



**Economic and Social  
Council**

Distr.  
LIMITED

ECE/MP.PP/WG.1/2007/L.11  
10 August 2007

Original: ENGLISH

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**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

Working Group of the Parties to the Convention

Eighth meeting  
Geneva, 31 October–2 November 2007  
Item 6 of the provisional agenda

ACCESS TO JUSTICE

**REPORT OF THE HIGH-LEVEL JUDICIAL WORKSHOP ON  
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS  
FOR THE EASTERN EUROPE AND SOUTH CAUCASUS REGION**

Report by the secretariat<sup>1</sup>

*Summary*

A workshop for senior members of the judiciary from Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine was carried out in framework of the Task Force on Access to Justice in accordance with its mandate set out in decision II/2 of the Meeting of the Parties to the Convention. The workshop took place from 4 to 6 June 2007 in Kiev and was organized by the United Nations Economic Commission for Europe in cooperation with the Organization for Security and Co-operation in Europe. The workshop was attended by senior judges and representatives of the Judicial Training Centers of the participating countries as well as by international experts.

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<sup>1</sup> This report was prepared in consultation with the Chair of the Task Force on Access to Justice

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## I. BACKGROUND AND OBJECTIVES

1. In accordance with its mandate set out in decision II/2 of the Meeting of the Parties to the Convention, the Task Force on Access to Justice at its first meeting on 16 and 17 February 2006 in Geneva discussed the issue of capacity-building for the judiciary. It invited its Chair, *inter alia*, to further explore the possibilities and develop a proposal for organizing capacity-building activities, in particular for the higher levels of the judiciary and initially focusing primarily on the subregional level, which could be organized under the auspices of the Task Force and/or in cooperation with other actors.

2. The concept of high-level judicial workshops proposed by the Chair and finalized in an electronic consultation process with the member of the Task Force, recommended the organization of a series of subregional high-level judicial workshops on access to justice in countries with economies in transition to facilitate national implementation of article 9 of the Convention. It was agreed that the higher levels of the judiciary were a strategic target group for capacity-building activities since the higher courts were generally more influential, as their decisions and statements give guidance to the lower courts. While the independence of the judiciary should be fully respected, the main objectives should be:

- (a) To increase awareness of the Convention among members of the judiciary;
- (b) To enable them to exercise their discretion in a way that promotes effective implementation of article 9 of the Convention.

3. As the first in this planned series of subregional seminars, a workshop on Access to Justice in Environmental Matters in the Eastern Europe and South Caucasus region was held in Kiev on 4 and 5 June 2007. Aimed at raising awareness and knowledge of access to justice matters among the senior judiciary and at discussing ways and means to address identified implementation obstacles, the workshop brought together members of the highest levels of the judiciary from the region, namely Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. It was organized by the Convention secretariat under the auspices of the United Nations Economic Commission for Europe (UNECE) in cooperation with the Organization for Security and Cooperation in Europe (OSCE)<sup>2</sup>.

4. The cooperation built on the history of the OSCE in supporting the Convention through the establishment of Public Environmental Information/Aarhus Centres in the Caucasus, South-Eastern Europe and Central Asia. Challenges related to the implementation of the third pillar of the Convention were noted during a meeting of the managers of the OSCE-supported Aarhus Centres held in Tbilisi in September 2006. This initial discussion attended by the Convention secretariat led to close collaboration between UNECE and OSCE in the organization of the

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<sup>2</sup> More specifically: the Environment and Security Initiative (ENVSEC) of OSCE through the Project Coordination Office (PCO) of the OSCE in Ukraine and the OSCE Secretariat; Office of the Co-ordinator of OSCE Economic and Environmental Activities (OCEEA).

workshop. As a result of these discussions, OSCE supported the workshop with a generous contribution and additional technical support.

5. The workshop was funded by contributions from the Governments of Sweden, Canada and the United States of America, the latter two through the OSCE fund, as well as by additional funding from the Convention trust fund.

6. Four to five senior judges from each of the six countries of the Eastern Europe and South Caucasus region, as well as several officials of high-level courts, were invited to attend the workshop.

7. Following consultations with the Division of the Judiciary and Programmes of the Council of Europe, it was decided to also invite representatives of the national judicial training centres and academies of justice (JTCs) of the participating countries to attend the workshop. The JTCs, which run courses in various areas of law for new and in-service judges, were identified as important partners for the promotion and implementation of the Convention, in particular its article 9, among the judiciary at the national level. In this regard, a separate information meeting with the representatives of the JTCs was organized on the fringes of the workshop to discuss, among other things, the integration of the Convention into their curricula, strengthening future cooperation, including with the national Aarhus Centres, and furthering capacity-building activities in the region. A summary report of this meeting is included in annex III to this report.

8. Additionally, several experts with excellent knowledge of the implementation process of the Aarhus provisions in Central and Eastern Europe were invited to bring their expertise and experience into the discussions. The European Union Forum of Judges for the Environment (EUFJE) played an important role by providing expertise and advice, both during the preparatory process and during the workshop itself, at which three high-level judges from Belgium and the United Kingdom participated as experts.

9. The workshop was attended by 52 participants, including 29 judges from highest courts of the region, six representatives of the JTCs of the participating countries, nine experts and five observers, as well as the Chair of the Task Force and two members of the secretariat. The list of the workshop participants is available from [www.unece.org/env/pp/a.to.j.htm](http://www.unece.org/env/pp/a.to.j.htm).

## **II. METHODOLOGY**

10. The Task Force had envisaged the workshops to be in the form of a dialogue among judges from the subregion, revolving around Convention issues in a context of substantive environmental law and emphasizing the third pillar of the Convention. They should provide a platform for an exchange of views and the sharing of experiences.

11. The methodology, agenda and background case studies for the workshop have been developed in consultation with the advisory group consisting of the Chair of the Task Force, several EUFJE members and international environmental law experts, including those who later participated in the workshop as experts. The programme of the workshop is included in annex II to this report. The workshop materials have been made available on the Convention's website ([www.unece.org/env/pp/a.to.j.htm#Workshops](http://www.unece.org/env/pp/a.to.j.htm#Workshops)).

12. The methodology of the workshop in Kiev included plenary sessions, held in Russian and English with simultaneous interpretation, and breakout sessions in national groups. The plenary sessions were split into presentations and facilitated discussions. The breakout sessions focused on interactive discussions amongst the participants.

13. To prepare for the discussions, all participants had been provided in advance with a set of background, including a copy of the Convention, the relevant national implementation report, the Aarhus Convention Implementation Guide, and the Handbook on Access to Justice under the Aarhus Convention, the latter publications being published by the Regional Environmental Center for Central and Eastern Europe (REC). During the meeting, additional materials were distributed, such as copies of the presentations of the experts and the United Nations Environment Programme's Judicial Handbook on Environmental Law.

14. The workshop started with a general introduction to the Convention, with particular focus on the access to justice pillar and the compliance mechanism. The introduction was followed by a more detailed overview of the first three paragraphs of article 9. The discussion on each of the paragraphs was built upon one specific case, setting out various legal and procedural obstacles in implementation of that particular paragraph. While the cases were hypothetical, they built on elements drawn from real cases and issues identified.

15. After introductory presentations by the experts setting out the requirements and identified problems of the specific paragraph of article 9, the experts presented the relevant hypothetical case together with a number of leading questions. The participants were then asked to consider the case and possible answers to the questions in the light of their own national legislation and the Convention in a following breakout session.

16. After the breakout session, the participants presented the findings of their national groups to the plenary. The comparison of the findings with those of other national groups and with a solution suggested by the experts led to lively discussions and suggestions regarding ways and means to address the identified application and implementation problems.

### **III. OUTCOMES**

17. Raised awareness and better knowledge of the application of the Convention's provisions at the national level among the 35 representatives of the high-level judiciary and judicial training institutions of the six countries of the region was one of the most important outcomes of the workshop. Other outcomes included:

- (a) Identification and discussion of the major challenges in implementation of access to justice in the region;
- (b) Exchange of views on ways to facilitate implementation;
- (c) Identification of existing practices and relevant national legislative developments;
- (d) Facilitation of future regional cooperation for the implementation of the Convention and cooperation between regional and international legal experts and practitioners;

- (e) Identification of possibilities for cooperation between the Task Force and the secretariat on the one hand and high-level judges and JTCs on the other;
- (f) Enhancing incorporation of environmental law and Convention requirements into the curricula of the judicial training centres;
- (g) Promotion of better links between Aarhus Centres and the judiciary, in particular through the JTCs.

18. Within the discussions, some participants reported an increasing number of cases related to public participation and access to justice in environmental matters in their national courts, along with increasing environmental awareness in the society. However, the majority of judges noted that they had dealt with few or no cases concerning environmental issues or the Convention, with many judges stating that they had not been aware of the Convention before the workshop.

19. Lack of awareness was identified as the biggest obstacle for effective implementation and application of the Convention, suggesting the need for increased promotion of the Convention. Though the large attendance and the active participation of judges and representatives of JTCs at the workshop reflected the growing demand and interest in its provisions among the judiciary in general, especially regarding access to justice, participants pointed out that the Convention is still not widely known among the judiciary or other legal practitioners. Environmental law had only recently started to be part of the curricula of national universities and other training institutes, whereas in most cases it was not yet included in the curricula of the JTCs. In this respect, the need for well-prepared trainers as a prerequisite for effective capacity-building activities by the various education and training institutes was particularly mentioned.

20. In almost all of the six countries, environmental and public participation laws existed, yet they were often lacking in consistency, fragmented or insufficient for dealing with emerging environmental and public participation problems. In most cases, the application of national laws led to differing approaches to resolving cases, even if in compliance with the Convention in general. However, the participants also identified difficulties in the application of the provisions of the Convention itself, related to unclear procedural rules as well as unclear provisions within the text of the Convention.

21. The discussions also confirmed existing technical, legal and financial barriers to effective access to justice. Barriers such as legal standing and costs were recognized as posing difficulties for non-governmental organizations and citizens in the region attempting to effectively and successfully enforce their rights in court. In almost none of the participating countries were effective legal or provisions of other kinds in place. In this regard, the participants stressed the possibility of using the institution of public prosecutor, which could initiate review proceedings, inter alia, at the request of individuals or organizations, and which was exempt from such costs, for example, as court fees.

#### **IV. EVALUATION AND FOLLOW UP**

##### **A. Evaluation of the methodology applied**

22. The applied methodology was effective in reaching the goals of the workshop. It allowed for increased awareness of the Convention and provided for better understanding of the access to justice provisions among the judiciary. The use of expert presentations and case studies triggered active dialogue among the participants and between the participants and the experts, and led to vivid discussions in both the plenary and the national breakout sessions.

23. Plenary expert presentations allowed the participants to gain a theoretical as well as practical overview of the requirements of the Convention. The breakout sessions gave them the opportunity to review their own relevant legislation against the principles of the Convention and to discuss the cases in the light of both national and international law, analysing both possibilities and shortcomings. As well, plenary discussions on the findings of the national groups provided for an interesting exchange of implementation practices, insights into possible solutions within the national laws and practices, and the opportunity to reflect on ways to better implement the provisions of the Convention through the national legislation and court practice.

24. It would be both effective and cost-efficient to rely on this methodology in any future subregional workshops of this kind. The materials and the methodology could also be used as a starting point the development of similar capacity-building activities for the judiciary or legal professionals at the national level by, for example, JTCs, Aarhus Centres or other relevant institutions.

##### **B. Workshop results and follow-up**

25. The aims and objectives of the workshop were achieved. Participants and experts evaluated it as a success.

26. According to the oral comments within the sessions as well as the written evaluation forms completed by the participants at the end of the workshop, most of them evaluated it as “very good”, with the remainder evaluating it as “good”. The workshop was found to be very useful and extremely well organized. The participants pointed out that it was particularly interesting to exchange views and experiences with other practitioners both in their own region and in Western Europe. Among the things participants appeared to appreciate most were:

- (a) The excellent knowledge and experience of the experts involved;
- (b) The high quality of the information on the third pillar of the Convention;
- (c) The possibility of understanding in more detail the implementation issues that countries face;
- (d) The possibility of analysing national laws in the light of the requirements of the Convention.

27. For the future, the participants expressed their wish for more workshops at subregional as well as national levels. Following the methodology of the Kiev workshop, future workshops should focus on taking a deeper and even more analytical look into all access to justice provisions

of the Convention, including related provisions such as the exemptions under article 4. Some mentioned that the length of the workshop could be increased to allow for more detailed discussions. Participants also expressed interest in discussing some real cases as well as hypothetical ones.

28. In this respect, participants pointed out that sustainable long-term engagement in the form of ongoing programmes and capacity-building activities would be vital for the successful implementation of the Convention in the region. They stressed that further awareness-raising and improved procedural laws and clear guidelines for the public would be needed as a basis to facilitate the implementation process and address legal and non-legal implementation barriers. In addition to capacity-building activities aimed at the judiciary itself, participants stressed the urgent need for training of trainers as a prerequisite for the incorporation of the Convention in the activities of various national education institutes. The importance of having the text of the Convention available in the national languages — through, for example, official publications — was also seen as a necessary precondition for raising awareness.

29. Some participants mentioned the awareness-raising and implementation activities with regard to the European Convention on Human Rights as a good example of successful implementation work. All participants recognized the need for environmental protection and environmental democracy for the region and acknowledged the central role of the judiciary in the implementation process. They also expressed their willingness to actively engage in the implementation process.

30. Confirming their dedication to support an effective implementation of international law, the participants agreed upon a set of recommendations which could be used to guide any future capacity-building work within the framework of the Task Force as well as relevant activities of other regional, national and local organizations and institutes (see Annex I). In these recommendations, the participants invited the Task Force on Access to Justice and other relevant organizations to consider organizing further workshops and other capacity-building activities related to the Convention at the subregional and national levels, and invited potential donors to support such activities. Organization of trainer trainings on the basis of JTCs and with the involvement of international experts would ensure training at the national level. Participants also encouraged JTCs and similar institutions, as appropriate, to further include environmental law modules, including issues related to the Convention, in their training curricula. They invited the Task Force and relevant institutions to consider ways to support them in doing so.

## Annex I

Access to Justice Regional Workshop for High-Level Judiciary  
(Eastern Europe and South Caucasus Region)  
4-5 June 2007,  
Hotel President, Kiev, Ukraine

On 4 and 5 June 2007 judges from the highest level of the judiciary and representatives of the judicial training centres from Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine met in Kiev to discuss legal issues connected to the UNECE Convention on Access to Information, Public Participation and Access to Justice (Aarhus Convention) in the context of substantive environmental law, emphasizing the third pillar of the Convention. The discussion was organized in the form of a workshop on access to justice by the Task Force on Access to Justice of the Convention Secretariat under the auspices of UNECE, in cooperation with OSCE.

### RECOMMENDATIONS

*The participants of the workshop,*

*Welcoming* having had the opportunity to participate in the subregional workshop on access to justice for the higher levels of the judiciary and expressing gratitude to the UNECE and OSCE for having organized the workshop, and also expressing gratitude to the Governments of Sweden, Canada and the United States of America for their financial contribution,

*Recognizing* that the Convention is a unique legal framework contributing to the protection of rights of each person to live in an environment adequate to his or her health and well-being,

*Reiterating* the Johannesburg Principles on the Role of Law and Sustainable Development that an independent judiciary is vital for the implementation, development and enforcement of environmental law in general and the Convention in particular,

*Noting* the findings in the national implementation reports and of the Compliance Committee that the implementation of the access to justice pillar is the most challenging to the Parties and recognizing that the judiciary has an important role in furthering the implementation of the Convention in general, and in particular the access to justice pillar,

*Recognizing* that sufficient knowledge of environmental law, including with respect to the Convention, amongst the members of the judiciary is a prerequisite for fulfilling the important role of the judiciary, as mentioned above,

*Recognizing also* the need for training in environmental law, including with respect to the Convention, for judges, public prosecutors, lawyers, advocates and public authorities,

*Noting* the need for closer cooperation between judicial training centres and Public Environmental Information/Aarhus Centres to better promote synergies between the three pillars of the Convention,

*Acknowledging* the important contribution that individual citizens and non-governmental organizations can make in environmental protection and in triggering better implementation, and in this regard recognizing the important role of lawyers providing pro bono legal counsel,

*Accepting* the desirability of specializing judges in each jurisdiction, with approval of the Chief Justice, to, as appropriate, take the lead in the promotion of the Convention,

1. *Invite* the Task Force on Access to Justice, and other relevant bodies and organizations to consider organizing further workshops and other capacity-building activities related to the Convention at the subregional and national levels,
2. *Invite* potential donors to support such capacity-building activities, including the organization of training of trainers to enable the relevant judicial training institutes to provide national level trainings, inter alia with the involvement of international experts
3. *Encourage* the judicial training centres and similar institutions to, as appropriate, further include environmental law modules, including Convention-related issues, in their training curricula, and invite the Task Force on Access to Justice and other appropriate institutions to consider ways to support them in doing so.

**Annex II**

Access To Justice Regional Workshop For High-Level Judiciary  
(Eastern Europe and South Caucasus Region)

4-5 June 2007,  
Hotel President, Kiev, Ukraine

**Programme of the Workshop**

Sunday, 3 June 2007

19:30	Welcome Dinner
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Monday, 4 June 2007

(8:30 – 12:15)	<b><u>SESSION I</u></b>	
8:30 - 9:00	Registration	
9:00 - 09:25	<p>Welcome and Introduction to the Workshop Mr. Håkan Bengtsson, Swedish Environmental Protection Agency, Chair of the Task Force on Access to Justice</p> <p>Mr. Jeremy Wates, Secretary of the Aarhus Convention, United Nations Economic Commission for Europe (UNECE)</p> <p>Ms Saba Nordstrom, Environmental Advisor, Organization for Security and Cooperation in Europe</p>	Plenary
09:25 - 09:40	Introduction of participants	Tour-de-table
09:40 - 10:00	<p>Role of judiciary in implementation and enforcement of international environmental law</p> <p>The Rt. Hon. Sir Robert Carnwath CVO, Lord Justice of Appeal, Senior President of Tribunals, Royal Courts of Justice, London, United Kingdom</p>	Plenary
10:00 – 10:15	<p>Introduction to the Convention: development and role in the context of international environmental law</p> <p>Mr. Jeremy Wates, UNECE</p>	Plenary
10:15 – 10:35	Plenary discussion: general comments, direct applicability of international environmental conventions, questions and answers	Plenary
10:35 – 10.50	Coffee Break	
10:50 – 11:05	<p>Article 9 of the Convention: overview</p> <p>Prof. Jerzy Jendroska, University of Opola, Poland (former Chair of the Meeting of the Parties), Member of the Permanent Court of Arbitration in The Hague</p>	Plenary
11.05 – 11:15	<p>The perspective of non-governmental organizations</p> <p>Mr. Andriy Andrusevych, European ECO-Forum</p>	Plenary

(8:30 – 12:15)	<b><u>SESSION I</u></b> (continued)	
11:15 – 11:30	Review of compliance and its implications on the national level Prof. Svitlana Kravchenko, School of Law, University of Oregon, Vice-Chair, Aarhus Convention Compliance Committee	Plenary
11:30 – 12:20	Plenary discussion: Relevance of the Convention on the national level	Plenary
12.20 – 14.00	Lunch	
(14:00 – 18:00)	<b><u>SESSION II</u></b>	
14:00 - 14.15	Methodology of work in the following sessions Prof. Jerzy Jendroska	Plenary
14:15 - 15:15	Article 9, para.1: overview of legal requirements, implementation problems, examples of cases, experience of civil society Prof. Svitlana Kravchenko Hon. Lord Justice Carnwath Prof. Pavel Zamfir, University of Chisinau; Director Eco-Lex Public Advocacy, Moldova	Plenary
15:15 - 15:45	Introduction to the breakout session discussion, presentation of case-study	Plenary
15:45 - 16:30	Discussions on a case-study with two designated national groups – Armenia and Moldova – presenting findings and results of the discussion in the following plenary discussion	Breakout session
16:30 - 16:40	Coffee Break	
16:40 - 18:15	Discussion on issues related to implementation of article 9, para. 1	Plenary
19:30	Dinner	

Tuesday, 5 June 2007

(9:00 – 12:30)	<b><u>SESSION III</u></b>	
9:00 - 9:45	Article 9, para.2: overview of legal requirements, implementation problems, examples of cases, experiences of civil society Prof. Jerzy Jendroska Hon. Luc Lavrysen, Judge, Constitutional Court, Belgium Mr. Andriy Andrushevych	Plenary
9:45 - 10:00	Introduction to the breakout session discussions Prof. Jerzy Jendroska	Plenary
10:00 - 10:45	Discussions on a case-study with two designated national groups– Belarus and Azerbaijan – presenting findings and results of the discussion in the following plenary discussion	Breakout session
10:45 - 11:00	Coffee Break	
11:00 - 12:00	Discussion on issues related to article 9, para.2	Plenary
12:00 - 12:30	Article 9, para. 3: overview of legal requirements, implementation problems, examples of cases, experiences of civil society  Prof. Jerzy Jendroska Hon. William Birtles, Judge, South-Eastern Circuit Court, United Kingdom Mr. Pavel Zamfir	Plenary
12.30 – 14.00	Lunch	

(14:00 – 17:45)	<b><u>SESSION IV</u></b>	
14:00 - 14.15	Introduction to the breakout session discussions Prof. Jerzy Jendroska	Plenary
14:15 - 15:00	Discussions on a case study with two designated national groups – Ukraine and Georgia – presenting findings and results of the discussion in the following plenary discussion	Breakout session
15:00 - 16:00	Plenary discussion on art. 9.3-related issues	Plenary
16:00 - 16:15	Coffee Break	
16:15 - 16:45	Plenary discussion: Other issues relevant to national implementation and the role of the judiciary	Plenary
16:45 - 17:45	Follow-up and outcomes, conclusions	Plenary
19:30	Dinner	

### **Annex III**

#### **Outcomes of the informal meeting with the representatives of the judicial training centres and academies from Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine**

1. The secretariat had invited the representatives of the national judicial training centres and academies (JTCs) for a lunch meeting to discuss their work of the, the integration of the Convention in their curricula and their related needs and possible future cooperation with the Task Force on Access to Justice and the secretariat.
2. The meeting confirmed the strong interest of the JTCs to include environmental law, in particular the Convention and its provisions on access to justice, in their curricula and to build close cooperation partnerships with the Convention secretariat and related actors in the field.
3. Five of the six representatives reported an increasing interest from the side of the governments, courts and individual judges in introducing the Convention in the JTC curricula. Like the judges, the JTC representatives noted an increasing number of legal problems related to the Convention leading to increasing awareness about it as well as increased demand for training.
4. One representative pointed out that while there was provisional willingness to include the Convention in the curriculum of his institute, such incorporation would only be successful if based on increased promotion of the Convention among the judiciary on the one hand and training of trainers on the other. For both, the support of the secretariat/Task Force or other actors in the field would be needed.
5. The urgent need for further promotion of the Convention among the judiciary, as well as for training of trainers was confirmed by all JTCs. With regard to training materials, the JTCs stated that they were not aware of any existing information and training materials on the Convention and access to justice matters. The possibilities of the Aarhus Centres playing a role was raised and supported, though it was noted that at that point only one of the JTCs had been in contact with its national Aarhus Centre.
6. All JTCs expressed the wish and need for direct support from and cooperation with the secretariat or the Task Force. Such support could be given in the form of the provision of information and training materials, the development of training modules or components for their courses, sending experts for initial training of trainers and the training of judges, in particular through the organization of workshops at the subregional and national levels, as well as the establishment of links and partnerships between the Aarhus Centres and relevant experts through the Task Force and the secretariat.

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