and Public Health Institute of the City of Belgrade, in this case raised the question of implementation of the Stockholm Convention on Persistent Organic Pollutants¹⁰, as well as the implementation of Aarhus Convention and its Protocol, considering the fact that professional public pointed out that concentration of dioxins and furans, substances which are released during combustion, is not being measured.

Based on all gathered reports and relevant facts and circumstances, it was determined that information system on air quality, as a part of information system on environmental protection, which is run by Environmental Protection Agency, does not contain all data for which there is an obligation to report, due to what the realization of the right of timely and full information about the state of environment is in question. In regard to this, the Protector of the Citizens, on 27th of June 2018, issued opinion to the relevant authorities in which he stated that it is necessary, without delay, to undertake all necessary measures in order to establish and maintain national registers in full and adequate manner, which will contain data on all polluting substances which are being reported, as well as the calculation of emission values of all unintentionally formed persistent organic pollutant. The Protector of the Citizens also pointed out that it is necessary that Ministry of Environmental Protection along with the Environmental Protection Agency make additional efforts and take all necessary measures for further development of information system, including securing financial means and strengthening administrative capacities of the Environmental Protection Agency itself.

¹⁰ Law on Confirmation of Stockholm Convention on Persistent Organic Pollutants („Official Gazette of the Republic of Serbia – International contracts“, No. 42/2009).