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

Sixth meeting
Geneva, 17–18 June 2013
Item 3 (c) of the provisional agenda
Sharing experiences and building capacities: national reporting

LIST OF ISSUES ADDRESSED BY THE PARTIES IN 2011 NATIONAL IMPLEMENTATION REPORTS: INDICATIVE OEVERVIEW

Background paper
Prepared by the secretariat

This document contains a "cut and paste" compilation of the relevant extracts from the national implementation reports submitted by the Parties to the Meeting of the Parties at its fourth session (Chisinau, 29 June – 1 July 2011)[1]. The document aims to indicate how issues set out in annex to the Guidance on reporting requirements (ECE/MP.PP/WG.1/2007/L.4) were addressed by the Parties in 2011 national implementation reports and serves as an input for the Parties to consider and select issues to be addressed in 2014 national implementation reports.

Delegates are invited to consult this document in advance of the meeting in order to discuss priorities for the work to be undertaken under auspices of the Task Force on Access to Justice in the next intersessional period.

[1] The national implementation reports are available from http://apps.unece.org/ehlm/pp/NIR/qwery.asp?LngIDg=EN

I. Summary table of issues addressed by the Parties in 2011 national implementation reports

Party	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11
Albania	--	--	--	X	X	X	--	--	--	X	--
Armenia	X	--	X	X	X	X	X	X	--	--	--
Austria	--	--	X	X	X	X	X	X	--	--	--
Azerbaijan	--	X	--	--	X	X	--	X	--	--	--
Belarus	--	X	X	X	X	--	--	X	X	--	X
Belgium	--	--	X	X	X	X	--	--	--	--	X
Bosnia and Herzegovina	X	--	--	X	X	X	--	--	--	--	X
Bulgaria	--	--	--	X	X	X	--	--	--	--	X
Croatia	X	X	--	--	X	X	X	--	X	X	X
Cyprus	--	X	--	X	--	--	--	--	X	--	--
Czech Republic	X	X	--	X	X	--	--	X	--	--	--
Denmark	--	X	X	X	X	X	--	--	X	--	X
Estonia	X	X	X	X	X	X	--	X	--	--	X
European Union	X	--	--	X	X	X	--	--	--	--	X
Finland	X	X	--	X	X	X	X	--	--	--	X
France	X	X	X	X	X	X	--	X	X	X	X
Georgia	X	--	X	--	X	X	--	X	X	--	X
Germany	--	X	X	X	X	X	--	X	X	--	X
Greece	--	--	--	X	X	X	--	X	--	--	X
Hungary	--	--	--	X	X	X	--	X	--	X	X
Italy	--	--	X	X	X	--	--	X	X	--	X
Kazakhstan	--	--	X	X	X	X	--	X	--	X	X
Kyrgyzstan	X	X	X	X	X	X	X	N/A	X	X	X
Latvia	X	--	--	X	X	X	--	X	X	X	X
Lithuania	--	--	--	X	X	X	--	--	X	--	--
Montenegro	--	--	--	X	X	X	--	--	X	X	X
Netherlands	--	--	X	X	X	X	--	X	--	--	X
Norway	--	--	X	X	X	X	--	X	--	--	X
Poland	--	--	--	X	--	X	--	X	--	--	X
Republic of Moldova	X	X	X	X	X	X	X	X	X	X	X
Romania	--	X	X	X	X	X	--	--	X	--	X
Serbia	--	--	X	X	X	X	--	X	--	X	X

Slovakia	--	X	--	X	X	X	--	X	--	X	X
Slovenia	--	--	--	X	X	X	X	--	--	--	X
Spain	--	--	--	X	X	X	--	X	X	--	--
Sweden	--	X	X	X	X	X	X	--	X	X	X
Turkmenistan	--	--	X	X	X	X	--	--	X	--	--
Ukraine	X	X	X	X	X	X	X	X	X	X	X
United Kingdom	--	--	--	X	--	--	--	X	--	--	X

II. List of issues addressed by the Parties in 2011 national implementation reports

A. General issues

1. Do the courts apply the text of the Aarhus Convention *directly*?

Armenia

The concept of “environmental information” has to date not been enshrined in Armenian legislation. On the basis of article 6 of the Constitution, the definition given in the Aarhus Convention may also be used. However, it is essential to enshrine this concept in national legislation in order to systematically regulate this area in detail (for example, the grounds for a refusal, conditions for provision etc).

Paragraph 2 of article 9 has been directly applied at various levels of the judicial system. Judges have given a range of interpretations of Armenian legislation and the provisions of the Aarhus Convention. The main problem lies in the unclear criteria for an NGO to bring a claim to protect general interests (actio popularis).

Bosnia and Herzegovina

Pursuant to Article II of the Constitution of BiH, the European Convention on Human Rights is applied directly and has priority over all other law. The Aarhus Convention is not directly applied in BiH. Therefore, the courts in BiH apply the Aarhus Convention through the provisions transposed into BiH legislation.

Croatia

In this regard Article 18, paragraph 2, and Articles 144-148 of the EPA, and Article 17 of the RAIA are applied.

"International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the RC and shall be above law in terms of legal effects" (Article 141 of the Constitution of the RC).

Provisions on the access to justice as referred to in Article 9 of the Convention may be found in individual provisions of the laws of the RC, as shown below in answers to certain questions. However, in case that a certain provision of the Convention contravenes a legal provision of the RC, the judges are bound to directly apply the provision contained in the Convention, because it has primacy over the law by its legal effects.

Czech Republic

Art. 9 (3) requires that individuals and NGOs be able to challenge acts and omissions by public authorities and private persons which contravene legal regulations relating to protection of the environment, i.e. that they be able to lodge an action in public interest. This provision can be construed as direct and directly applicable entitlement and, since the Aarhus Convention is part

of the Czech legislation, action could be lodged on the basis of Section 66 (3) of the Code of Administrative Justice (Special locus standi in respect of protection of public interest). However, while the Supreme Administrative Court accepted, in its recent judgments, the principle that international treaties have priority in case of conflict with a law and laws are to be interpreted in accordance with such treaties, it nevertheless rejected direct applicability of Art. 9 (3) of the Aarhus Convention in the Czech legislation, because, in its opinion, Art. 9 (3) is not "self-executing" (and there is also no legal regulation that would transpose Art. 9 (3) to the Czech laws); on these grounds, it ruled that all the conditions for individuals or NGOs to be able to directly enforce rights arising out of Art. 9 (3) of the Aarhus Convention before the courts had not been fulfilled (cf. Resolution of the Supreme Administrative Court File No. 3 Ao 2/2007).

Estonia

The administrative court proceedings are based on the "violation of rights" rather than on the objective control of administrative activities. The courts' rather limiting interpretation of the standards for the right to file an action so far may pose a significant impediment to the implementation of the Convention. Until now, there haven't been any special conditions for the right of NGOs to file an action. In practice, the courts, including the Supreme Court, have applied the Convention directly and on several occasions have recognized the right of NGOs to file an action. At the same time, there is no common court practice in respect of the recognition of the right to initiate proceedings (in some cases, the courts have not recognized the right of the NGOs when in fact they should have). The need for criteria is supported by the fact that this excludes the locus standi for groups with strictly limited interests as well as the need for the court to interpret and apply directly the Convention.

European Union

In Case C-240/09 Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky the Supreme Court of the Slovakian Republic has asked the Court of Justice of the European Union to rule on whether Article 9(3) of the Aarhus Convention is directly applicable in EU law. In her Opinion, the Advocate-General found that it was not directly applicable.

Finland

As for article 9 of the Convention, it may be generally stated that the Aarhus Convention is implemented in Finland similarly to other current legislation, and the provisions in the Convention are also used as grounds for decisions in court practice. At any rate the need for direct implementation is small, since the provisions of the Convention have been extensively taken into account in other legislation.

France

So far, the Council of State (the highest administrative court) has considered that the provisions of article 6, paragraphs 1, 2, 3 and 7, of the Aarhus Convention are directly applicable in the domestic legal order. The provisions of article 6, paragraphs 4, 6, 8, and 9 and of articles 7, 8, and 9, paragraphs 3 and 5, merely establish obligations between the State parties to the Convention. They have no direct effect in the domestic legal order, and can thus be invoked only by a claimant or the defender (Council of State, 28 July 2004, 5 April 2006 and 6 June 2007). The Council of State has apparently not taken a position on the other provisions of the Aarhus Convention.

No record has been found of any decision by a civil or criminal court, and in particular by the Court of Cassation (the highest civil and criminal court), referring to the direct applicability or otherwise of the Aarhus Convention.

Georgia

The practice of applying the Convention by judges already exists (e.g. decision of a City Court on the complaint (N3/2647-07) of the Association Green Alternative, etc).

Kyrgyzstan

The text of the Convention is not applied directly by the courts.

Latvia

In hearing cases on environmental issues, the courts may apply the Convention directly. E.g., on 25 May 2007, the Constitutional Court decided to initiate the case on Riga Territorial Planning for 2006–2018, with respect to Riga Free Port Territory's conformity with Article 115 of the Constitution.

The decision was based on the Convention, incl. Paragraph5 Article 2 and Paragraph3 Article 9. The judgment in the case (No.2007-11-03) was passed on 17 January 2008. The Constitutional Court has applied the Convention in a number of other cases, too.

Interpreting Article 115 of the Constitution, the Constitutional Court decided that subjective environmental rights of the public are detailed by the Convention, as well as by national legislation, and that territorial planning is also an environmental area where Article 115 allocates wide rights (see Constitutional Court decision in case No. 2006-09-03 on "Conformity of Part of Garkalne Territorial Planning with respect to Construction on Baltezers Lake Overflowing Territory with Constitution Articles 1 and 15", sect. 11, of 8 February 2007).

Republic of Moldova

If necessary, the courts apply the text of the Aarhus Convention, but official statistics on this is lacking. According to the briefing note on the widespread practice of judicial enforcement in environmental protection, which is the background of the Explanatory Decision of the Supreme Court of Justice on environmental legislation enforcement practice, the Aarhus Convention is one of the international acts, and its provisions should be applied in the examination and resolution of environmental causes. In particular, the settlement of cases stemming from the right to environmental information and public participation, the courts will apply not only to the Law on Access to Information, but also Aarhus Convention provisions.

Ukraine

The courts apply the text of the Aarhus Convention directly. Article 19 of the International Agreements Act specifies that international agreements to which the Supreme Council has consented form part of national legislation and are to be applied in the same way as national legislation.

2. Do the courts have only cassation or also reformatory rights in cases under this article?

Azerbaijan

The public have the right to demand the annulment in administrative or court proceedings of decisions on the location, construction, reconstruction or commissioning of enterprises, plants and other environmentally hazardous facilities that have an adverse impact on human life and the environment as well as the restriction or temporary suspension of the activities of natural or legal persons and the wind-up of legal persons (article 6 of the Environmental Protection Act).

Belarus

Article 11 of the Civil Code lists remedies for the breach of civil rights: curtailment of actions that infringe a right or create a threat that it might be infringed; declaration of invalidity of an act [i.e. a rule or decision] of a state authority, local government or self-government authority; compensation for loss; compensation for non-pecuniary loss; and other means established by legislation.

Croatia

According to Article 4 of the Administrative Dispute Act (OG 53/91, 9/92 and 77/92, hereinafter referred to as the ADA) the court rulings made with respect to administrative disputes are binding. The relevant principles are laid down in Articles 62, 63 and 64. For example, Article 62 lays it down that the competent body whose act has been annulled by the decision made by the Administrative Court of the RC shall be bound by the legal opinion of the court and the comments of the court in relation to the proceedings. Article 15, paragraph 2 of the RAIA specifies the obligation to pass a decision on the denial of the request.

Cyprus

According to Article 146 of the Constitution, the decision of the Supreme Court is binding. In cases of annulment of a decision the public authority concerned must ensure to restore things to the way they were prior to the decision.

Czech Republic

Actions lodged by NGOs are usually effective only in those cases where unlawfulness of the contested decision was caused by breach of procedural rules. Some courts tend to reject substantive review, although they are obliged to undertake full review according to law.

Denmark

The Danish regulations on review do not contain access to judicial review that, on their own, meets the requirements of the Convention. This is because environmental organisations cannot always expect to be afforded capacity to sue. Therefore, extensive access to administrative recourse at the special boards for the environmental area has been implemented. To a certain extent there is further access to appeal in connection with the minimum requirements of the Convention in that the Danish regulations also cover other types of decision and other Acts than those related to the Convention´s annex activities.

Estonia

An administrative court has the right:

(a) To annul an unlawful administrative act in its entirety or partially;

(b) To issue an order to execute an unlawfully suspended administrative act, to issue an administrative act that has not been issued or to adopt a measure that has not been adopted;

(c) To declare an administrative act or measure unlawful. An administrative court shall verify both the procedural and the substantive lawfulness of administrative activities.

Finland

The Finnish judicial system of legal remedies is such that the appellate court can not only overturn a decision by an authority, but also has the power to change it. This is thus contrary to cassation practice.

France

The constitutional principle of the separation of powers prohibits judges from taking administrative action. However, in two cases the law allows administrative courts to call upon the administration to give effect to a res judicata at the request of the complainant: (a) when the res judicata "necessarily entails" adoption of a given implementation measure (art. L. 911-1 of the Code of Administrative Justice); and (b) when it "necessarily entails" the taking of a decision on completion of a fresh investigation of the case (art. L. 911-2 of the Code of Administrative Justice). The court may make the deadline for the administration to execute the ruling subject to a fine (art. L. 911-3 of the Code of Administrative Justice).

Germany

The provisions of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) and the VwGO guarantee effective access to justice. In administrative proceedings, if the complaint is found to be justified, the authority´s contested decision is revoked, or the authority concerned is required to review the matter taking account of the court´s legal opinion, or to undertake the measure petitioned for by the complainant. There are means available for the compulsory enforcement of legal rulings.

Kyrgyzstan

Cases relating to the overturning of decisions in accordance with Article 9 of the Convention are handled by respective civil courts for the various categories of cases. Under civil procedural legislation, appeals may be lodged against such decisions in both courts of appeal and courts of cassation, and the decisions can be overturned.

Republic of Moldova

In accordance with the national law, the court has the right to change and to cancel the decision studied in accordance with art. 9.

Romania

Law no.554/2004 on administrative contentious, as amended provides in art.1 that "Any person which considers that one of his/her rights or one of his/her legitimate interests is injured by a public authority, by an administrative act or by the failure to settle a petition within the legal time limit, may address to the law court on administrative contentious, for the annulment of the act, the acknowledgement of the claimed right or of the legitimate interest and the legal redress of the damage caused. The legitimate interest may be both private and public."

Slovakia

Moreover, the abolished decision by court does not guarantee that environmental information will be provided to the applicant. The administrative court in the process of reviewing the legality of the decision has no decision ability to make the information public. After the administrative court´s decision, new administrative procedure could begin, within which the body may again refuse to provide information (e.g due to another legal reason).

Sweden

A review can examine both the formal and the substantive aspects of the decision. It can be mentioned in this context that satisfactory consultations including an adequate and well-conducted environmental impact statement are required before a court considers a permit application. If the legal requirements are not met in these respects, an application may be rejected.

Ukraine

According to information supplied by the Supreme Court, cases disputing the action or failure to act of a natural or legal person, state bodies, local self-government bodies and the officials of these bodies, relating to a contravention of national legislation relating to the environment are heard by courts of general jurisdiction in civil, administrative or commercial proceedings. Legislation on civil, administrative and commercial procedure allows impugned judgments not only to be rescinded but also to be varied or for a new judgment to be issued (approved) on the merits of a claim at both the appellate and cassational stage.

B. Paragraphs 1 and 2: Remedies

3. How is the *independence* of the administrative review ensured?

Armenia

When complaints are addressed to the Ombudsman (Commissioner for Human Rights), the Ombudsman may decide, upon receipt of the complaint, to take it into account; to explain to complainants the remedies that are available for the protection of their rights and freedoms; or to transmit the complaint to the state or local self-government authorities or to an official with the necessary competence to decide on the complaint.

Under the revised Constitution, new safeguards have been created for the work of the Ombudsman. A human rights defender shall be elected for a term of six years by the National Assembly, by a majority of not less than three fifths of the total number of deputies. Eminent citizens who fulfil the requirements to

stand for election as deputies may be elected human rights defender. The human rights defender is irremovable.

Austria

In the Federal provinces, Environmental Advocacy Offices i.e. Ombudsmen for the environment were set up as regional bodies representing the cause of environmental protection . It is the task of the Ombudsman for the environment to ensure the protection of the environment in certain administrative procedures (e.g. procedures concerning nature protection or procedures according to the Waste Management Act or the EIA Act 2000). In order to enforce such claims, the Ombudsman for the environment has the position of a party and is authorized to lodge complaints with the Administrative Court with regard to compliance with legal provisions which are relevant for the environment;

A specially established Ombudsperson Board ("Volksanwaltschaft") investigates claimed or assumed severe administrative deficiencies and thus exerts public control for the benefit of the rule of law and democracy in a way that attracts media attention. Yet the Ombudsperson Board only executes supervising investigation (after the procedure has been completed) and does not represent any party in the procedure per se.

For matters of EIA the competent authority (provincial government) decides and a special body, the Environmental Senate, which was established at the Federal Ministry of Agriculture, Forestry, Environment and Water Management acts as the authority of appeal. The Environmental Senate is the relevant superior authority with substantive jurisdiction. The members of the Environmental Senate perform their activities independently and are not bound by instructions.

Belarus

Administrative complaints to a higher authority or official are more common. In such cases it is difficult to monitor the independence of the body dealing with the complaints.

Belgium

The autonomy of this appeal body is guaranteed by law (Art. 26 DOB): "The appeal body carries out its duties fully independently and neutrally. It is not allowed to receive instructions when hearing appeals. Its members may not be evaluated and no disciplinary proceedings may be brought against them on the basis of the reasons constituting the grounds for their decisions within the framework of the tasks assigned to them in this Flemish Parliament Act".

Denmark

The right of appeal is supplemented by the non-statutory administrative law principle of resumption. It is also possible to bring a case before the Ombudsman of the Danish Parliament and the authorities responsible for the supervision of municipalities.

Estonia

In general, challenge proceedings are considered as a positive and good opportunity for a administrative body to correct its mistakes quickly and efficiently. However, the negative side of the proceeding is that the authority may not see its own mistakes and also the impartiality and independence of the decision on challenge are not guaranteed. As there is also a not very

expensive alternative to challenge a decision in an administrative court (if the fee of legal aid is not taken into account), the challenge proceedings are not used very often.

Supervisory control proceedings

Supervisory control consists in the internal control of administrative activities and aims to ensure the legality and purposefulness of administrative activities. A person cannot demand that supervisory control be exercised, but he or she can draw the attention of the administrative body exercising supervisory control to circumstances that demand its exercise. Supervisory control is not exercised in matters related to (State) supervision measures and acts, e.g. it is not exercised over the precepts of the Minister of the Environment.

A person exercising supervisory control has the right to:

(a) Issue an order for the elimination of the deficiencies in a legal instrument or act;

(b) Suspend the performance of an act or validity of a legal instrument;

(c) Invalidate a legal instrument.

Supervisory proceedings carrier out by the Chancellor of Justice

The main duties of the Chancellor of Justice include reviewing the legislation of general application of the legislative and executive powers and of local governments for conformity with the Constitution and legal acts of the Republic of Estonia. In addition, paragraph 19 of the Chancellor of Justice Act establishes that everyone has the right of recourse to the Chancellor of Justice in order to control the activities of governmental authorities, including the guarantee of constitutional rights and freedoms. As the independence of the Chancellor of Justice is stressed in Chapter XII of the Constitution, the Chancellor can doubtlessly be considered an independent body in the meaning of article 9, paragraph 1, of the Convention. The proceedings carried out by the Chancellor are free of charge for the person who made the recourse. The Chancellor does not have sufficient means to ensure the efficient execution of his or her functions, and neither have definite proceeding deadlines been established. Therefore, the review and supervision carried out by the Chancellor of Justice is not appropriate for implementing the requirements of the Convention, but the proceedings may have a supportive role.

France

Article 20 of Act No. 78-753 of 17 July 1978 established the Commission on Access to Administrative Documents to ensure freedom of access to administrative documents, giving it the status of an independent administrative authority charged with ensuring freedom of access to administrative documents. Its independence is guaranteed by the make-up of its membership, which includes figures from the high courts (Council of State, Court of Cassation and Court of Audit), universities and the parliament, as well as qualified public figures and locally elected officials. There are no representatives of the executive branch on the Commission.

Georgia

The independence of reviewing an administrative complaint is ensured and regulated by Chapter XIII - the Administrative Proceeding in Regard to an Administrative Complaint of the General Administrative Code of Georgia.

Germany

In the event of a refusal of a request for information by a public authority, there is the opportunity to undertake a preliminary administrative procedure of objection (*verwaltungsinternes Widerspruchsverfahren*) under Article 68 ff. VwGO. This ensures that the matter is reviewed by a separate body, namely the "objection authority" which is responsible for dealing with the objection, or in cases in which the refusal comes from a supreme or higher authority, by this authority itself. In the event of a refusal by a person under private law who is required to furnish information, the applicant may, pursuant to Article 6 (3) and (4) UIG, request a review of the refusal by the authority required to furnish the information.

Italy

The majority of local administrations, such as Regions, Provinces or Municipalities, nominate an Ombudsman to assist the public. Its main tasks is to collect citizens complains on bad administration and to provide remedies against denial to access to administrative acts.

Kazakhstan

The Environmental Code envisages state (Chapter 12), industrial (Chapter 14) and public (Chapter 15) environmental compliance assurance. Public environmental compliance assurance seeks to engage society in the state’s environmental problems. The procedure for conducting public environmental compliance assurance is decided by public associations in accordance with their articles of association (Article 135).

In order to facilitate public environmental compliance assurance, legislation requires the provision of information and other forms of cooperation. Natural and legal persons must have access to information about the work of the state bodies responsible for ensuring compliance with legislation on environmental protection and the protection, replenishment and use of natural resources, and the results of such work. The state bodies that ensure compliance with legislation on environmental protection and the protection, replenishment and use of natural resources publish reports from individual inspections and an annual report. In order to facilitate cooperation and concerted action, the mandated authority for environmental protection draws up a list of public associations whose articles of association include the function of public environmental compliance assurance. State bodies have the right to engage natural and legal persons on a voluntary basis to identify breaches of environmental legislation (Article 136).

Kyrgyzstan

The National Council for Judicial Affairs has been established for the selection and nomination of candidates to vacant judgeships in local courts, and for conducting performance evaluations of local court judges in order to decide whether or not to relieve them of their duties.

In accordance with the regulations of the National Council for Judicial Affairs attached to the Office of the President of Kyrgyzstan, the Council’s membership includes NGO representatives. Work is carried out with civil society to discuss ways of ensuring the effectiveness of the institution of judicial self-administration.

Netherlands

The possibility to challenge the substantive or procedural legality of decisions, acts or omissions according to article 6 of the Convention, is provided for in chapter 20 of the Environmental Management Act (see art. 20, paras. 1 (1 and 3), 6 (2), 10 (2) and 3).

The legislation concerning access to justice has not been changed very much since the 2007 report. There are two new rules though that have come into force and are relevant enough to be mentioned in this report. Both changes are meant to pressure authorities in their decision making process. Firstly authorities that fail to take a decision on time are confronted with the fact that this failure is seen a positive decision for the applicant (Lex silencio positivo). Secondly authorities that fail to take a decision on time can be subject to a penalty paid to the applicant. This legislation does not apply to all Dutch decision making but does to most legislation concerning environmental permits and decisions. Permits that are based on European legislation concerning the IPPC directive or the directive on the assessment of the effects of certain public and private projects on the environment are excluded from the Lex silencio positivo because these directives do not allow the use of it.

Norway

The Ombudsman system represent “another independent and impartial body established by law”. The Ombudsman’s opinions are made in writing, and in all but the fewest of cases the public authorities act in accordance with his conclusions. Anyone may file a complaint to the Ombudsman over a refusal of a request for information. This must be done within a year after the decision of the public administration has been made. The Ombudsman system is free of charge. These arrangements ensure that article 9, paras. 1 and 2 are implemented in the legislation.

Republic of Moldova

National legislation ensures the independence of the review of the administrative body decision.

Romania

Prior to recourse to the competent administrative contentious court of law the persons referred to in art.23 must request to the hierarchic superior body of the issuing public authority, within 30 days from the date when the screening stage decision or the decision to issue/reject the environmental agreement was made available to the public, to revoke, in whole or in part, the respective decision.
The hierarchic superior body of the issuing public authority has the obligation to respond to the complaint referred to in paragraph (1) within 30 days from the registration date of the complaint to that authority.
The preliminary administrative procedure referred to in paragraphs (1) and (2) is free of charge and must be equitable and fair.”

The administrative review is free of charge and has to be fair, Art. 3.7 from Directive 2003/35 has been transposed in the national legislation in art. 25 (3) of GD 445/2005: “The preliminary administrative procedure referred to in paragraphs (1) and (2) is free of charge and must be equitable and fair”.

Serbia

A number of laws were adopted as part of the National Judicial Reform leading to the establishment of a new organization of the judiciary and the prosecution, namely, the Law on High Judicial Council, Law on State Prosecutorial Council, Law on Judges, Law on Public

Prosecution, Law on Organisation of Courts and Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Office. These pieces of legislation regulating the judiciary introduced new institutions, such as High Judicial Council, State Prosecutorial Council and Administrative Court that guarantee the independence of judges and prosecutors. The establishment of the Judicial Academy, carrying out initial and continuous training of members of the judiciary is also very important. The new organization of courts, introduced by the above-mentioned laws, became operational on January 1st, 2010. The new organization of the judiciary meant the distribution of cases according to specialties, which allowed a more efficient and objective processing of cases and facilitated public access to justice.

Sweden

To ensure that authorities handle their business correctly, the actions and omissions of the public authorities are examined by the Parliamentary Ombudsmen (JO; www.jo.se) and the Chancellor of Justice (JK; www.jk.se). Following a complaint or on their own initiative, the Parliamentary Ombudsmen can examine whether an authority has acted as it is supposed to. The Parliamentary Ombudsmen cannot order an authority to act, but as a rule the authorities follow their decisions and recommendations. The Chancellor of Justice supervises central government authorities, employees and service providers, etc. However, the Parliamentary Ombudsmen and the Chancellor of Justice are the bodies that exercise extraordinary scrutiny and not ordinary supervisory authorities. Both the Parliamentary Ombudsmen and the Chancellor of Justice are able to bring charges as special prosecutors against officials who have committed criminal offences by violating their obligations in the exercise of their duties.

Turkmenistan

State, civil-society and other bodies and their officials and the heads and officials of enterprises, institutions and organizations of all forms of ownership are obliged to promptly, objectively and comprehensively examine communications from citizens, check the facts contained in them, take decisions in accordance with current legislation, ensure these decisions are fulfilled and inform citizens of the outcomes of consideration of communications.

Ukraine

The Citizens' Communications Act gives citizens the right to send individual or group complaints about a breach of their rights to the authorities or private legal entities. The recipient of such a complaint is obliged within a certain time frame to examine the complaint and take a reasoned decision.

However, despite this right, access to justice through an administrative complaint is not effective as it is extremely rare for the body examining the complaint to revoke the decisions of the body whose decisions or actions are in dispute.

4. How do the national law and adjudication interpret the phrase "NGOs promoting environmental protection and meeting *any requirements under national law"*?

Albania

With respect to paragraph 3: according to the national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment, but the criteria to be met by the public are not defined in the national legislation.

Armenia

Paragraph 2 of article 9 has been directly applied at various levels of the judicial system. Judges have given a range of interpretations of Armenian legislation and the provisions of the Aarhus Convention. The main problem lies in the unclear criteria for an NGO to bring a claim to protect general interests (actio popularis).

Acting within the scope of competence granted by the Constitution, the Constitutional Court has defined the particular criteria for an NGO to enjoy procedural legal standing. In its decision of 30 October 2009, the Court of Cassation partially granted an appeal. Citing the articles of association of the public associations Transparency International Anti-corruption Centre and Ekodar, the Court ruled that Ekodar fulfilled the criteria of national legislation, was registered in accordance with the Public Associations Act and, on the basis of its object and tasks as defined by its articles of association, engaged in environmental protection. It ensues from the Court of Cassation's position that Ekodar was a representative of the public concerned and had the right to challenge the decisions and actions of state and municipal bodies. The corresponding provisions of the Administrative Legal Procedure Code have also been reviewed by the Constitutional Court. Public associations challenged the compliance of article 3 of the Code with the Constitution, asserting that the use of the word "his/her" excluded the possibility of applying to a court to protect the rights and freedoms of the public. The Constitutional Court, while emphasizing the importance of allowing public associations the right to apply to a court to protect public interests in this area, also ruled that the word "his/her" in the Code did not contradict the Constitution.

Article 3 of the Administrative Legal Procedure Code lists the entities that have legal standing. All legal and natural persons have the right to apply to the court if they believe that administrative decisions of state bodies or local self-government have infringed or may directly infringe their rights as protected by laws and regulations, including international agreements.

Austria

NGOs/ environmental organisations that fulfil certain criteria provided for in national legislation can also apply the rights given to parties in various administrative environment proceedings (most relevant eg EIA, IPPC, Waste Management Act and Industrial Code). The Aarhus Convention allows the establishment of criteria according to national legislation as long as they are reasonable and comply with the principles of the Convention.

Belarus

Article 86 of the Civil Procedural Code grants public associations the right to institute legal proceedings to defend the rights and lawful interests of their members, if this is specified by their articles of association.

Articles 12, 15 and 100 of the Environmental Protection Law of 21.12.2007 enshrine the rights of citizens and public associations engaging in environmental protection to file actions requesting the complete or partial suspension or termination of economic or other activities of legal entities and citizens that have an adverse environmental impact. Article 1 defines an adverse environmental impact as "any direct or

indirect impact on the environment by an economic or other activity, the consequences of which lead to negative changes in the environment.

The legal standing of NGOs in environmental matters is limited in comparison to the Aarhus Convention.

Belgium

As far as the environmental licence and planning permission are concerned, there exists an administrative appeal procedure in first instance in accordance with the Flemish Parliament Act on Environmental Licences and the Flemish Spatial Planning Codex. Next to this, judicial appeal procedures are available. In case of environmental licences, an appeal can be lodged with the provincial executive against decisions in first instance of the Board of Mayor and Aldermen and with the Flemish Government (Minister responsible for Environment) against decisions in first instance of the provincial executive (Art. 23 Flemish Parliament Act on Environmental Licences). This appeal can be lodged by the applicant, by the governor, by the advisory public authorities, by the Board of Mayor and Aldermen (first category), and by natural persons and legal persons, who may experience direct nuisance as a result of the establishment and the operation, as well as by any legal person who has set himself the statutory objective of protecting the environment, has had legal personality for at least five years and whose statutes describe the territory to where his activities extend (Art. 24, § 1 Flemish Parliament Act on Environmental Licences).

As for the planning permission , the applicant of the permission, any natural or legal person who may experience direct or indirect nuisance or disadvantages, any association being able to take legal action, the regional spatial official and the advisory bodies can lodge an organised administrative appeal with the executive against the explicit or tacit decision of the Board of mayor and Aldermen if a number of conditions are met (Art. 4.7.21 of the Flemish Spatial Planning Codex).The applicant, the licensing authorities involved, any natural or legal person who may experience direct or indirect nuisance or disadvantages, any association able to take legal action, the regional spatial official and the advisory bodies can lodge an appeal with the Council for permission disputes (administrative court) against the decision of the executive, if a number of conditions are met (Art. 4.8.16 of the Flemish Spatial planning Codex). This is a judicial appeal.

If the above-mentioned administrative appeal possibilities are exhausted, judicial appeal is still possible. This concerns a federal competence (see federal report) (www.health.fgov.be)

Bosnia and Herzegovina

Measures taken to ensure that within the framework of national legislation, members of the public concerned meeting the criteria set out in paragraph 2 have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

The relevant Articles are the following: Article 15, paragraph 3 LoAP BiH; Article 11, paragraph 3 LoAP FBiH; Article 12, paragraph 3 LoGAP RS, and Article 11, paragraph 2 LoAP BD. Also relevant are Article 39 LoPE FBiH and Article 38 LoPE RS.

With respect to paragraph 3, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment.

Pursuant to Article 213 LoAP BiH; Article 221 LoAP FBiH; Article 211 LoGAP RS, and Article 208 LoAP BD; parties, plaintiff, public defender and other bodies may appeal against a decision in administrative procedure which contravenes the law in favour of a physical or a legal person to the detriment of the public interest. Article 2 LoAD BiH; Article 2 LoAD FBiH; Article 2 LoGAD RS, and Article 2 LoAD BD, stipulate that a physical or a legal person is entitled to initiate an administrative dispute if their rights or direct personal interest based on the law have been violated. Also relevant are Articles 39 and 107 LoPE FBiH, Articles 38 and 117 LoPE RS, and Article 103 LoPE BD.

Bulgaria

This question is not specifically regulated by the Bulgarian legislation, but members of the interested public undoubtedly have the right to challenge any decision taken by the administrative authorities. Administrative Procedure Code shall apply to administrative proceedings and representatives of the public may appeal decisions of administrative bodies.

In the Constitution of the Republic of Bulgaria is written that everybody has right of clean environment, therefore the writing gives material right to everyone to participate in the process of challenging any decision, act or omission in the court. The case law shows that legal entities, including NGOs that meet the criteria of national legislation, namely, are duly registered, have the opportunity to participate in the trial.

Cyprus

Moreover, Law 140(I)/2005 on the assessment of the impacts on the environment from certain programmes, provides that any legal person, registered for at least 5 years under national legislation, and, in accordance with its charter, has been created with the purpose of promoting environmental protection, is considered to have sufficient interests that may be affected by a decision taken under the law and has the right to appeal before the court against the decision, in accordance with Article 146 of the Constitution.

Czech Republic

For natural persons, locus standi is always examined in each specific case and is granted if the plaintiff's right has been affected (including the right to a favourable environment) or if his procedural rights have been infringed. Locus standi is questionable in respect of civic associations, which do not benefit from the right to a favourable environment and can thus turn to the courts only on the grounds of infringement of procedural rights.

Given the fact that the Czech legislation does not stipulate a definition of the public concerned, permission proceedings involve particularly NGOs as the parties (based on component laws) in addition to the owners of the affected properties. In case of court proceedings pursuant to Art. 9 (2) of the Aarhus Convention, NGOs are usually deprived of substantive rights to a favourable environment and the decisions are thus reviewed particularly from the procedural viewpoint.

Special locus standi with the aim to protect the public interest is also granted by law to the Supreme State Attorney (Section 66 (2)), and it is also vested in any person who is explicitly authorised to this effect by a special regulation or an international agreement that is part of the legislation. An important type of court proceedings in terms of implementation of Art. 9 (2) is also represented by proceedings on cancellation of a general measure or its part (cf. Sections 101a to 101d of the Code of Administrative Justice), because zoning plans of municipalities and regions are issued in this form. An application for cancelling a general

measure may be lodged by anyone who claims that his rights were infringed by the general measure. The court must rule on the application within thirty days after the perfect application reached the court. An amendment to Act No. 100/2001 Coll., on environmental impact assessment, came into effect on 11 December 2009; this amendment inserted new paragraph 10 into Section 23, reading as follows: “A civic association or a beneficiary society whose objects of activities include protection of the environment, public health or cultural monuments, or a municipality affected by a project, provided that they submitted a written opinion on the documentation or statement within the deadlines stipulated by this Act, may lodge an action on the grounds of violation of this Act and claim that the court cancel the ensuing decision issued in proceedings pursuant to special legal regulations, through the procedure pursuant to the Code of Administrative Justice. An action does not have suspensory effect.”

Re c): Pursuant to the Code of Administrative Justice, locus standi is conditional on direct infringement of the rights by an administrative decision or omission, i.e. it is necessary to demonstrate direct infringement of the right to a favourable environment. The Code of Civil Procedure provides for private-law actions, which do not extend to the area of public law (law of the environment). A certain quasi-exemption consists in the possibility of lodging a “neighbour action”, i.e. an action whereby the plaintiff claims that his neighbour refrain from impairing the exercise of the plaintiff’s ownership rights beyond an appropriate degree – again, such a dispute would take place within the sphere of private law; if the action is successful, the court can merely order the neighbour to refrain from the given activity. Nevertheless, the public has the right to defend itself against inactivity of administrative authorities and submit instigations for initiation of proceedings ex officio or claim review proceedings before the superior administrative authority as a party to the proceedings (cf. the Code of Administrative Procedure).

Denmark

Right of appeal has been introduced for nationwide associations and organisations that have protection of nature and the environment as their primary objective. There are also requirements that such associations have articles of association or similar that documents the objective and that they cover all of Denmark and have a professional and stable organisation.

Special regulations have also been introduced on right of appeal for organisations representing important recreational interests. Organisations (nationwide and local) that protect the environment and also organisations using nature have thus been afforded an extended right of appeal.

Estonia

Three conditions are applicable in determining the existence of a right to file an action:

(a) The relevant environmental legal standard has to give rise to a legal public right;

(b) This right must be held by the person filing an action, i.e. there must be a personal connection;

(c) A causal connection must exist between the administrative activities and the violation of the rights.

In case of legitimate interest, there are two main conditions applicable to the right to file an action:

(a) The person filing an action must have a certain personal connection to the case;

(b) The person filing an action must demonstrate the need to determine the unlawfulness.

The administrative court proceedings are based on the "violation of rights" rather than on the objective control of administrative activities. The courts' rather limiting interpretation of the standards for the right to file an action so far may pose a significant impediment to the implementation of the Convention. Until now, there haven't been any special conditions for the right of NGOs to file an action. In practice, the courts, including the Supreme Court, have applied the Convention directly and on several occasions have recognized the right of NGOs to file an action. At the same time, there is no common court practice in respect of the recognition of the right to initiate proceedings (in some cases, the courts have not recognized the right of the NGOs when in fact they should have),. The need for criteria is supported by the fact that this excludes the locus standi for groups with strictly limited interests as well as the need for the court to interpret and apply directly the Convention.

The right of appeal of the non-governmental environmental organisations has been regulated in the draft General Part of the Environmental Code Act proceeded by the Riigikogu but the scheduled term for enforcement thereof is 01/01/13 that is not satisfactory taking into account the stage of infringement procedure.

Due to the infringement proceedings the right of appeal regarding environmental issues has been provided for in the Code of Administrative Court Procedure until the enforcement of the General Part of the Environmental Code Act.

Proceeding from the judicial practice and Environmental Liability Act the definition of an environmental organisation provided in the draft is broad. This is an important improvement as the valid law does not comprise the general definition of a non-governmental environmental organisation. Pursuant to the draft a non-profit organisation or a foundation promoting environmental protection having operated a year before the challenging the administrative act or act but also an association of persons who are not legal persons in case such an association represents the opinions of the relevant part of the local population may be an environmental organisation. As said before, the aim of the requirement for one activity year of the environmental organisation is to exclude the appeals of ad hoc groups of random character representing the interests of small circles.

Based on the Convention, courts in Estonia have been liberal in recognising the environmental organisations. The appeals of several NGOs, the right of appeal of a foundation and also the right of appeal of a partnership have been accepted. The draft prescribes specifications of the right of appeal of the environmental organisations regarding challenges of the rulings made in environmental cases – the justified interest of the environmental organisations or infringement of rights in case of challenging such rulings are assumed in case the subject-matter is related to the present activities or area of activity of the environmental organisation.

European Union

See Articles 3(7) (inserting a new Article 10a in the EIA Directive 85/337 as amended) and 4(4) (inserting a new Article 15a in the IPPC Directive 96/61). Reference is here made to the above comments with respect to the practical information on Article 6 and 7 of the Convention.

Recent case-law of the ECJ on paragraph 4.

• Standing rights of NGOs. Restrictive rules on when NGOs can go to Court are another significant impediment. In 2009, the ECJ ruled that certain restrictive rules in Sweden were not in line with the Directive, opening the way for better access for NGOs in EIA and IPPC cases (Case C 263/08). There are three ongoing cases that can be mentioned in the topic, all of them concerning access to justice.

• Standing rights of NGOs. A German administrative court of appeals has referred several questions concerning the interpretation of Article 10a of the EIA Directive, regarding NGOs standing. If the Court gave a broad interpretation of this provision it would considerably broaden standing of NGOs in the German legal system (Case C-115/09). The hearing was held in June 2010.
• Standing rights of NGOs. The Belgian Council of State has also referred several questions on the interpretation of the EIA Directive, including its provisions on access to justice (Article 10a). If the Court gave a favourable judgement in the matter, standing of NGOs in the Belgian system would be considerably broadened (Joined Cases C-12/09 to 131/09, 134/09 and 135/09). The hearing was held in June 2010.
• Standing rights of NGOs. The Belgian Constitutional Court introduced a preliminary reference in Case C-182/10 lodged on 9 April 2010 - Marie-Noëlle Solvay. This in principle raises similar questions to the Belgian case presented above, linked to access to justice and public participation

Finland

Pursuant to the Environmental Protection Act, an appeal against a decision made by a permit authority or supervisory authority is sought with Vaasa Administrative Court. From Vaasa Administrative Court, an appeal may be made to the Supreme Administrative Court. Pursuant to Section 97 of the Environmental Protection Act, the right of appeal pertains to the parties, the municipality where the activity takes place and the municipalities subjected to its impact, the Centre for Economic Development, Transport and the Environment, the environmental protection authority located in the area of impact and other authorities supervising the public interest. A registered corporation or foundation whose purpose is to promote the protection of the environment or health, nature conservation, or the suitability of the living environment also has the right of appeal, in whose area of activity the environmental impacts occur. A comparable right of appeal is defined in the Water Act.

France

The administrative court interprets the applicant's interest in seeking annulment for illegality liberally. The interest is considered sufficient if the injury suffered is not excessively uncertain or indirect. The Council of State also admits applications lodged on behalf of collective interests (ruling of 28 December 1906, in a case involving a Limoges hairdressers' union).

The concept of "public concerned" does not exist in domestic law, which refers to persons having standing to bring an action.

The Environment Code sets out the right of action of environmental protection associations:

a) Under article L. 142-1, paragraph 1, any environmental protection association may bring proceedings in administrative courts for any complaint relating to its purposes

b) Under article L. 142-1, paragraph 2, recognized associations (L. 141-1) are granted (presumed) standing in proceedings against any administrative decision which has harmful impacts on the environment

c) Under article L. 142-2, associations have the right, in certain conditions, to exercise the same rights as those granted to applicants for criminal indemnification

Article 9, paragraph 3

The criterion applied in domestic law for any remedy is legal standing.

Before the civil courts, it is possible to obtain an interim injunction for preservation or restoration to prevent imminent damage or stop clearly illicit activities. Such injunctions may be ordered subject to a fine in an amount set by the court in the event of a delay in execution.

Outside the jurisdiction of judges for interim applications, an injunction for redress may also be obtained, subject to a fine for non-performance, by filing an application to the competent court.

Furthermore, the recent case law of the Court of Cassation has been favourable to civil action brought by environmental protection associations. The Court has ruled that an environmental protection association may bring a civil action not only before a criminal court, but also before a civil court (Court of Cassation, 7 December 2006). It has also ruled that an association may bring legal action on behalf of collective interests, as long as such interests fall within the scope of its mandate, without reference to any requirement for authorization (Court of Cassation, 5 October 2006).

Germany

An association may on principle only have recourse to the courts if it has been recognised. Recognition is pronounced by the UBA or competent bodies in the Länder, provided that the legal criteria for recognition are fulfilled (see Article 3 UmwRG). Special rules apply to foreign environmental associations in particular, which in individual cases may have recourse to the courts without previous formal recognition having been granted.

Greece

The independence of the judges is safeguarded by the Constitution. (Article 26). The Greek legal system allows direct access to the civil courts both to individuals and NGOs. In environmental cases the scope of legal standing has been remarkably expanded as a result of the jurisprudence of the Council of State.

In addition, there is no express prohibition against citizens from other States participating in court proceedings. NGOs in general can participate if they fulfil some requirements. The most important one is that NGOs should have as their aim, provided by their statutes, the protection of the environment. It could be said that in Greek law a quasi-actio popularis has been introduced by the jurisprudence of the Council of State since the actio popularis itself is not accepted.

Hungary

Under the Administrative Procedures Code, a client is a natural or legal person, or a non-legal entity organisation whose rights, legal situation or legitimate interests are affected by the decision. In addition, a law or government decree may set out the scope of persons in a specific type of case who are also deemed to be a client if lacking any rights or legitimate interests. Pursuant to the Administrative Procedures Code, the owner of property in the impact area defined by the provision of law and the person whose right relating to the property has been registered in the land registry are deemed to be a client if lacking any rights or legitimate interests.

The term “client” is construed extensively by the Environment Act in so far as it clearly spells out that associations established to represent environmental interests, and other NGOs not deemed to be a political

party or interest representative, operating in the impact area, automatically enjoys the status of a client in all administrative procedures relating to the environment. This privileged legal standing is also confirmed by the above referenced Government Decree No. 314/2005 (XII. 25) on environmental impact assessment and the uniform environmental licensing procedure, laying down the framework of impact assessment, which declares that NGOs operating in the area affected by the activity subject to EIA always have to be deemed “concerned”.

In its administrative uniformity decision 4/2010, superseding decision 1/2004, the Supreme Court also dealt with the client status of environmental NGOs, the right to bring action and to a court hearing, and the possibility of intervention in administrative proceedings.

The decision, upholding the theoretical arguments of the 2004 decision, determined that the NGOs set out under Section 98 (1) of the Environment Act are entitled to the client status in environmental administrative cases, where the environmental authority acts in the capacity of peremptory authority and in other such administrative cases where law stipulates the participation of the environmental authority as an administrative environmental authority.

In the view of the Supreme Court, administrative nature conservation and water management cases do not constitute administrative environmental cases. However, participation is nevertheless possible in nature conservation cases pursuant to the provisions of the nature conservation Act. There is no information yet available on the practical application of the uniformity decision.

Section 98 of the Environment Act makes it possible for environmental NGOs to seek the intervention of the competent authorities as well as to directly sue the operators of activities that pose a threat to, pollute or damage the environment. NGOs may request the court to order the termination of the unlawful polluting activity or the introduction of preventive measures.

Pursuant to Section 65 of Act LIII of 1996 on the Conservation of Nature, in the event of unlawful damage or risk to natural areas and values, the environmental NGOs are entitled to take nature conservation steps and request government authorities or municipalities to take the appropriate measures under their authority, or take legal action against the entity causing damage or posing a risk to the protected natural value or area.

Italy

With respect to article 9, para. 2, the legal system is based on the protection of legitimate interests. A legitimate interest is a direct interest of an individual in a public decision but is not guaranteed as a legal right. The system gives the public “with an interest” in an administrative decision (individuals and associations) the possibility not only to participate in the decision-making, so that their interests are taken into account, but also to challenge before Courts any unlawful decision adopted by a public authority (Law 1034/1971 on TARs, L.241/1990). A decision is considered to be unlawful when it is inconsistent with legal provisions regulating the way the discretionary power of the administration should be exercised, including those on public participation. Individuals and associations, other than the ones challenging the decision, can also intervene throughout the jurisdictional proceedings. To give an example, the decision on “environmental compatibility” of an activity, following the environmental impact assessment procedure, may be appealed to the TAR or to the President of the Republic. The Legislative Decree152/2006, as modified, reaffirms that against decisions, acts or omission related to public participation procedures under the EIA general rules on challenging unlawful administrative acts are always applicable.

Concerning article 9, para. 3, each person/group of persons, whose right or "legitimate interest" has been breached by a public authority's decision or omission, has legal standing to act in court against that public authority's decision or omission. Furthermore, according to Law 349/1986, all environmental NGOs recognized by the MoE can challenge public decisions or omissions, both at the national and at the local level through a review procedure. For the criteria for recognition, see answer to question 3. Recognised environmental organizations can also challenge decisions taken by local public authorities (at the regional, provincial or municipal levels) that cause environmental damage (Law 127/1997). Private individuals are not allowed to challenge public decisions directly; in the case of criminal behaviour (the private or public act is punishable by criminal law), any individual or group is entitled to commence an investigation, by addressing either the police or the judiciary (if the request appears to have a sound basis, these authorities are obliged to act).

Furthermore, any person whose right has been breached by another private person can challenge that act or omission directly before a court and request both tort compensation for the damage and criminal sanctions.

Specific provisions apply with regard to the restoration of environmental damage. The legislative Decree 152/2006, as modified, charges the State (in particular the MoE) to request compensation for environmental damage both before the administrative or criminal courts. Environmental organizations and parties " with an interest" may only request the MoE to seize the court in matters related to environmental damage and its compensation. These subjects may then act for nullifying administrative decisions and can address their requests for compensation for damages to the court or can act against the MoE in case of inaction.

Recognized environmental associations can always intervene in proceedings on environmental damages. According to a large jurisprudence now also environmental associations not recognized are normally admitted to participate in those proceedings. In the case of local damage, NGOs can address their requests for compensation for the damage directly to the court on behalf of the local administration. However, the Municipality remains the addressee for pecuniary compensation (Leg. Decree 267/2000).

Lastly, the jurisprudence shows a general trend not to grant locus standi to non-recognised NGOs to initiate environmental proceedings, but this can be seen in the light of increasing requests and subsequent granting of recognitions to environmental NGOs (see response to art.3).

Kazakhstan

Article 14(2(1)) of the Environmental Code states that, when carrying out their activities in the field of environmental protection, public associations are required to: 1) contribute to the implementation of measures to promote efficient use of natural resources, protect the environment and ensure environmental security.

Statistical data from 2009 indicates that 616 applications were made to courts by natural and legal persons, including prosecutors and mandated State bodies, on environmental issues. Of these, 291 were granted by judges. The number of applications in 2010 has not yet been ascertained. In the first nine months of the year a total of 485 applications were made to courts by natural and legal persons on environmental issues, including 13 from natural persons and 159 from public environmental associations. A total of 159 were granted by the courts, including two from natural persons and 53 from public environmental associations.

It is clear that the legal standing of public associations in the situations described is limited by several criteria:

- There must be obvious violations of the rights and interests of citizens;

- There must have been specific damage to human health and the environment;

- It must be proved that the specific activity "negatively affected the environment and human health."

The Public Associations Act, which gives public associations the right to initiate court proceedings to protect the rights and legitimate interests of their own members, needs to be brought into line with the Aarhus Convention and the Environmental Code, under which environmental NGOs have the right to apply to court with environment-related claims to protect the interests of an unspecified group of people, and not just their own members.

Under the Environmental Code, state bodies can engage natural and legal persons on a voluntary basis to identify violations of environmental legislation. In order to allow cooperation and concerted action, the mandated authority for environmental protection creates a list of public associations whose articles of association include the function of public environmental compliance assurance (Article 136). This provision could restrict public participation on the grounds of non-appearance in "the list of the mandated body for environmental protection" and the need to include the "function of environmental compliance assurance" in their articles of association. Under the Aarhus Convention, environmental NGOs a priori are parties concerned and can protect public environmental interests in court and non-court procedures.

Kyrgyzstan

In 2007, the public association Independent Environmental Expertise (IEE) filed a claim to the inter-district court of Bishkek city "on recognising that Government Resolution 360 on construction of a ferro-alloy factory in the Kyrgyz Republic contradicts national legislation", which claimed that "building while designing" contradicted national legislation. During examination of the claim, the court decided to repeal the paragraph of the Resolution on Building while Designing.

Latvia

EPL, Article 6, provides that every private person and groups of persons, organizations are entitled, inter alia:

(a) To demand the public authority, official or private enterprise to stop the activity or omission degrading environmental quality or harmful to human health or life, legal interests or property;

(b) To support environmental protection measures and cooperate with the public authorities to prohibit activities and decisions that can harm environmental quality or that contradict to legislative requirements;

(c) To provide public authorities with information on activities influencing environmental quality, as well as information on negative environmental changes resulting from such activities.

Lithuania

Both natural and legal persons (including community-based organisations) shall have the right to apply to court for the protection of their interests protected under law or when protecting the public interest on environmental issues (e.g. in relation to decisions, acts or omissions of public or local self-government authorities, etc.). In this relation the case-law concerning the right of communities to apply to court for the protection of the public interest in the environmental field under the Aarhus Convention should be mentioned. In its ruling of 24 October 2006, the Supreme Administrative Court of Lithuania stated that on 31 October 2001 the Republic of Lithuania ratified the Aarhus Convention Article 9(2) of which regulated the right of community-based organisations to apply to courts for the protection of the public interest in the field of environment. Therefore, community-based organisations that help deal with environmental issues and that operate under the provisions of national laws and regulations shall have the right to apply to the administrative court for the protection of the public interest in the field of environment, as provided by Article 56(1) of the Law of the Republic of Lithuania on Administrative Proceedings. Thus, with due consideration to this court decision and having assessed the above provisions of the Law of the Republic of Lithuania on Administrative Proceedings and the Code of Civil Procedure of the Republic of Lithuania, a conclusion can be drawn that the laws and regulations of Lithuania guarantee the opportunity for associations and other persons to apply to courts regarding environmental issues, and in this way respective provisions of the Aarhus Convention are being implemented.

Montenegro

Article 24 stipulates that any applicant presenting a request for access to the information or any other person interested therein shall be entitled to the court protection during any administrative dispute procedure, and that the procedure upon a suit instituted in relation to access to the information shall be urgent. Therefore, administrative procedure may be instituted by a complaint against the final decision upon the request for access to information, and procedure based on the complaint shall be urgent. This Article provides for further protection of fundamental rights and freedoms and such protection at the same time implies the protection of public interest, protection of citizens' rights and protection of the principle of truth.

The Law on General Administrative Procedure stipulates that every individual or organisation may file a complaint to the Administrative Court of Montenegro against an administrative or other act adopted in the second instance, and with whose decision it is not satisfied (Article 7 and Article 15).

Netherlands

The basic rule is that appeals may be lodged with the Council of State (art. 20, para. 1). Article 20, paragraph 6, contains the provisions concerning appeals against decisions which are subject to the extensive public participatory procedure described in section 3.5 of the General Administrative Law Act. This article thus applies to decisions on the activities mentioned in annex I, which are - as explained above in the section on implementation of article 6 – subject to the aforementioned procedure. An appeal may be lodged by anyone who has submitted reservations about the draft decision in the review procedure (art. 20, para. 6). This system can be described as an indirect actio popularis. Article 20, paragraph 10, regards appeals for the public concerned on decisions on the basis of the Environmental Management Act for which section 3.5 of the General Administrative Law Act does not apply (see also the response to question 28 (c) below).

Members of the public may challenge acts or omissions by private persons or public authorities that contravene provisions of national environmental laws. Article 18, paragraph 14, of the Environmental Management Act stipulates firstly, that any person may request an administrative authority to apply executive coercion, impose an order for a monetary penalty or withdraw a license or an exemption to make a decision to this effect. If that request is not adequately addressed, an appeal can be lodged in

accordance with article 20, paragraph 10 (see also the answer to paragraph 2 above). Secondly, Dutch environmental legislation generally allows for an appeal to be lodged by anyone who has submitted reservations about the draft decision in the review procedure (art. 20, para.6).

Norway

Thus, the established environmental organizations normally have the capacity to be a party to a case. In addition, the party must have a legal interest in the matter, see section 54 of the Civil Procedure Act. This means that the lawsuit must deal with a matter that comes within the scope of the organization's objectives or of its operations in practice. Furthermore, the membership of the organization must make it a natural representative of the environmental interests the lawsuit is intended to safeguard.

Poland

The decisions referred to in article 6 of the Convention are administrative decisions which may be appealed and challenged in court. Parties to the proceedings always have the right to challenge a decision as do NGOs in cases of decisions requiring public participation. Any person has the right to participate in proceedings concerning the decisions referred to in article 6 of the Convention, however, the right to access to appeal procedure is granted only to those with a legal interest in a given case and to NGOs.

Access to participation in proceedings and consequently access to justice for NGOs, is excluded if the competent authority decides not to carry out a full environmental impact assessment procedure.

In the course of the report consultation, the non-governmental organizations (WWF Poland) indicated that it is impossible to appeal against a decision on the construction permit for investments for the proceedings of which on the stage of contruction permit, environmental impact assessment is not carried out (e.g. large bodies of water). Where the authority conducting the adiministrative proceeding finds no obligation to carry out an environmental impact assessment, an ecological organization has no right to a judicial verification of correctness of such ruling.

NGOs can file a civil claim asking for the restoration of the original state in compliance with the law and the institution of preventive means in the public interest (if the damage or threat concerns the environment as a common good).

Republic of Moldova

According to national legislation NGOs that contribute to environmental protection are defined as non-governmental organizations acting for environmental protection.

Romania

Art.24 (2)[GD 445/2009] stipulates that "any NGO which promotes environmental protection and is legally registered, may address to the law court on administrative contentious [...]". The relevant provisions on access to justice related to public participation in decisions on specific activities are provided by GD 445/2009, art.24-25, as follows:

Serbia

Please, refer to Article 9 of the Law on Environmental Protection specifying that a citizen or groups of citizens, their associations, professional and other organizations are entitled to exercise their right to

healthy environment before the competent authority or the court in accordance with the law. Article 81a of the Law on Environmental Protection stipulates that the public concerned are entitled to exercise their right to healthy environment by initiating the decision review procedure before the competent authority or the court in accordance with the law.

Slovakia

Currently, there is access to court for the purpose of contesting a breach of law in the area of environment in the following cases:

- if persons are parties to administrative proceedings because the proceedings directly related to their rights;

- in case of non-governmental organizations that were parties to an approval procedure pursuant to the Act on integrated prevention or use of genetically modified technology.

Slovenia

General Administrative Procedure Act stipulates under articles 42 and 43 which persons have the position of a party and which persons may participate in a procedure as accessory participants. The position of a party may be held by any natural person and legal entity under private or public law, at whose request the procedure has been instated or against whom the procedure is under way. Parties may also be others (a group of individuals, etc.), if they are holders of rights and obligations, which are the subject of an administrative procedure. An individual, who shows legal interest, may hold the position of an accessory intervenient (participant). This person shows legal interest by claiming to enter the proceedings because of protection of his legal entitlements. Legal entitlement is direct personal entitlement in accordance with the law or other regulation. An accessory participant in the procedure holds the same rights and obligations as a party.

EPA recognises as a party any person located in the area on which the intended intervention causes environmental burden, which may affect human health or property. A party in the procedure of issue of an environmental consent and environmental permit is the holder of the intended intervention. This party is a person residing in this area or the owner or other possessor of property. The position of an accessory participant in the procedure for issue of an environmental consent and environmental permit is also held by a Non-governmental Organization operating in public interest in the field of environment, which has been awarded the status in accordance with provisions of article 152 of the EPA.

In the past, the Constitutional Court has, at least in relation to spatial planning acts, addressed the question of presence of a legal interest relatively broadly, so that in some cases, for example, it granted the interest to environmental Non-governmental organizations.

Spain

Article 22 of Law 27/2006 sets forth the popular action by which appeals may be lodged against acts and, where applicable, omissions attributable to public authorities that contravene the environmental regulations listed in article 18.1 of Law 27/2006 through the administrative appeals system regulated in Law 30/1992 and the system of judicial reviews established in Law 29/1998. All non-profit legal entities accrediting compliance with the requirements set down in article 23 of Law 27/2006 are legitimated for the exercise of popular action.

Sweden

Certain decisions covered by the Convention are issued under the Planning and Building Act (1987:10). New rules in that Act giving environmental NGOs the right to appeal such decisions entered into force on 1 January 2008 (chapter 12, section 6, of the Planning and Building Act).

A decision may be appealed by a person who is affected by the decision if it has gone against him or her (chapter 16, section 12 of the Environmental Code; section 22 of the Administrative Procedure Act). Environmental NGOs have a right to appeal under chapter 16, section 13, of the Environmental Code, as well as under a number of special acts. Since Sweden acceded to the Convention, the provision in the Environmental Code has been clarified so that it now clearly states that the possibilities of making an appeal also cover reconsideration, conditions and approval of establishments as well as supervisory decisions under Chapter 10 of the Environmental Code (which concerns activities that cause environmental damage). Furthermore, the right for environmental NGOs to appeal has been expanded to apply to more types of organisation, and the required number of members has been reduced. Non-profit organisations that have safeguarding the interests of nature conservation or environmental protection as their main aim, that has at least 100 members or prove by other means that they have the support of the public, and that have conducted activities in Sweden for at least three years how have the right to appeal. Under the Act on Judicial Review of Certain Government decisions, environmental NGOs also have an explicit right to apply for judicial review of permit decisions by the Government that are covered by article 9, paragraph 2, of the Convention.

A general right for environmental NGOs to appeal, inter alia, permit decisions, was introduced into the Environmental Code in 1999. According to a subsequent survey by the all-party Environmental Code Committee, the experience of the right of environmental NGOs to take legal action is positive (see Swedish Government Official Reports SOU 2005:59 – The Environmental Code: environmental quality standards, environmental NGOs in the environmental decision-making and charges). The survey shows that environmental NGOs had only used the possibility of appealing rulings in a few cases and that there was no evidence of abuse of the possibilities of appealing, but that the operators still feared that the right of the organizations would lead to delayed and dearer projects. The environmental NGOs have played an important role in environmental permit examinations by contributing knowledge and making operators and permit-granting authorities give clear reasons for the positions they take. Moreover, the environmental NGOs proven to provide an effective way of channelling views from many parties to cases.

Turkmenistan

The Civil Procedure Code states that any interested party has the right, under the procedure established by law, to defend in court rights that have been infringed or challenged and lawful interests. Refusals to allow someone to bring a case are invalid (article 3).

Close relatives, lawful representatives, advocates, NGO representatives or other parties permitted by a decision of the judge, court or pre-trial investigator may represent the victim or a claimant or respondent in a claim for civil damages instituted as part of criminal proceedings (article 89).

The Environmental Protection Act enshrines a wide range of guarantees on the access of the public and citizens to justice. First, when carrying out economic, administrative and other activities affecting the environment, executive and administrative bodies, legal entities and citizens must be guided by the principles of ensuring the real rights of citizens to an environment that is favourable to life, transparency in the performance of environmental tasks and close links with civil-society organizations and the population (article 1). Second, environmental NGOs and other NGOs performing functions relating to the protection of the environment have the right to file claims to courts or economic courts for compensation for damage to the environment or health or property of citizens or civil-society organizations, caused by

infringements of environmental legislation, including claims against state bodies for environmental protection (article 30). And third, Turkmenistan guarantees citizens and civil-society organizations involved in environmental protection the exercise of the rights granted to them in the field of environmental protection in accordance with current legislation.

Ukraine

Laws implement the requirements of article 9, paragraph 3. Under the Code of Administrative Procedure, natural and legal persons have the right to appeal against any decision, action or failure to act of state bodies before an administrative court. Decisions and actions of state bodies that contravene national environmental legislation may also be disputed before an administrative court.

United Kingdom

Under Article 9, paragraph 2 of the Convention, NGOs which promote environmental protection and which meet requirements under national law are deemed to have “sufficient interest” to engage in review procedures. In England, Wales and Northern Ireland, if the interest of an applicant is not direct or personal, but is a general or public interest, it will be for the courts to determine whether or not the applicant has standing in accordance with a number of factors including the level of public importance of the issues raised and the applicant’s relationship to those issues. S31(3) of the Senior Courts Act 1981 provides that the court shall not grant leave for application for judicial review, "unless it considers that the applicant has a sufficient interest in the matter to which the application relates". In determining whether public interest groups or NGOs specifically have sufficient interest to bring a challenge, the court will consider a number of factors including the merits of the challenge, the importance of vindicating the rule of law, the importance of the issue raised, the likely absence of any other responsible challenger, the nature of the breach and the role played by the group or body in respect of the issues in question. The criteria have come to be applied liberally; if an applicant has insufficient private interest in bringing an application, provided he or she raises a genuine and serious public interest, he or she will have standing.

In Scottish law, title (to be heard by a court) and interest (in the subject matter) is subject to substantive law, not only procedural rules. Scottish Statutory Instruments 510/2005 and 614/2006 transposing EU Directive 2003/35/EC included in secondary legislation provision ensuring environmental NGO and community or resident organisations’ assured interest in all cases engaging the Directives covering pollution prevention and control, and strategic environmental assessments.

Under Article 9, paragraph 3, of the Convention, if an applicant has a direct personal interest in the outcome of the claim, he will normally be regarded as having sufficient interest in the matter. The term “interest” includes any connection, association or interrelation between the applicant and the matter to which the application relates.

For public interest cases, the Legal Services Commission (LSC) (www.legalservices.gov.uk/) which administers the Legal Aid Scheme in England and Wales has revised its definition of Wider Public Interest. The LSC will regard a case as having Wider Public Interest where it is satisfied that:

(i) the case has the potential to produce real benefits for individuals other than the client (other than benefits to the public at large which normally flow from proceedings of the type in question); and (ii) the case is considered on its particular facts to be an appropriate case to realise those benefits.

In Scotland, the claimant must show both title and interest, which means that a party has to show that there is some legal capacity and a direct interest in the subject matter. Some changes have therefore been

needed to the Scottish law as a result of the requirements of Directive 2003/35/EC that NGOs should be deemed to have sufficient interest to access review proceedings. These changes have been made in transposing Directive 2003/35/EC with Scottish Statutory Instruments 510/2005 and 614/2006.

Research evidence from the Commission to underpin its draft Directive on access to justice in environmental matters (see http://ec.europa.eu/environment/aarhus/index.htm) puts the UK among those Member States that take an "extensive approach" to legal standing before the administrative courts. This analysis suggests that, in recent years, the English courts have given an expansive interpretation to the criterion of "sufficient interest" for obtaining a hearing before the courts. It gives examples of environmental cases taken by a wide variety of complainants, including established NGOs, ad hoc pressure groups and individuals reflecting a community concern, in which legal standing has been granted because of the relevance of wider public interests.

C. Paragraph 3: The public's right to challenge acts and omissions by private persons and authorities

5. Which level of legislation implements the requirements of article 9, paragraph 3?

Albania

The Code for Administrative Procedures (art. 20 and 51-55)
Law no. 8934, 05/09/2002 on "Environmental Protection" (art. 1/2dh, 10/3, 77, 78)
Law no.8503, 30/06/1999 on "The right to information on official documents".

Armenia

In accordance with the provisions of article 2 of the Code of Civil Procedure, every person who so wishes has the right to complain to the court to obtain protection against infringements of his lawful rights or interests.

Austria

As was shown above, there is a tightly knitted net of measures in place in Austria which grants members of the public access to administrative or judicial procedures in order to challenge acts and omissions contravening provisions of national regulations relating to the environment. However, due to the fact that according to the Austrian Federal Constitutial Law (B-VG), environmental protection is a cross-sectoral issue and therefore part of many different legal acts on national and federal level, a study of the current situation of the implementation of Art. 9 para 3 was commissioned by the BMLFUW. This study from Prof. Schulev-Steindl of the University of Natural Resources and Life Sciences in Vienna, publicly presented in October 2009 and published on the BMLFUW website, confirmed in principle the compliance of the Austrian legal situation with Art. 9 para 3 and provided an overview on potential improvements with regard to this provision. The BMLFUW is currently in the process of assessing the results.

On the first implementation report certain members of the general public as well as a political party represented in the Austrian Parliament have criticized the existing implementation of Article 9, Paragraph 3, for being not comprehensive enough, in particular with regard to the law enforcement possibilities

existing outside the approval procedure and the costs for expert opinions incurred in EIA procedures. Public consultation on the update of the implementation report has shown similar results.

Azerbaijan

Azerbaijani legislation gives everyone the right to judicial protection of their rights. For example, article 1 of the Act on Court Appeals of Decisions and Actions (Omissions) that Infringe the Rights and Freedoms of Citizens specifies that citizens who believe their rights or freedoms to have been infringed by a decision or action (or omission) of state authorities, enterprises and officials may appeal to court.

Environmental Protection Act

Belarus

Article 86 of the Civil Procedural Code grants public associations the right to institute legal proceedings to defend the rights and lawful interests of their members, if this is specified by their articles of association.

Articles 12, 15 and 100 of the Environmental Protection Law of 21.12.2007 enshrine the rights of citizens and public associations engaging in environmental protection to file actions requesting the complete or partial suspension or termination of economic or other activities of legal entities and citizens that have an adverse environmental impact. Article 1 defines an adverse environmental impact as “any direct or indirect impact on the environment by an economic or other activity, the consequences of which lead to negative changes in the environment.

Belgium

Flemish Parliament Act of 26 March 2004 on open government, B.S., 01.07.2004, err. B.S., 18.08.2004, modified by Flemish Parliament Act of 27 April 2007 (B.S., 05.11.07).
Flemish Government Decree of 19 July 2007 establishing the appeal body regarding open governmentand reuse of public information , B.S., 05.11.2007.
Flemish Parliament Act of 5 April 1995 containing general provisions regarding environmental policy, B.S., 03.06.1995 (DABM), Title IV: environmental impact and safety reporting, Art. 4.6.4 (EIR/VR: econsideration possibilities)
Flemish Parliament Act of 28 June 1985 on environmental licences, B.S., 17 September 1985
Flemish Spatial Planning Codex

Bosnia and Herzegovina

• LoPE FBiH,
• LoPE RS,

• LoPE BD
• Law on Administrative Disputes BiH (Official Gazette BiH 19/02, 19/02, 88/07, 83/08, 74/10) (LoAD BiH),
• Law on Administrative Disputes FBiH (Official Gazette FBiH 09/05) (LoAD FBiH),
• Law on Administrative Disputes RS (Official Gazette RS 109/05) (LoAD RS),

• Law on Administrative Disputes BD (Official Gazette BD 4/00, 1/01) (LoAD BD),
• Law on Courts FBiH (Official Gazette FBiH 38/05) (LoC FBiH)

• Law on Courts RS (Official Gazette RS 111/04, 109/05, 37/06, 119/08) (LoC RS), and
• Law on Courts BD (Official Gazette BD 19/07) (LoC BD).

Bulgaria

The opportunity of public members to have access to administrative and judicial procedures to challenge acts and omissions of individuals and public authorities which contradict to the provisions of national legislation relating to the environment is guaranteed by the Constitution, which provides that everyone is entitled to a healthy environment. This gives the constitutional grounds for appeal for all acts and omissions of natural persons and government bodies, relating to the environment.

In chapter eleven of the EPA also provides civil liability for anyone who has caused another damage from pollution or environmental damage. Art. 171 of the Environmental Protection Act expressly provides injured person can bring an action against the violator for an injunction to remove the effects of pollution.

Croatia

Provisions on the access to justice as referred to in Article 9 of the Convention may be found in individual provisions of the laws of the RC, as shown below in answers to certain questions.

Czech Republic

The area of access to justice in environmental matters is **part of the general regulation of administrative justice**, which is embodied in Act No. 150/2002 Coll., the Code of Administrative Justice. Pursuant to the Code of Administrative Justice, court review is relevant in those cases where rights were affected or procedural rights infringed during the previous proceedings.

Denmark

There is a constitutional right to test cases in the courts. The right to test a case in the courts requires that the person raising the case complies with the relevant regulations.

Estonia

Due to the infringement proceedings the right of appeal regarding environmental issues has been provided for in the Code of Administrative Court Procedure until the enforcement of the General Part of the Environmental Code Act.

European Union

The developments contained in the 2008 report under Section XXVIII on Article 9 paragraph 1 remain valid. The only modifications relate to

– The ´European Union´ having succeeded the ´European Community´.

– the articles for NGOs to institute court proceedings and/or make a complaint to the Ombudsman: they are now Articles 263 and 265 of the TFUE, instead of Articles 230 and 232 of the EC Treaty,

– in Case C-240/09 Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky the Supreme Court of the Slovakian Republic has asked the Court of Justice to rule on whether

Article 9(3) of the Aarhus Convention is directly applicable in EU law. In her Opinion, the Advocate-General found that it was not directly applicable. The case is still pending.

– the insertion of a final sentence ´There is no significant case-law on the application and interpretation of Title IV of Regulation No 1367/2006 as yet. Actions were brought in Cases T-388/08 Stichting Milieu en Natuur v Commission and T-396/06 Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v Commission on 6th October 2009 for the interpretation of Articles 2(1)(c) and 2(1)(g). According to the order issued by the General Court the claim for interim relief was rejected.´

A proposal for a Directive on access to justice in environmental matters was adopted by the Commission on 24 October 2003.[51] This proposal is pending before the EU legislature. As to the legal situation of the EU until this proposal is adopted, reference is made to the following excerpt from the declaration of competence deposited alongside its instrument of ratification by the EU: "[…] the European Community also declares that the legal instruments in force do not cover fully the implementation of the obligations resulting from article 9, paragraph 3, of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by article 2, paragraph 2(d), of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations." In order to obtain a comprehensive overview of the different measures adopted or in place in the Member States to implement Article 9, paragraph 3, of the Convention and related provisions, the Commission contracted a consultant to prepare a study focusing on the measures allowing members of the public to contest actions or omissions by public authorities (the study covers all Member States except Bulgaria and Romania, which had not yet joined the EU when the study was initiated). The findings of the study can be found at the following address: http://ec.europa.eu/environment/aarhus/study_access.htm. The analysis provided in the country reports is based on legislation and case-law available in July 2007. It should be noted that, as mentioned in the reports, "[t]he views expressed [in the report] are those of the consultants alone and do not represent the official views of the European Commission."

Finland

Pursuant to said Section of the Environmental Protection Act, the right of persons and organisations to institute proceedings may relate to the clarification of the need for purifying soil and groundwater and the extent of pollution and to the obligation to undertake such purification measures (Sections 77 and 79). The right to institute proceedings also applies to the rectification of an offence or neglect specified in the Environmental Protection Act (Section 84), the issuing of an order necessary to prevent pollution (Section 85) and the cessation of activity spoiling the environment (Section 86). Section 57 of the Nature Conservation Act prescribes a right to institute proceedings against violation of the law. The Waste Act also provides for the right to institute proceedings. The right of persons and organisations to institute proceedings is secondary to the authorities' right to institute proceedings. Furthermore, Chapter 21, Sections 3 and 3a-e of the Water Act contain the administrative compulsion provisions of the said Act.

France

Article 61-1 of the Constitution, inserted by Constitutional Act No. 2008-724 of 23 July 2008, instituted a new procedure allowing parties to challenge during proceedings a statutory provision that infringes the rights and freedoms guaranteed by the Constitution. The principles and rules that may be invoked by a "priority question of constitutionality" are enshrined in the 1958 Constitution and the texts listed in its

preamble (the 1789 Declaration, the preamble to the 1946 Constitution and the Environmental Charter). In particular, the right to live in a balanced environment commensurate with health (article 1 of the Environmental Charter) or the right, in the conditions and to the extent defined by law, to access environmental information held by public bodies and to participate in public decisions that affect the environment (article 7 of the Environmental Charter).

In an interim order of 16 June 2010 (Conseil d'Etat, ordonnance de référé, 16 June 2010, Appeal No. 340250), the Council of State held that a priority question of constitutionality may be raised before an administrative judge for interim applications ruling in first instance or appeal pursuant to article L.521-2 of the Code of Administrative Justice.

In a plenary ruling of 3 October 2008 (Conseil d'Etat, arrêt d'assemblée, 3 October 2008, No. 297931, Commune of Annecy) the Council of State recognized the constitutional status of the Environmental Charter, infringement of which can be invoked to contest the legality of administrative decisions.

Georgia

The General Administrative Code of Georgia, the Civil Code of Practice of Georgia and the Criminal Code of Practice of Georgia regulate the requirements of Article 9, Paragraph 3. According to the national legislation any person has a right to file an application inan administrative agency or bring a case before a court if his/her rights were violated or limited and if by the decision or action of an administrative agency he/she incurred harm.

Germany

Germany, in accordance with Article 9 (3) of the Convention, has a whole package of effective mechanisms available through civil, criminal and administrative law enabling individuals and associations of individuals to enforce compliance with the environmental provisions of German law and to petition against any violations of such provisions by public agencies or private persons.

Civil law establishes the right to sue against third parties in the civil courts in order to obtain suspensory or prohibitory action or compensation for damages when such legal rights of third parties as enjoy absolute protection are impaired, including by a violation of environmental provisions intended to protect those concerned.

Criminal law contains a number of provisions to protect the environment which penalize impairments of the environmental media (water, soil and air; also flora and fauna).

Greece

131. Law 1650/86 on the protection of the environment as amended by Law 3010/2002 and implemented by several Presidential Decrees and JMDs is the basic environmental protection law in Greece. A great number of EU Directives on the environment have been transposed in the Greek legislation and several laws on environmental issues e.g. on the protection of the marine environment and on the protection of forests etc also provide for environmental protection.

133. Aiming at citizens' protection, there are also several possibilities for administrative and judicial review, such as the application for remedy, special recourses, quasi-judicial recourses, hierarchical recourses and hierarchical control exercised by superior authorities over subordinate

authorities, actions for compensation according to civil liability provisions, as well as several judicial recourses.

134. The enactment of JMD 11764/653/2006 on access to environmental information has also contributed to facilitating public seeking access to justice in environmental matters. According to article 6 of the above JMD, citizens have the following possibilities for administrative and judicial review:

a. File an action for compensation before the Special Committee as provided by Law 1943/1991 (art. 5, para. 13);
b. File an action for compensation before the competent court according to the civil liability provisions;
c. File a quasi-judicial recourse before the Special Committee as provided by Law 1943/1991 (art. 5, para. 13) for the modification or reconsideration of the acts or omissions of the public authority. The interested physical or legal person has the right to file an administrative recourse before the Administrative Court, against the decision of the above Special Committee.

135. JMD 11764/653/2006, which transposed Directive 2003/4, repealed JMD 77921/1440/6-9-5 on access to environmental information. By the repealed JMD, a Committee on Access to Environmental Information had been established, competent for the administrative review of the applicant's request rejection by the public authority. Today, according to the new JMD 11764/653/2006, this Committee has been replaced by a Special Committee established by Law 1943/1991 (art. 13, para. 5) as amended, which is now competent for the above administrative review of the applicant's request rejection.

Hungary

Pursuant to Section 65 of Act LIII of 1996 on the Conservation of Nature, in the event of unlawful damage or risk to natural areas and values, the environmental NGOs are entitled to take nature conservation steps and request government authorities or municipalities to take the appropriate measures under their authority, or take legal action against the entity causing damage or posing a risk to the protected natural value or area.

In addition, Act XXIX of 2004 generally enables anyone to file a complaint or a report at the competent authority.

Measures relating to the general right to bring action are exclusively stipulated on a legislative level in Hungary.

Italy

Concerning article 9, para. 3, each person/group of persons, whose right or "legitimate interest" has been breached by a public authority's decision or omission, has legal standing to act in court against that public authority's decision or omission. Furthermore, according to Law 349/1986, all environmental NGOs recognized by the MoE can challenge public decisions or omissions, both

at the national and at the local level through a review procedure. For the criteria for recognition, see answer to question 3.

Kazakhstan

In the reporting period since the first and second reports on the implementation of the Aarhus Convention, no significant amendments have been made to national legislation. Procedures for public access to justice in environmental disputes are enshrined in the following legislation: the Constitution, the Aarhus Convention, the Civil Procedure Code, the Environmental Code, the Forest Code, the Water Code, the Act on Specially Protected Natural Territories, the Act on the Protection, Replenishment and Use of Animals, the Act on Architecture, Town Planning and Construction, the Sanitation and Disease Prevention Act, the Act on Natural and Anthropogenic Emergencies, and the Public Associations Act as well as in the Supreme Court Plenary Decision on the application by judges of environmental protection legislation.

Kyrgyzstan

National legislation governing relations in the field of public access to justice includes criminal, civil, criminal procedural and civil procedural legislation, as well as the Code on Administrative Liability.

The judicial system is established by the Constitution and by the laws of Kyrgyzstan, and consists of the Constitutional Court, the Supreme Court and district courts. Specialised courts may be authorised under constitutional law.

As part of the judicial reform, a constitutional innovation was introduced into the justice system with the adoption of a jury system. The relevant amendments have already been made to legislation on criminal procedure. A draft law on juries is currently in preparation.

Latvia

APL regulation concerns every public authority's decision or omission that violates not only environmental legislation. According to the APL, a private person can appeal to the court an administrative act issued by an authority or its actual activity. To ensure a review procedure, administrative courts have been in operation from 1 February 2004.

As far as environmental legislation breaches are concerned, additional regulation is included in EPL, Article 9, and the Law on Compensation of Losses Created by State Authorities.

Lithuania

Provisions of the Law of the Republic of Lithuania on Administrative Proceedings and the Code of Civil Procedure provide an opportunity for all persons to apply to court regarding decisions, acts or omissions of public or municipal authorities or other persons.

Montenegro

The Law on Environment stipulates that non-governmental organisations shall contribute to environmental protection in accordance with their programmes and in a way defined by separate regulations and that the state shall encourage participation of non-governmental sector in making and implementing decisions which are important for environmental protection (Article 12). The Law

stipulates protection of all segments of the environment, including the right to legal protection in this field. Consequently, provisions of Article 42 of this Law stipulates, inter alia, that "any legal or private entity who thinks that its rights to healthy environment was violated due to the nature, location and impact of activities, or because of actions of other legal entity and entrepreneur, shall be entitled to legal protection in accordance with the Law".

Provisions of Articles 14 and 25 of the Law on Environmental Impact Assessment regulate the right to complain.

Provisions of Article 14 and Article 21 of the Law on Integrated Prevention and Control of Environmental Pollution regulate the right to complain.

Provisions of Article 36 of the Law on Waste Management regulate the right to complain. Provisions of Article 5 of the Law on Genetically Modified Organisms regulate the right to complain. Namely, a complaint against the first-instance decision of the administrative authority responsible for environmental protection in the field of GMOs, may be filed with the Ministry competent for environmental protection (Article 5 paragraph 3 in relation to Article 10 paragraph 1 line 6).

Netherlands

Members of the public may challenge acts or omissions by private persons or public authorities that contravene provisions of national environmental laws. Article 18, paragraph 14, of the Environmental Management Act stipulates firstly, that any person may request an administrative authority to apply executive coercion, impose an order for a monetary penalty or withdraw a license or an exemption to make a decision to this effect. If that request is not adequately addressed, an appeal can be lodged in accordance with article 20, paragraph 10 (see also the answer to paragraph 2 above). Secondly, Dutch environmental legislation generally allows for an appeal to be lodged by anyone who has submitted reservations about the draft decision in the review procedure (art. 20, para. 6).

Norway

Article 9, paragraph 3, of the Convention must also be considered to be implemented through the ordinary administrative appeals system and courts system under the law. The paragraph leaves it to national law to determine the criteria for the right to bring civil action and the right of appeal. According to the law, an organization that is an independent legal entity can act as a party in cases brought before the courts if it can show that it has an actual need to have its claim settled, cf. section 1-3 second paragraph of the Civil Procedure Act.

Republic of Moldova

Requirements indicated in item 3 of Article 9 of the Convention can be achieved under the Law on Petitions, the Law on Access to Information, the Law on Environmental Protection, the Law on Administrative Litigation and the Code of Civil Procedure.

Romania

The legislative measures that implement the provisions on access to justice are:
The Romanian Constitution, Law no.554/2004 on administrative contentious, Law 544/2001 on free access to public information, GD 878/2005 on public access to environmental information, GD 445/2009

on establishing the environmental impact assessment framework for certain public and private projects, the Civil Procedure Code.

The Romanian Constitution mentions in art.52 that should any person´s rights or legitimate interest be violated by public authority, that person may have recourse to the law courts.

Serbia

- The Constitution of the Republic of Serbia, Law on Environmental Protection, Law on Integrated Environmental Pollution Prevention and Control, Law on Free Access to Information of Public Importance, Law on State Administration, Law on Self-Government, Law on General Administrative Procedure
- Law on Administrative Disputes (Official Gazette of the Republic of Serbia No. 111/2009)
- Civil Procedure Code (Official Gazette of the Republic of Serbia No. 125/2004)
- Law on Executive Procedure (Official Gazette of the Republic of Serbia No. 125/04)
- Law on Contractual Relations (Official Gazette of the Republic of Serbia No. 29/78, 39/85, 45/89, 7/89, Official Gazette of the Federal Republic of Yugoslavia No.31/93)
- Law on the Protector of Citizens (Official Gazette of the Republic of Serbia No. 79/2005, 54/2007)
- Law on Mediation (Official Gazette of the Republic of Serbia No. 18/2005)
- Criminal Procedure Code (Official Gazette of the Republic of Serbia No. 46/2006)
- Criminal Code (Official Gazette of the Republic of Serbia No. 85/2005)
- Law on the Liability of Legal Entities for Criminal Offences (Official Gazette of the Republic of Serbia No. 97/2008)
- Law on Constitutional Court (Official Gazette of the Republic of Serbia No. 109/2007)
- Law on Infractions (Official Gazette of the Republic of Serbia No. 101/05)
- Law on Economic Offences (Official Gazette of the Federal Republic of Yugoslavia No. 4/77, 36/77, 14/85, 10/86, 74/87, 57/89 and 3/90 and Official Gazette of the Federal Republic of Yugoslavia No. 27/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 64/2001 and Official Gazette of the Republic of Serbia No. 101/2005)
- Law on Lawyers (Official Gazette of the Federal Republic of Yugoslavia No. 24/98, 26/98, 69/00, 11/02 and 72/02)
- A number of laws were adopted as part of the National Judicial Reform leading to the establishment of a new organization of the judiciary and the prosecution, namely, the Law on High Judicial Council, Law on State Prosecutorial Council, Law on Judges, Law on Public Prosecution, Law on Organisation of Courts and Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Office. These pieces of legislation regulating the judiciary introduced new institutions, such as High Judicial Council, State Prosecutorial Council and Administrative Court that guarantee the independence of judges and prosecutors. The establishment of the Judicial Academy, carrying out initial and continuous training of members of the judiciary is also very important. The new organization of courts, introduced by the above-mentioned laws, became operational on January 1st, 2010. The new organization of the judiciary meant the distribution of cases according to specialties, which allowed a more efficient and objective processing of cases and facilitated public access to justice.

Slovakia

Civil Procedure Code

Slovenia

The Constitution stipulates under paragraph 2 of the stated article that an individual may raise an administrative dispute believing that with an individual action or act of a public authority, one of his constitutional rights has been infringed, if other judicial protection is not provided, In relation to this option, reference to infringement of the right to a healthy living environment (article 72 of the Constitution) could be made if appropriate. However, it is questionable if the Court would not adopt the position that in this case other judicial protection is provided. Article 14 of the EPA governs the so-called »actio popularis« by which nationals or their associations, societies and organizations are able, for implementation of the right to a healthy and clean environment, to demand from the Court with a suit that the Court orders the carrier of the environmental intervention to suspend, or to prohibit the start, of the environmental intervention, if it is highly likely that it would cause direct danger for the environment, critical load or injury of the environment or direct danger to human life and health. The stated provision in our opinion also enables implementation of the requirement of the Aarhus Convention under paragraph 3 of article 9, under which, the States Parties undertake to provide members of the public (meeting the criteria, laid down in their national law) access to administrative or judicial procedures to challenge acts and activates, which contravene the provisions of its national law relating to the environment.

The act which regulates in detail the granting of the status of an NGO operating in the public interest in the environmental area was adopted in 2006.

PIC finds that it is still the implementation of the third pillar of the Convention in the legislation, and particularly in practice, that is still the weakest. Based on the proposals for the last report or issues to which PIC drew attention, it needs to be told that the problem of previous lack of recognition of the position of an accessory party in a procedure, even though the organisation had the status of operation in the public interest in accordance with the Nature Conservation Act, has been resolved. With the amendments of the Environmental Protection Act in 2008, it was established that organisations with the mentioned status shall be awarded the status also in accordance with the Environmental Protection Act, if the audit condition was fulfilled (which was eliminated in 2009). This indicates that with regards to rights to participation in a procedure, now the status awarded based on the Nature Conservation Act is equivalent to the status under the Environmental Protection Act.

Spain

At State level, the general legal framework is set down in article 24 of State Law 50/97 regulating the procedure for public information and comments in the drafting of regulations. This State provision is complemented by the obligation of public authorities, set down in article 18 of Law 27/2006 to ensure that the necessary guarantees are observed to ensure participation in environmental matters.

Sweden

There are rules in the Environmental Code and in administrative law legislation making it generally possible to appeal against the decisions of public authorities. It is therefore possible to have decisions of public authorities that are contrary to environmental legislation examined by the courts. Over and above this, there is an explicit right for environmental NGOs to appeal supervisory decisions taken under chapter 10 of the Environmental Code (which regulates operations that cause environmental damage). There are also rules concerning the acts and omissions by persons that contravene national environmental regulations. In certain cases it is possible for individuals and environmental NGOs, inter alia, to bring an action for damages at an environmental court or to bring an action against an operator to have his activity prohibited (chapter 32, sections 12–14, of the Environmental Code). In the event of a breach of an environmental provision carrying a penalty, an injured party can also initiate a private prosecution under

chapter 47, of the Code of Judicial Procedure. Anyone at all can report the breach by persons of environmental legislation to the supervisory authorities, the police or a prosecutor for examination.

Turkmenistan

Civil Procedure Code
Criminal Code
Environment Protection Act
Land Code

Ukraine

The provisions of article 9 are implemented through administrative, commercial and civil legal procedure. Claims of contravention of the right to access to environmental information or the right to participate in environmental decision-making, as well as challenges to other decisions and actions/failures to act of state bodies, are heard in administrative courts. Claims that an enterprise has contravened environmental legislation are lodged with commercial courts (if the claimant is a legal entity) or civil courts (if the claimant is a natural person).

6. Can members of the public initiate administrative cases through *petitions, complaints or motions*?

Albania

With respect to paragraph 3: according to the national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment, but the criteria to be met by the public are not defined in the national legislation.

Armenia

Under article 2 of the Code of Civil Procedure, article 3 of the Administrative Legal Procedure Code and the Non-Governmental Organizations Act, the public, or non-governmental organizations, have the right to participate in administrative or judicial proceedings arising from complaints about the acts or omissions of individuals or state authorities (applications to the Administrative Court are subject to the restricts cited above). Proposals, requests and complaints by citizens are submitted to non-judicial bodies without the payment of any duties or to courts in accordance with article 70 of the Code of Civil Procedure and article 56 of the Code of Administrative Legal Procedure and following the procedure and steps laid out in the State Duties Act.

Austria

In the Federal provinces, Environmental Advocacy Offices i.e. Ombudsmen for the environment were set up as regional bodies representing the cause of environmental protection . It is the task of the Ombudsman for the environment to ensure the protection of the environment in certain administrative procedures (e.g. procedures concerning nature protection or procedures according to the Waste Management Act or the EIA Act 2000). In order to enforce such claims, the Ombudsman for the environment has the position of a party and is authorized to lodge

complaints with the Administrative Court with regard to compliance with legal provisions which are relevant for the environment.

In the framework of the implementation of the EU Environmental Liability Directive 2004/35/EC, the Federal Environmental Liability Act (Federal Law Gazette I No. 55/2009; the provinces have in the following adapted their respective legal systems in accordance with the Federal Environmental Liability Act) provides for an environmental complaint, if the public authority fails to take action in the event of environmental damage (to water bodies and soils, provided that human health is affected). If they are affected, natural or legal persons as well as Ombudsmen for the environment and acknowledged environmental organizations are entitled to lodge a written complaint with the district administration authority. The authority shall then inform the claimant of the due course of action (also if and which prevention and rehabilitation measures have been instructed). It is possible to lodge a complaint with the Independent Administrative Tribunal against unlawful information or information which has not been provided.

A specially established Ombudsperson Board ("Volksanwaltschaft") investigates claimed or assumed severe administrative deficiencies and thus exerts public control for the benefit of the rule of law and democracy in a way that attracts media attention. Yet the Ombudsperson Board only executes supervising investigation (after the procedure has been completed) and does not represent any party in the procedure per se.

Azerbaijan

55. The public have the right:
- to demand the annulment in administrative or court proceedings of decisions on the location, construction, reconstruction or commissioning of enterprises, plants and other environmentally hazardous facilities that have an adverse impact on human life and the environment as well as the restriction or temporary suspension of the activities of natural or legal persons and the wind-up of legal persons (article 6 of the Environmental Protection Act);
- to bring claims before the relevant authorities and courts holding liable organizations, entities and citizens guilty of breaching environmental legislation (article 6 of the Environmental Protection Act);
- to bring claims for compensation of damage caused to citizens' health or property by a breach of environmental legislation (article 7 of the Environmental Protection Act).

Belgium

Challenging, through administrative or judicial procedures, acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment is possible via various administrative appeal possibilities:

- submission of a complaint to an ombuds service;

- voluntary appeal with the authority that took the decision;

- hierarchical appeal with the higher authority;

- organised appeal provided by Act or Flemish Parliament Act;

- appeal with the supervisory authority and via various judicial appeal possibilities when the above-mentioned administrative appeal possibilities are exhausted. This concerns a federal competence (see federal report) (www.health.fgov.be)

Bosnia and Herzegovina

With respect to paragraph 3, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;

Pursuant to Article 213 LoAP BiH; Article 221 LoAP FBiH; Article 211 LoGAP RS, and Article 208 LoAP BD; parties, plaintiff, public defender and other bodies may appeal against a decision in administrative procedure which contravenes the law in favour of a physical or a legal person to the detriment of the public interest. Article 2 LoAD BiH; Article 2 LoAD FBiH; Article 2 LoGAD RS, and Article 2 LoAD BD, stipulate that a physical or a legal person is entitled to initiate an administrative dispute if their rights or direct personal interest based on the law have been violated. Also relevant are Articles 39 and 107 LoPE FBiH, Articles 38 and 117 LoPE RS, and Article 103 LoPE BD.

Bulgaria

The opportunity of public members to have access to administrative and judicial procedures to challenge acts and omissions of individuals and public authorities which contradict to the provisions of national legislation relating to the environment is guaranteed by the Constitution, which provides that everyone is entitled to a healthy environment. This gives the constitutional grounds for appeal for all acts and omissions of natural persons and government bodies, relating to the environment.

Croatia

In this regard Article 146, paragraph 1of the EPA is applied.

Denmark

There are administrative possibilities to go to the Ombudsman, the Regional State Administration, or the Police in order to contest actions and omissions by private individuals or public authorities that do not comply with the provisions of national environmental law. It is also possible to appeal to the Ombudsman.

The competence of the Ombudsman covers the entire public administration. He must decide whether authorities or people under his jurisdiction are acting in breach of current law or whether in some other way they are guilty of errors or neglect in the performance of their duties. Control includes both decisions and other administrative activities. Appeals can be submitted by anyone, and the appeal must be submitted within one year of the condition being ´committed´. His powers of sanction are to state criticism, issue recommendations, or to otherwise give his opinion regarding a case. In accordance with the declaration issued during negotiations on the institution

of the Ombudsman, Denmark recognised the possibility to bring cases before the Ombudsman as a possibility for review by an independent administrative body.

The Regional State Administration carries out supervision of municipalities. The Regional State Administration supervises that municipalities and municipal associations comply with the legislation that applies in particular for public authorities. The Regional State Administration does not supervise to the extent that special appeals or supervisory authorities can take a position on the case in question. The Regional State Administration can make statements on the legality of municipal measures or omissions and it can annul municipal decisions that have been made contrary to legislation. Under circumstances stated in the legislation, the Regional State Administration can also impose default fines, institute damages and declaratory actions, as well as enter into agreements on penalties under the law of tort.

There can be reports to the environmental authorities or the Police regarding non-compliance with environmental regulations.

Estonia

Challenge proceedings are regulated under the Administrative Procedure Act. Their aim is on the one hand to allow for inexpensive and prompt review of decisions, and on the other to give the administrative system a chance to correct its mistakes. Challenge proceedings are free of charge for persons. Currently, as a rule they are not mandatory (except the mandatory challenge procedure foreseen in the Environmental Charges Act and the Environmental Liability Act) and the relevant person may turn directly to the court. A challenge may be filed by a person who finds that his or her rights have been violated or freedoms restricted by an administrative act or in the course of administrative proceedings (para. 71). However, a challenge cannot be filed against an act or measure of an administrative authority over which the Government exercises supervisory control.

European Union

A proposal for a Directive on access to justice in environmental matters was adopted by the Commission on 24 October 2003.[51] This proposal is pending before the EU legislature. As to the legal situation of the EU until this proposal is adopted, reference is made to the following excerpt from the declaration of competence deposited alongside its instrument of ratification by the EU: "[…] the European Community also declares that the legal instruments in force do not cover fully the implementation of the obligations resulting from article 9, paragraph 3, of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by article 2, paragraph 2(d), of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations." In order to obtain a comprehensive overview of the different measures adopted or in place in the Member States to implement Article 9, paragraph 3, of the Convention and related provisions, the Commission contracted a consultant to prepare a study focusing on the measures allowing members of the public to contest actions or omissions by public authorities (the study covers all Member States except Bulgaria and Romania, which had not yet joined the EU when the study was initiated). The findings of the study can be found at the following address:

http://ec.europa.eu/environment/aarhus/study_access.htm. The analysis provided in the country reports is based on legislation and case-law available in July 2007. It should be noted that, as mentioned in the reports, "[t]he views expressed [in the report] are those of the consultants alone and do not represent the official views of the European Commission."

Finland

Under Sections 108 and 109 of the Constitution, it is the task of the Chancellor of Justice and the Parliamentary Ombudsman to supervise that the courts and other authorities, officials in public corporations and other persons engaged in public tasks comply with the law and fulfil their obligations. In their duties, the highest supervisors of legality supervise the realisation of basic rights and human rights. The duties of the Chancellor of Justice are laid out in detail by law (193/2000). The duties of the Parliamentary Ombudsman are laid out in detail in the Act on the Parliamentary Ombudsman (197/2002). Any person who considers that a supervised authority has acted in defiance of the law or neglected his or her duties may submit an extraordinary appeal to the highest supervisors of legality.

France

Article 6 of Act No. 73-6 of 3 January 1973 stipulates that persons who consider, in cases concerning them, that the administration has not acted in accordance with its mission of public service may ask for the case to be brought to the attention of the Ombudsman. When the complaint is deemed to be justified, the Ombudsman issues any recommendations he or she believes will resolve the matter, in particular recommending to the body in question any solution allowing the claimant's situation to be settled equitably. Prior to the complaint, the necessary procedures must be carried out with the relevant administrations and the complaint has no effect on deadlines for appeals, including in the competent courts.

Georgia

The General Administrative Code of Georgia, the Civil Code of Practice of Georgia and the Criminal Code of Practice of Georgia regulate the requirements of Article 9, Paragraph 3. According to the national legislation any person has a right to file an application in an administrative agency or bring a case before a court if his/her rights were violated or limited and if by the decision or action of an administrative agency he/she incurred harm.

Germany

Germany, in accordance with Article 9 (3) of the Convention, has a whole package of effective mechanisms available through civil, criminal and administrative law enabling individuals and associations of individuals to enforce compliance with the environmental provisions of German law and to petition against any violations of such provisions by public agencies or private persons.

Moreover, everyone has the option of reporting violations of environmental law by private persons to the environmental authority; German law on administrative procedure provides that the environmental authority must then propio motu decide what action to take.

Finally, the right of petition enshrined in Article 17 of the Basic Law ensures that anyone may at any time address written requests or complaints to the competent authorities and to the legislature.

Furthermore, in Germany – as in all other EU Member States – every individual and every environmental/nature conservation association can make a complaint to the European Commission, in its role as guardian of compliance with European law, if he takes the view that the authorities of a Member State have violated environmental legislation, which is substantially influenced by EU law.

Greece

Aiming at citizens' protection, there are also several possibilities for administrative and judicial review, such as the application for remedy, special recourses, quasi-judicial recourses, hierarchical recourses and hierarchical control exercised by superior authorities over subordinate authorities, actions for compensation according to civil liability provisions, as well as several judicial recourses.

Additionally, the enactment of JMD 9269/470/2007 (OG 286B/2-3-2007), which defines measures of judicial protection of the public against acts or omissions of the public administration regarding access to information and public participation during EIA, has also contributed essentially in facilitating access to justice in environmental matters. According to article 3 of the above JMD, citizens have the following possibilities for administrative review:

i. Application for remedy submitted before MoE according to law 2690/1999 (art. 24), by which the applicant asks for the annulment or modification of the initial administrative decision/act concerning public information and participation during environmental impact assessment of the relevant activities;

ii. Special recourses that are submitted before MoE, by which the applicant asks for the annulment or modification of the General Secretary of the Region Initial Act concerning public information and participation during EIA of the relevant activities;

Hungary

Section 98 of the Environment Act makes it possible for environmental NGOs to seek the intervention of the competent authorities as well as to directly sue the operators of activities that pose a threat to, pollute or damage the environment. NGOs may request the court to order the termination of the unlawful polluting activity or the introduction of preventive measures.

Pursuant to Section 65 of Act LIII of 1996 on the Conservation of Nature, in the event of unlawful damage or risk to natural areas and values, the environmental NGOs are entitled to take nature conservation steps and request government authorities or municipalities to take the appropriate measures under their authority, or take legal action against the entity causing damage or posing a risk to the protected natural value or area.

In addition, Act XXIX of 2004 generally enables anyone to file a complaint or a report at the competent authority.

Kazakhstan

The environmental prosecutor and the human rights ombudsman also provide means of legal redress. They examine communications from citizens on the actions and decisions of officials and organizations that infringe rights and freedoms as guaranteed by the Constitution, legislation and international agreements.

Kyrgyzstan

By law, the public has the right to challenge, before a court or other body, the actions or failure to act on the part of officials and private concerns when the provisions of environmental protection legislation are violated.

Representatives of civil society may initiate administrative cases by filing petitions, complaints or appeals.

The decisions of an administrative body are subject to review both out of court and in court proceedings. Under the first option, an appeal may be filed with the next highest body with the same remit; under the second, it may be filed with a court.

Latvia

If the authority is not issuing required information, such action can be appealed and questioned as the authority's activity. Private persons can appeal and question an authority's activities just like they can any administrative act.

Private persons often want more opportunities for administrative review in order to avoid necessity to have recourse to the court as legal proceedings are associated with additional expenses.

Lithuania

Thus, the public is provided with information about the right to administrative and legislative review procedure.

Pursuant to the provisions of the Law of the Republic of Lithuania on Public Administration, entities of public administration shall consider applications (including applications to provide environmental information) submitted by persons in accordance with the Rules for the Consideration of Applications Submitted by Persons and for the Provision of Services to such Persons by Public Administration Authorities, Institutions and Other Entities of Public Administration (hereinafter referred to as the Rules) approved by Government Resolution No. 875 of 22 August 2007. Paragraph 44 of these Rules provides that if a person disagrees with the response received by his application from an authority, or if no response is provided to the person by the established deadline for the consideration of applications, such person shall have the right to lodge a complaint in accordance with the procedure established by Chapter III "Administrative Procedure" of the Law of the Republic of Lithuania on Public Administration, in accordance with the procedure established for the Administrative Disputes Commission by the Law of the Republic of Lithuania on Administrative Disputes Commissions, and in accordance with the procedure established for the Administrative Court by the Law of the Republic of Lithuania on Administrative Proceedings.

It should also be noted that, pursuant to Article 8(2) of the Law of the Republic of Lithuania on Public Administration, an individual administrative act must specify the appeal procedure. The appeal procedure must also be specified in decisions of Administrative Disputes Commission and courts. (Article 87 of the Law of the Republic of Lithuania on Administrative Proceedings; Article 270 of the Code of Civil Procedure of the Republic of Lithuania).

A person shall have the right to file a complaint with the Seimas Ombudsman of the Republic of Lithuania about the abuse of office by and bureaucracy of public servants or other violations of human

rights and freedoms in the field of public administration following the procedure established by the Law of the Republic of Lithuania on the Seimas Ombudsmen.

Montenegro

In the legal system of Montenegro, every individual or legal entity is provided with court or administrative protection within which decisions are taken on their rights and obligations.

In terms of opportunities to file complaints in the administrative procedure, Article 219 of the General Administrative Procedure stipulates that every individual or organisation, whose right has been violated by the decision made by the first-instance authority, may file a complaint to the second-instance authority. The complaint is a regular instrument which initiates the second-instance procedure as the procedure of controlling of the work of the first-instance authority. This type of control cannot happen without a complaint, since the second-instance procedure may not be instituted or managed ex officio.

Consequently, within the competence of this Ministry, it has been established that complaints filed against a decision made in the first-instance administrative procedure by the Environment Protection Agency shall be decided upon by this Ministry. Namely, the Environment Protection Agency, pursuant to Article 10 of the Law on Environment and Article 44c of the Regulation on Changes and Amendments to the Regulation on Organisation and the Method of Work of State Administration ("Official Journal of MNE", number 68/08), shall be responsible for the first-instance administrative procedures that fall under affairs entrusted to it by this Regulation.

It is only the Law that may prescribe that complaints are not permitted in individual administrative matters if the protection of rights and legal interests of clients, or protection of legality, has otherwise been ensured. Complaints are not permitted against a decision made in the second-instance.

Netherlands

Members of the public may challenge acts or omissions by private persons or public authorities that contravene provisions of national environmental laws. Article 18, paragraph 14, of the Environmental Management Act stipulates firstly, that any person may request an administrative authority to apply executive coercion, impose an order for a monetary penalty or withdraw a license or an exemption to make a decision to this effect. If that request is not adequately addressed, an appeal can be lodged in accordance with article 20, paragraph 10 (see also the answer to paragraph 2 above). Secondly, Dutch environmental legislation generally allows for an appeal to be lodged by anyone who has submitted reservations about the draft decision in the review procedure (art. 20, para. 6).

Norway

This paragraph must also be considered to be implemented through the ordinary administrative appeals system and courts system under the law.

Poland

Challenges to actions or lack of actions of public authorities may be undertaken in administrative and judicial-administrative proceedings. The list of parties may differ from case to case (e.g. in the case of a permit for waste water emission, the parties are those persons having a permit for water use; in the case of environmental impact assessment decision, these will consist of neighbouring residents).

The competent authority for environmental protection, is obliged to accept everyone's notification of environmental damage or threat. If the environmental damage or threat concern the environment as a common good, a notification may be submitted by an administrative authority or an environmental organisation. Refusal by competent authority to initiate proceedings resulting from the notification may be made based on the decision to which the appeal applies.

In the course of the report consultation, the non-governmental organizations (WWF Poland) indicated that it is impossible to appeal against a decision on the construction permit for investments for the proceedings of which on the stage of contruction permit, environmental impact assessment is not carried out (e.g. large bodies of water). Where the authority conducting the adiministrative proceeding finds no obligation to carry out an environmental impact assessment, an ecological organization has no right to a judicial verification of correctness of such ruling.

Republic of Moldova

Yes, the public can do this in accordance with the Law on Petitions, the Law on Access to Information, and the Law on Environmental Protection.

Romania

Art. 25 (1)[GD 445/2009] Prior to recourse to the competent administrative contentious court of law the persons referred to in art.23 must request to the hierarchic superior body of the issuing public authority, within 30 days from the date when the screening stage decision or the decision to issue/reject the environmental agreement was made available to the public, to revoke, in whole or in part, the respective decision.

The hierarchic superior body of the issuing public authority has the obligation to respond to the complaint referred to in paragraph (1) within 30 days from the registration date of the complaint to that authority.

The preliminary administrative procedure referred to in paragraphs (1) and (2) is free of charge and must be equitable and fair."

Serbia

- Please, refer to Article 11 of the Law on Environmental Impact Assessment stipulating that the developer of the project and the public concerned are entitled to file a complaint against the decision of the competent authority on the application for a decision on the need for an impact assessment. Moreover, the project developer and public concerned are entitled to file a complaint against the decision of the competent authority on the application for a decision on the scope and content of the environmental impact assessment study. (Article 15)

- Please, refer to Articles 24, 25 and 26 of the Law on Environmental Impact Assessment specifying that the competent authority adopts the decision granting the approval of the EIA study or refusing the application for approval of the EIA study, based on the completed EIA procedure and the report of the technical commission. The decision is delivered to the project developer within ten days from the date of receipt of the report. The decision of the competent authority referred to in Article 24 of this Law is final. The applicant and the public concerned are entitled to initiate the administrative court proceeding against the decision.

- Please, refer to Article 11 of the Law on Administrative Disputes; Articles 73 and 186 of the Civil Procedure Code; Articles 53-66 of the Criminal Code; Article 29 of the Law on Constitutional Court; Article 25 of the Law on the Protector of Citizens; Articles 8, 12, 18 of the Law on Mediation.

Slovakia

In case the applicant for information appealed to a superior body and did not succeed in the appeal proceedings, he/she can appeal to a court. A competent shall be a regional court in the territorial district there is a domicile of the body which took a decision on the appeal;

Slovenia

Further, article 31 of the Act on Access to Information of Public Character establishes judicial protection against the Commissioner with an administrative dispute. In Slovenian positive law, the Constitution defines under paragraph 1 of article 157 that proceedings before an Administrative Court (i.e. administrative dispute) may be instituted by an individual believing that any of his rights or legal entitlements were infringed with a specific administrative act (for example, Decision on issue of a site permit). Implementation of the provision of paragraph 1 of article 157 of the Constitution is represented by the Administrative Dispute Act (Official Gazette RS, No. 105/06, hereinafter referred to as ZUS-1), which stipulates that in an administrative dispute judicial protection is provided for the rights and legal entitlements of individuals and organizations against decisions and actions of State bodies, local community bodies and holders of public authorisations.

Spain

The current legal system establishes a system of administrative appeals and, when this possibility has been exhausted, the possibility of court action, allowing citizens to fully exercise their right to access to justice with the characteristics and requirements described in article 9 of the Convention. Article 20 of Law 27/2006 establishes that a member of the public who considers that an act or, where applicable, an omission attributable to a public authority has impaired his/her rights to information and public participation as recognised by this Law may seek the administrative remedy regulated in Law 30/1992 on the Legal System of Public Authorities and the Common Administrative Procedure.

Sweden

Anyone at all can report the breach by persons of environmental legislation to the supervisory authorities, the police or a prosecutor for examination.

If the provisions of environmental law are not followed, the supervisory authority has to intervene. The central supervisory authorities have to intervene in their turn if a subordinate supervisory authority does not carry out its duties. Under the rules of the Environmental Code, the supervisory authorities have to supervise, to the extent necessary, compliance with the Environmental Code and regulations, judgments and other decisions issued under the Code and have to take the measures needed to ensure that faults are corrected. Their supervision has to ensure compliance with the purpose of the Environmental Code and regulations issued under the Code (chapter 26, section 1, of the Environmental Code). The supervisory authorities normally act on their own initiative, but the public is entitled to make a report to the authorities if, for instance, they think that something should be checked. Such a report to a supervisory authority has to be registered as a matter and be closed by some form of decision. If the supervisory authority discovers deficiencies it can, for example, decide on an environmental sanction charge, orders or prohibitions.

The activities of all public authorities are checked by the Parliamentary Ombudsmen and the Chancellor of Justice. The public, including environmental NGOs, are always able to report infringements of various environmental regulations to supervisory authorities, and the public can also take direct contact with the Parliamentary Ombudsmen, who examine complaints concerning deficiencies and omissions in the exercise of public authority. The Parliamentary Ombudsmen supervise the application of laws and other statutes in public activities.

Turkmenistan

A host of legislation has been passed on the basis of the Constitution's provisions on citizens' rights and freedoms. The Act on Citizens' Communications and their Consideration of 14 January 1999 allows citizens to submit communications without initiating court proceedings if their rights are infringed. Under article 2 of the Act, citizens, in accordance with the Constitution and laws, have the right to submit in writing or orally to state, civil-society and other bodies, enterprises, organizations and institutions of all forms of ownership suggestions about improving their performance or to make applications or complaints.

Ukraine

Laws implement the requirements of article 9, paragraph 3. Under the Code of Administrative Procedure, natural and legal persons have the right to appeal against any decision, action or failure to act of state bodies before an administrative court. Decisions and actions of state bodies that contravene national environmental legislation may also be disputed before an administrative court.

The Citizens' Communications Act gives citizens the right to send individual or group complaints about a breach of their rights to the authorities or private legal entities. The recipient of such a complaint is obliged within a certain time frame to examine the complaint and take a reasoned decision.

7. Can a member of the public challenge decisions of the type regulated by *articles 7 and 8* of the Convention by challenging them as contravening the provisions of the national law relating to the environment?

Armenia

The Constitution lists a range of entities entitled to appeal to the Constitutional Court. The right to appeal to the Constitutional Court in the manner prescribed by the Constitution and by the Constitutional Court Act is now enjoyed by "every person - in a specific case, when a court has handed down a final judgment and all remedies have been exhausted and when the constitutionality of the legal provision underpinning that judgment is being challenged" (art. 101, para. 6).

Austria

Judicial review of the legality of administrative decisions and regulations as well as the constitutionality of laws is reserved to the Constitutional Court (Verfassungsgerichtshof). The Constitutional Court has competence to review the legality of administrative regulations and decisions violating fundamental rights.

Croatia

However, according to the ADA the initiation of an administrative procedures by filing a suite for all decisions taken by second instance bodies, and bodies that are considered as central administrative bodies according to the regulations on governmental administrative bodies system and all other bodies determined by a special law whose administrative documents are final in administrative proceedings and no appeal may be lodged against them (Article 7).

Finland

Since the beginning of March 2007, a system of appeal permits has been introduced in matters relating to construction, restricting continued further appeals to the Supreme Administrative Court in certain permit cases, and prevents an appeal on detailed planning on appeal grounds that have been decided on in connection with handling an appeal relating to more generalised planning. The experience gained on the practical effects of this system is still meagre.

Kyrgyzstan

It is common practice in Kyrgyzstan for civil society representatives to challenge decisions, such as those governed by the provisions of Articles 7 and 8 of the Convention, by indicating how they violate the national environmental protection laws.

In 2007, the public association Independent Environmental Expertise (IEE) filed a claim to the inter-district court of Bishkek city "on recognising that Government Resolution 360 on construction of a ferro-alloy factory in the Kyrgyz Republic contradicts national legislation", which claimed that "building while designing" contradicted national legislation. During examination of the claim, the court decided to repeal the paragraph of the Resolution on Building while Designing.

Republic of Moldova

Yes, he/she can, according to the Law on Administrative Litigation and the Code of Civil Procedure.

Slovenia

Under Slovenian law, the person who shows a legal interest may challenge the legality of implementing regulations and other general legal acts before the Constitutional Court. The legal interest may be shown by any person demonstrating that such an act (remaining valid) would infringe his rights, obligations or property entitlements. Thus, within this framework, members of the public concerned could challenge plans, programmes and all other acts of formation of environmental policy, if these have the nature of general legal acts, as also all implementing regulations. Thus, they could challenge before the Constitutional Court, spatial (planning) acts, forest economy plans and plans of water management. All of the above, of course, with fulfilment of the condition of show of legal interest.

Sweden

Certain permit decisions are taken by the Government as the first instance or after an appeal to the Government. Such government decisions can be reviewed by a court of law under the Act (2006:304) on judicial review of certain government decisions.

Certain decisions covered by the Convention are issued under the Planning and Building Act (1987:10). New rules in that Act giving environmental NGOs the right to appeal such decisions entered into force on 1 January 2008 (chapter 12, section 6, of the Planning and Building Act).

Under the Constitution, a decision on the release of an official document that has been taken by a Government minister cannot be appealed to a court of law. However, the principle of public access to official documents set out in the Constitution satisfies the purposes of the Convention. Sweden has entered a reservation on this point in relation to the requirements of the Convention.

Ukraine

In Ukraine the public has the right to challenge any decision, action or failure to act of a state body, including on the grounds of articles 7 and 8.

8. What are the conditions of issuing an *injunctive relief* by the court in cases brought under article 9, paragraph 3, of the Convention and/or the relevant national legislation?

Armenia

Chapter 14 of the Code of Civil Procedure establishes the legal principles for temporary injunctions to secure a claim in civil and administrative proceedings.

Austria

Concerning environmental private law, the Austrian Civil Code (ABGB) provides for a set of general and specific rules. In general, anybody who is or fears to be endangered by pollution is entitled to file a lawsuit against the polluter and to seek an injunction. This right to preventive action against pollution detrimental to health has been expressly acknowledged by courts as an integral, innate right of every natural person (Art 16 ABGB), neither requiring participation in administrative proceedings nor ownership of private property in the proximity of the polluter. In addition, private entities in violation of environmental laws may be sued by competitors and special interest groups, since producing goods in violation of such laws is regarded by courts to be unfair business practice.

Paragraph 364 et seq. of ABGB, the Austrian Civil Code, provide for a basis for a claim for the defence against inadmissible emissions coming from adjacent properties. Neighbours hold the subjective right to prohibit emissions exceeding a certain level. In this context, direct or indirect emissions having an effect from one property to another (e.g. waste water, smell, noise, light and radiation) are deemed as impairments. A special environmental context is established by the provisions on emission control (para. 364, subparas. 2 and 3 of the Austrian Civil Code) and the special provisions on approved plants (para. 364(a) of the Austrian Civil Code). In addition, there are also facts subject to special laws constituting claims for damages representing an explicit relation to the environment: paragraph 26 of the Austrian Water Act, paragraph 53 of the Austrian Forestry Act, paragraph 79(a) et seq. of the Austrian Genetic Engineering Act, and paragraph 11 of the Austrian Nuclear Liability Act.

Azerbaijan

The public have the right:

- to demand the annulment in administrative or court proceedings of decisions on the location, construction, reconstruction or commissioning of enterprises, plants and other environmentally hazardous facilities that have an adverse impact on human life and the environment as well as the restriction or

temporary suspension of the activities of natural or legal persons and the wind-up of legal persons (article 6 of the Environmental Protection Act);

Belarus

Interim injunctions are not very effective as they are granted at the court's discretion; if they are applied, losses incurred by the respondent may be charged to the claimant, which imposes a very heavy financial burden.

Czech Republic

According to the law, an action for unlawfulness of a decision pursuant to Section 65 of the Code of Administrative Justice does not have suspensory effect; nevertheless, the court may grant the action such an effect on the basis of Section 73 of the Code of Administrative Justice. The latter provision stipulates three preconditions for granting an action suspensory effect (enforcement of the decision would result in irreparable harm for the plaintiff, the granting of the suspensory effect will not inappropriately affect the rights acquired by third parties and this is not at variance with the public interest). Especially the precondition of irreparable damage that must be threatening directly the plaintiff, as a condition for granting suspensory effect, is difficult to demonstrate, also in those cases where the plaintiff is threatened by damage which can be compensated in money, the more so in those cases where irreparable harm is threatening the environment or where the plaintiff is an NGO. In its decision File No. 8 As 26/2005, the Supreme Administrative Court ruled that court proceedings may be initiated also in those cases where such harm is likely to be incurred; this ruling was referred to in several later decisions. The case-law of administrative courts (particularly the judgment of the Supreme Administrative Court of 29 August 2007, Ref. No. 1 As 13/2007-63), which unambiguously requires the satisfaction of applications for granting suspensory effect to actions lodged by members of the public concerned with the meaning of the Aarhus Convention and the EIA Directive, so that the afforded court protection is timely and fair, is also a positive signal.

Court review does not lead to an effective remedy:

Pursuant to paragraph 4 of Article 9, review of a decision should ensure an adequate and effective remedy. This requirement is not met in practice in this country. Even in cases where the plaintiff is successful in the case, review has no effect on the state of affairs. The disproportionately long court proceedings and especially the unrecognized suspensory effect of the action mean that a successful outcome of the court action is useless to the plaintiff because, e.g., the construction has long been completed and the governmental authorities are not willing to put the judgment into effect. However, the progressive ruling of the Supreme Administrative Court of 28 June 2007 (File No. 5 As 53/2006) states that failure to afford suspensory effect to an action (lodged by the public concerned) may not result in the fact that the project against which the action is aimed has already been implemented at the time when the decision is made. This ruling directly refers to the requirements of Art. 9 (4) of the Convention. The court practice has gradually been changing on the basis of this ruling. The right of access to justice thus remains defined only generally in Act No. 150/2000 Coll., the Code of Administrative Justice. According to the Code, an action may be lodged by a person who states that his rights have been infringed by an official decision „whereby his rights or duties are established, changed, cancelled or determined with binding effect" and also by a party to administrative proceedings that states that its rights have been violated by the procedure of the administrative authority in a manner that could lead to an unlawful decision. The interpretation is such that the former definition should apply to applicants (e.g. investors) and other entities about whose rights a decision is made "directly", while the latter applies to other parties, including associations (cf. above- restrictive interpretation of locus standi). Thus, theoretically, nothing has changed in the concept according to which associations can successfully lodge an action only if, in

administrative proceedings in which they participated (or in which they were entitled to participate, but this was not the case due to a mistake made by the administrative authority), their procedural rights were breached in a manner such that this could, according to the court, cause an unlawful decision. Court practice is not uniform; there exist both cases where the courts continue to reject actions brought by associations and do not consider them in rem, as well as judgments that, on the basis of an action brought by an association, dealt with the merits of the case and interpreted the conditions for locus standi in conformity with the provisions of the Aarhus Convention

Estonia

In accordance with paragraph 22 of the Environmental Supervision Act, an activity damaging to the environment may be suspended if:
(a) It is not in compliance with an environmental standard or with the standards determined in the environmental permit;
(b) It is performed on the basis of an environmental permit but endangers the life, health or property of persons and such danger cannot be immediately eliminated;
(c) It is permitted only on the basis of an environmental permit which does not exist, has not been submitted, has been issued by a person who has no authority to do so or has been issued without considering the environmental protection requirements established in the law;
(d) It is permitted only during a certain period of time or under certain conditions and does not comply with the time or conditions permitted for such activity.
An environmental supervision authority may also take other measures in order to bring an activity damaging to the environment into conformity with the requirements.

France

Before the civil courts, it is possible to obtain an interim injunction for preservation or restoration to prevent imminent damage or stop clearly illicit activities. Such injunctions may be ordered subject to a fine in an amount set by the court in the event of a delay in execution.

Outside the jurisdiction of judges for interim applications, an injunction for redress may also be obtained, subject to a fine for non-performance, by filing an application to the competent court.

In addition, court judgements are enforceable under article L. 11 of the Code of Administrative Justice.

The Code of Administrative Justice contains provision for procedures of redress.

Firstly, article L. 521-1 of the Code provides that in urgent cases and where a serious doubt has been established as to the lawfulness of a disputed decision, the urgent applications court can suspend the enforcement of a decision or of some of its effects. A negative decision may be suspended.

Furthermore, articles L. 554-11 and L. 554-12 of the Code of Administrative Justice provide for two special suspension procedures to protect nature or the environment that obviate the need to demonstrate urgency. The first may be used against project permits wrongly issued without a prior environmental impact assessment. The second allows suspension of a planning decision that is subject to a prior public inquiry but either no inquiry has been held or the inquiry commissioner has issued an unfavourable opinion. Similarly, article L.123-16 of the Environment Code provides that an administrative judge must grant an application for the suspension of a decision taken after unfavourable findings by the inquiry commissioner if there is serious doubt as to the legality of this decision.

Secondly, book IX of the Code of Administrative Justice offers remedies to beneficiaries of court decisions that have become final, enabling them to secure the enforcement of decisions the administration fails to execute within a reasonable time.

- Regarding substantive applications for damages or requests for interim relief for harm caused by an environmental nuisance (civil courts), the trend before appeals courts, courts of major jurisdiction and courts of minor jurisdiction has been as follows:

Year	Appeal court	Courts of major jurisdiction		Courts of minor jurisdiction and local courts	
		Ordinary proceedings	Summary proceedings	Ordinary proceedings	Summary proceedings
2001	644	985	1591	1 350	108
2002	669	922	1212	1 093	97
2003	543	795	978	868	90
2004	562	709	1039	774	57
2005	508	713	977	808	58
2006	500	664	986	719	57
2007	533	630	825	739	60
2008	460	632	792	618	44
2009	474	770	878	762	31
Source: Subdirectorate for Statistics and Studies (SDCE) General List of Civil Cases			Directorate for Civil Matters and the Seal (DACS) Centre for the Assessment of Civil Justice		

Georgia

Measures regarding Paragraph 4 imply rights protected under the national legislation, in particular, they are defined by the Articles 29-31 of the Code of Administrative Proceedings of Georgia (it should be noted that, according to the Article 31, it a court can render a temporary ruling before the action is brought if existing circumstances may hinder realization of rights of the applicant or it will become significantly complicated) and also by Chapter XXIII of the Civil Code of Practice of Georgia.

Germany

Provisional legal remedy is always guaranteed under the conditions stated in Article 80 (5) and Articles 80a and 123 VwGO. In particular, this means that the lodging of an appeal in principle has a suspensory effect unless the court determines otherwise in the individual case.

Greece

Additionally, an important legal mechanism in many environmental cases constitutes the interim injunctive relief when an administrative decision with environmental consequences cannot be revoked. If the interim injunctive relief is admitted, a stay of execution is ordered if the danger is deemed probable unless there are specific grounds of public interest.

Hungary

As a result of the conducted probative proceedings, the court assesses the available evidence and determines the facts of the case serving as a basis for the judgement. On the basis of the determined facts, it determines in the given case the extent in which the available facts meet conditions stipulated by relevant substantive law. As a result of such assessment, it passes a conviction or acquittal. (In civil cases, cases of damage are assessed according to the rules of compensation under the Civil Code, while in criminal cases, the factual elements of certain crimes are examined in the regulation of the Penal Code.)

Italy

Furthermore, safeguard and preventive administrative measures (e.g. closure of productive sites, confiscation) can be imposed by those public authorities charged with environmental control which also have power of ordinance (for instance from the Municipality’s Mayor or from the MoE).

Kazakhstan

Legislation provides for provisional injunctive remedies – that is, an application can be made to the court for a provisional remedy at the same time as a claim is filed.

Real possibilities have been created at the legislative level for the courts to ban an activity challenged while a claim filed by public representatives is examined in court. Such issues are regulated by Chapter 15 of the Civil Procedure Code. In particular, under Article 158 the court can order provisional remedies following applications from persons participating in national or international arbitration proceedings. A provisional remedy is allowed with regard to any aspect of the case, if failure to take such measures could make executing the court judgment more difficult or impossible.

Provisional measures can include: 1) seizure of property; 2) prohibiting the defendant from taking a certain action; 3) prohibiting other persons from transferring the defendant’s property to the defendant or fulfilling obligations to the defendant; and 4) stay of execution of an impugned decision of a state body, organization or official (except in stipulated cases).

If necessary, the court can order several provisional measures. If one of the prohibitions (i.e. injunctions to refrain from a certain action) under Article 159(1(2 and 3)) of the Civil Procedure Code is infringed, the guilty parties are held administratively liable. In addition, the claimant has the right to file a court application for compensation from such a person for damage caused by non-performance of the provisional order. Legislation requires that provisional measures are proportionate to the claim. These issues are also reflected in legislative Decision No. 2 of the Supreme Court on application by judges of several rules of civil procedure legislation of 20 March 2003.

Latvia

APL, section 22, provides for injunctive relief that can be applied at every stage of the case. According to APL, Paragraph 1 of Article 195, if there is a reason to believe that the contested administrative act or

consequences of the non-issue of an administrative act might cause significant harm or damages, the prevention or compensation of which would be considerably encumbered or would require incommensurate resources, and if examination of information at disposal of the court reveals that the contested act is prima facie illegal, the court may, pursuant to the reasoned request of an applicant, take a decision on injunctive relief.

Netherlands

Provisions on effective access to justice (procedures that provide for effective remedies, including injunctive relief, and are fair, timely and not prohibitively expensive) are embedded in the provisions on the General Administrative Law Act (art. 8, paras. 41, 51, 72, 66, 67 and 81) and in the Environmental Management Act (art. 20, paras. 1(3) and 6).

Norway

Normally, a claimant is liable for damages if interim measures are granted under the Enforcement Act and it later proves that the claimant's claim was not valid when the application for interim measures was granted. For example, this would be the case if a company had later reduced its emissions in accordance with the currently applicable discharge permit.

Poland

In administrative proceedings, filing an appeal to the authority of second instance automatically suspends the implementation of the decision being the subject of the appeal. In judicial-administrative proceedings, a person filing a complaint can simultaneously submit a motion for suspension.

In the course of the report consultation, the non-governmental organizations (WWF Poland) indicated that there are exceptions to the rule of automatic suspension of executing a decision under appeal. It is possible to impose the order of immediate enforceability on the decisions or to proceed in the mode of special purpose act (e.g. Act on Preparations for the Final Tournament of the UEFA European Football Championship 2012).

Republic of Moldova

The judge or court may take measures to ensure the action at the request of participants in the trial according to Art. 174 of the Code of Civil Procedure. When it's impossible to enforce the court decision insurance is accepted, and this can happen on any stage of the process. In this case several measures of insurance may be admitted. Among the insurance measures provided by the Law are:

1. to seize property or money of the defendant, including those which are at other people;
2. 2. to prohibit the defendant to perform certain acts;
3. to prohibit other persons committing certain acts on the object in question

According to Art. 21 of the Law on Administrative Litigation, suspension of the contested administrative act may be claimed by the plaintiff to the administrative court while submitting the application. In well justified cases in order to prevent an imminent harm the court may order the suspension of the administrative and office activities.

Serbia

Please, refer to Article 291 of the Law on Executive Procedure stipulating that a temporary injunction may be granted before and during court or administrative procedure, as well as after these procedures have been completed, until the ruling is enforced.

Slovakia

The English phrase "injunctive relief" can be understood as a court preliminary measure (precaution). Within the administrative justice the courts shall not issue preliminary measures since they are regulated by the second part of the Civil Procedure Code that does not apply to the administrative justice (§ 246c). In terms of § 250c a court may postpone enforceability of a contested decision of a public administration body.

In general, preliminary measures shall be issued by administrative bodies within administrative proceedings, hence the court would point to its insufficient powers in terms of § 7.

Spain

The general regulations on the procedure for the resolution of administrative appeals and judicial reviews apply. These establish all of the guarantees for ensuring the efficacy and public disclosure of the decisions adopted to resolve administrative appeals and judicial reviews, including the possibility of adopting injunctive measures.

Ukraine

A preliminary court injunction (as a means of securing a claim) in administrative proceedings is granted where there is an evident risk of harm being caused to the claimant's rights, freedoms and interests before a judgment is issued on the case, or where the defence of these rights, freedoms and interests is impossible without a court injunction, or their restitution will necessitate significant effort and cost, or if there are clear signs of an illegal decision or action by the respondent.

A preliminary court injunction may be granted in civil proceedings if the failure to issue such an injunction could render execution of the judgment more difficult or impossible.

In addition, the court may require a deposit that is sufficient to prevent abuse of the injunction. The size of the deposit is determined by the court according to the circumstances of the case. Moreover, if the defendant wins the case, s/he has the right to claim compensation from the claimant for losses incurred as a result of the injunction. These conditions discourage the public from filing petitions requesting a preliminary injunction.

United Kingdom

Adequate and effective remedies, including injunctive relief in appropriate cases, are available.

D. Paragraph 4: Timely, adequate, effective, fair, equitable and not prohibitively expensive remedies

9. What kinds of *sanctions* are available in cases where an official fails to fulfill his or her responsibilities concerning access to information or public participation?

Belarus

Under the Citizens' Communications Act and ensuing legislation, an official of a body, institution, organization or enterprise is obliged to take the necessary measures to restore the impaired rights and legal interests of citizens and to decide if the party accused of impairment is responsible. Even oral communications by citizens and legal entities must receive a written reply.

Under Article 357 of the Civil Procedural Code, a court must hand down a judgment based on its examination of a complaint. A court that finds the actions (omissions) in dispute to be wrongful and in breach of the rights of the citizen must hand down a judgment ruling that the complaint is justified and that the breach must be rectified. A court that finds that the actions in dispute were committed in compliance with the law and within the scope of the authority of the state authority, legal entity, organization, official, or military authority must hand down a judgment refusing to grant the complaint. A judgment ruling that breaches must be rectified is sent to the head of the state authority, legal entity, organization or to the official or military authority whose actions were disputed, or to the hierarchically superior state authority, legal entity, organization, official or military authority within three days of the judgment coming into force. The court and the complainant must be informed within a month of receipt of the court's judgment that the court's judgment has been performed.

Croatia

In case that an official fails to fulfil his/her obligation with respect to access to information or public participation, measures are taken in compliance with the Civil Servants Act (OG 92/05, 142/06, 77/07, 107/07 and 27/08).

Cyprus

According to Article 146 of the Constitution, the decision of the Supreme Court is binding. In cases of annulment of a decision the public authority concerned must ensure to restore things to the way they were prior to the decision.

Denmark

The competence of the Ombudsman covers the entire public administration. He must decide whether authorities or people under his jurisdiction are acting in breach of current law or whether in some other way they are guilty of errors or neglect in the performance of their duties. Control includes both decisions and other administrative activities. Appeals can be submitted by anyone, and the appeal must be submitted within one year of the condition being ´committed´. His powers of sanction are to state criticism, issue recommendations, or to otherwise give his opinion regarding a case. In accordance with the declaration issued during negotiations on the institution of the Ombudsman, Denmark recognised the

possibility to bring cases before the Ombudsman as a possibility for review by an independent administrative body.

The decisions of the Ombudsman are written but not binding; in practice the administration generally follows the recommendations of the Ombudsman. The Ombudsman´s position in a case does not limit the access of the courts to review the case subsequently.

Decisions by the courts are in writing, binding, and can be enforced.

France

Court judgements are enforceable under article L. 11 of the Code of Administrative Justice.

Book IX of the Code of Administrative Justice offers remedies to beneficiaries of court decisions that have become final, enabling them to secure the enforcement of decisions the administration fails to execute within a reasonable time.

Georgia

According to the General Administrative Code of Georgia a public agency shall designate a public servant responsible for providing public information (Article 36). If the public servant violates responsibility to provide the public information, he/she will face disciplinary liability in accordance to the rules of Law of Georgia on Public Service.

Germany

The provisions of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) and the VwGO guarantee effective access to justice. In administrative proceedings, if the complaint is found to be justified, the authority´s contested decision is revoked, or the authority concerned is required to review the matter taking account of the court´s legal opinion, or to undertake the measure petitioned for by the complainant. There are means available for the compulsory enforcement of legal rulings.

Italy

ISPRA as well as the Regional Agencies for Environmental Protection and a number of authorities dealing with security (national or local police, forest guards, environmental police, customs officials) ensure through inspections (mainly in polluting installations) that environmental law, including permit requirements, is properly implemented. These authorities charged with monitoring are alerted by the public authority dealing with environmental control (the national or local administration, as defined by sectoral environmental laws - in most cases Provinces) but can also be directly alerted by claimants or by the judiciary itself.

The above-mentioned authorities charged with monitoring have the power to ascertain whether infringement of environmental law or permits has occurred and, if so, to apply administrative penalties (e.g. fines, suspensions of permits), or, where applicable, to initiate criminal proceeding by signalling an infringement to the judiciary.

Kyrgyzstan

Kyrgyz legislation provides for criminal, administrative, civil, disciplinary or material penalties when officials fail to perform their duty to provide access to information and ensure public participation. The type of liability depends, first of all, on the nature of the act committed by the official and also on the consequences of the refusal to grant access to information or failure to ensure public participation.

Latvia

The APL provides for a person's right to compensation, if the authority's administrative act or activity has resulted in damages. APL, Article 93, provides that indemnification of losses can be claimed simultaneously with an appeal of administrative act to a higher authority or, if this is not possible, simultaneously with an appeal of an administrative act in court. Indemnification can also be claimed simultaneously with an appeal of an authority's action. The APL provides private persons with a simplified and efficient compensation claims procedure.

According to Latvian Administrative Violations Code (LAVC) Article 2013, the State or NGO officials refusing to publish information in the mass media are punished by a fine up to hundred LVL (€142); for provision of incorrect information, up to 250 LVL (€356).

LAVC, Article 84, defines the fine for concealing or misrepresenting environmental information (e.g., in the EIA process), which is from 50 to 1000 LVL (€70–1396).

Lithuania

It should be noted that, pursuant to Article 15(1) of the Law on Administrative Disputes Commissions, effective decisions of Administrative Disputes Commissions shall have a binding effect on entities the decisions of which are appealed. Similar provisions are stated in Article 14(1) of the Law of the Republic of Lithuania on Administrative Proceedings, which provides that an effective court decision, ruling and order shall have a binding effect on all public authorities, officers and public servants, enterprises, agencies, organisations, other natural and legal persons and must be executed within the entire territory of the Republic of Lithuania. The court decision shall be in writing and shall be reasoned.

Montenegro

Please refer to provisions of Articles 20, 22 and 24 of the Law on Free Access to Information.

Legal entities shall be held responsible for criminal offences based on the principle of objective accountability, and the responsible entity in a legal entity, entrepreneur and a private entity shall be held responsible based on the principle of subjective accountability.

In 2010, the project "Criminal procedures in environmental protection of Montenegro" was implemented in Montenegro in order to review efficiency of sanctioning of ecological offences and highlight potential directions of the reform. The project also analyzed applicable legal norms which envisage criminal and minor offences responsibility of ecological offenders, problems which occur in actions taken by competent authorities in this field and recommendations are given in order to ensure higher efficiency in punishing of those who commit these offences. In addition, the level of harmonization of applicable legal regulations in this field with the Directive 2008/99 EC on environmental protection through criminal legislation is analyzed as well. The work on this project was contributed by: representatives of the Ministry of Spatial Planning and Environment, Environment Protection Agency, Ministry of Justice, Police Administration, Customs Administration, Councils for Offences, Basic State Prosecution, Basic Court and experts in this field.

Republic of Moldova

Criminal penalties are vindicated by Criminal Laws of the Republic of Moldova in following cases:
- willful concealment of data;

-presentation of erroneous data (about the excessive pollution damage to the environment, radioactive pollution, chemical, bacteriological or other dangerous consequences for life or health of population and health status affected by environmental pollution) by a responsible person or by a person who manages a commercial, public or other non-governmental organization, and by a legal person;and if it caused by negligence:

a) massive illness of humans;

b) massive extinction of animals;

c) death of a person;

d) other serious consequences.

At the same time, failure to keep work obligations related to access to information and public involvement may constitute a disciplinary offense which is sanctioned in accordance with labor legislation.

Romania

Law 554/2004 on administrative contentions, as amended, contains provisions on the remedies that may be granted for the damages that have been suffered. The court of law decides on remedies for moral and material damages suffered.

Spain

Likewise, article 21 of Law 27/2006 regulates a special system of complaints against public authorities for cases in which the request for environmental information is submitted to a public authority that does not have the legal status of a public authority. In the event of failure to comply with the ruling, penalties may be imposed.

Sweden

The supervisory authorities are able to issue orders and prohibitions and also to combine them with administrative fines (astreinte). The authorities can also order environmental sanction charges and are obliged to report infringements of the provisions of the Environmental Code or regulations issued under the Code to the police or prosecution authority if a criminal offence is suspected.

Turkmenistan

Article 145 of the Criminal Code provides an important guarantee of public access to justice. It states that a direct or indirect infringement or limitation of human and civil rights and freedoms, regardless of sex, race, nationality, language, origin, property or official status, place of residence, attitude to religion, conviction or membership of a civil-society organization shall be punished by a fine equivalent to five to 10 average monthly salaries or corrective labour for a period of up to one year. If they entail serious

consequences, the same actions shall be punished by corrective labour for a period of up to two years or imprisonment for one to two years.

The Environmental Protection Act enshrines a wide range of guarantees on the access of the public and citizens to justice. First, when carrying out economic, administrative and other activities affecting the environment, executive and administrative bodies, legal entities and citizens must be guided by the principles of ensuring the real rights of citizens to an environment that is favourable to life, transparency in the performance of environmental tasks and close links with civil-society organizations and the population (article 1). Second, environmental NGOs and other NGOs performing functions relating to the protection of the environment have the right to file claims to courts or economic courts for compensation for damage to the environment or health or property of citizens or civil-society organizations, caused by infringements of environmental legislation, including claims against state bodies for environmental protection (article 30). And third, Turkmenistan guarantees citizens and civil-society organizations involved in environmental protection the exercise of the rights granted to them in the field of environmental protection in accordance with current legislation.

Anyone who hinders the exercise by citizens and civil-society organizations of their rights and duties arising from this act or who deliberately distorts or conceals environmental information shall be held accountable in accordance with current legislation (article 31).

Ukraine

The Administrative Offences Code of Ukraine provides for the administrative accountability of civil servants and officials for refusing to provide environmental information or not providing it in good time. The fine varies between five and 17 euros.

Under current legislation, at the same time as issuing a judgment on the wrongfulness of a refusal to provide information, a court may (at the request of the claimant) issue a separate report that raises the question of prosecuting the guilty parties and rectifying the factors that led to a breach of legislation. However, the number of administrative prosecutions of officials compared to the number of contraventions of article 4 of the Convention that are recognized by the courts is abysmally low.

10. Are there judges *specializing* in environmental cases?

Albania

According to paragraph 4: there is no distinction between normal judicial procedures and the environmental ones. The law provides the basic rights for such procedures in general for all procedures which are meant to be fair and with reasonable costs and time limits.

Armenia

As part of ensuring compliance with the provisions of article 9 of the Aarhus Convention, and with support from the OSCE office in Yerevan, the non-governmental organization EPAS has conducted a series of training courses for judges and lawyers in Yerevan and in different parts of the country, drawing on the potential of the Aarhus centres for this exercise. Representatives of the Constitutional Court also attended the training course organized by OSCE and the secretariat of the Aarhus Convention in June 2007.

France

While there is de facto specialization of judges in the courts, certain associations consider that the courts respond better when there are specialist environmental courts (for example, for marine pollution).

Hungary

There are no judges exclusively specialising in environmental cases. If, however, certain judges possibly have the necessary qualifications (e.g. environmental lawyer), the chairpersons of the courts may take this into account when assigning cases. There are 4 judges with environmental lawyer qualifications at the Metropolitan Court of Budapest, 1 in Hajdú-Bihar County, 1 in Komárom-Esztergom County, 2 in Nógrád County and 2 in Pest County – a total of 10 judges in the country.

Kazakhstan

In 2008, a training and practical manual was produced on the application of the Aarhus Convention by Kazakhstan's judges. This contains in-depth studies of cases involving the environmental rights of the public and their defence in court. In addition, the course at the Institute of Justice of the Presidential Academy of State Administration as well as training programmes for judges cover environmental legislation and issues arising in cases relating to the implementation of the Aarhus Convention.

Training centres are in operation in all provincial courts. These run courses for judges on considering problematic issues that arise while hearing a case, including issues concerning the application of the Aarhus Convention.

The Supreme Court and provincial courts regularly monitor the quality of court proceedings, including those on environmental disputes. Provincial courts are opening electronic information kiosks to more fully ensure openness and access to justice and to notify the population about court activities.

An agreement has been concluded with the OSCE to train judges and environmental NGOs on the implementation of the Aarhus Convention in partnership with the Union of Judges of the Republic of Kazakhstan.

The manual for judges on application of the Aarhus Convention in Kazakhstan (OSCE/Supreme Court of the Republic of Kazakhstan) provides a complex analysis of national laws, including provisions on the rights of natural persons, public associations and other legal persons in the field of environmental protection (Articles 13 and 14 of the Environmental Code, and Articles 12 and 13 of the Act on Specially Protected Natural Territories); protection and efficient use of natural resources (Articles 62 and 63 of the Water Code, and Article 66 of the Forest Code); public health and radiation safety of the population (Articles 19-21 of the Act on the Radiation Safety of the Population); and architecture, town planning and construction (Article 13 of the Act on Architecture, Town Planning and Construction). The draft was presented and discussed in June 2008 at the international conference on access to justice in Astana held to mark the 10th anniversary of the Aarhus Convention.

Kyrgyzstan

In 2009, IEE, the Osh Aarhus Centre and the Judges' Training Centre approved a training module for judges.

In 2009-2010, the Support Network, the Osh Aarhus Centre, IEE, and Biom, in partnership with the Supreme Court Judges' Training Centre, the professional training centre at the General

Prosecutor's Office, and the Lawyers' Training Centre organised seminars for judges in all provinces of Kyrgyzstan.

Latvia

Considering the relatively small number of cases, nearly no judges specialize in environmental rights.

Montenegro

Problems that affect the work of judiciary include: inadequate or insufficient knowledge of environmental protection regulations; lack of specialized staff, and this problem could be overcome by establishing independent specialized departments within courts for conducting detailed analyses of the number of cases and efficiency of acting upon them, in order to identify a real need for establishing such a department; lack of a relevant court and other practices in these cases; in specific cases, judges face significant difficulties in identifying the contents of damages and the link between consequences and the offence.

Republic of Moldova

Currently there is no sub-specialization of judges in settlement of environmental cases. However, all judges participate in seminars organized by the National Institute of Justice, including on environmental topics.

Association "Eco-Tiras" in partnership with the National Institute of Justice organized two seminars for judges on implementation of the Aarhus Convention, Chapter "Access to Justice" implementation on October 22 and November 2, 2010 with support of Rosa Luxemburg Foundation. The curriculum for the Environmental Law trainees was developed by the National Institute of Justice in 2009.

Association "Eco-Tiras" elaborated and published the Guide for Judges on application of Aarhus Convention in 2010.

Serbia

The Sector for Control and Monitoring of the Ministry of Environment and Spatial Planning in collaboration with the Ministry of Justice and Magistrates' Association, Judicial Centre and the OSCE, organized the second round of training for judicial authorities entitled "Supporting the Implementation of Legislation in the Field of Environmental Protection". This time, the training was intended for magistrates and inspectors specializing in environmental protection. In the period from May until October 2009, six training sessions were held for over 450 participants, 300 of whom were magistrates, 90 national and 30 town inspectors specializing in environmental protection.

Slovakia

Judges do not specialize in environmental cases; Lawyer offices do not specialize in cases of environmental law violations. There are just few lawyers who would address such cases (also with regard to the fact that those are not lucrative cases).

Sweden

The right to a determination by a court of law of the substantive and formal validity of decisions, etc., covered by article 6 is provided for in different parts of Swedish legislation. In most cases, permit decisions are taken under the rules of the Environmental Code. Those decisions can be appealed either via a superior authority to an environmental court and then to the Environmental Court of Appeal or from an environmental court to the Environmental Court of Appeal and finally the Supreme Court. A review can examine both the formal and the substantive aspects of the decision. It can be mentioned in this context that satisfactory consultations including an adequate and well-conducted environmental impact statement are required before a court considers a permit application. If the legal requirements are not met in these respects, an application may be rejected.

Ukraine

There are no specialized environmental judges, courts or divisions of courts that hear cases on rights to information or the right to participate in environmental decision-making. A computer allocates cases to judges in order.

11. What overall costs do members of the public incur in bringing cases to court?

Armenia

Under the State Duties Act, the basic state duty for an application to the Administrative Court is 4000 dram (around 8 euros).

Belarus

Court fees are established by legislation. Legal entities and citizens who file a claim in defence of the rights and lawful interests of others are exempted from court fees and other costs relating to court hearings in the cases established by legislation. Moreover, claimants who instigate actions seeking compensation for injuries to their health are also exempted from court fees. The court may also exempt claimants and applicants from court fees in consideration of their financial situation if they file a petition to this effect.

Belgium

Whether or not the procedures are “fair”, “fast” and “not disproportionately expensive”, is also the subject of much discussion. Normally, the decisions within the framework of the review procedures mentioned above are in writing, public and accessible.

Bosnia and Herzegovina

Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;

Prior to initiating an administrative dispute, when the law provides so, an appeal to a second-instance administrative body is allowed. Article 11 LoAP BiH; Article 14 LoAP FBiH; Article 14 LoGAP RS, and Article 14 LoAP BD stipulate that administrative procedure has to be expeditious and as inexpensive for the party as possible, while obtaining all that is necessary to properly establish the facts and render a

lawful and proper decision. Also relevant are Articles 31 and 39 LoPE FBiH; Articles 30 and 38 LoPE RS, and Article 30 LoPE BD. Pursuant to Article 37 LoPE RS, the procedure on appeal before a second-instance body or under a lawsuit before a court of law is considered to be emergency procedure.

Bulgaria

Payment of fees is in accordance with the tariff set for all courts and is firmly fixed amount. As in the case of administrative cases, these fees are minimum.

Croatia

Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;

Denmark

In matters for the Nature Protection Board a charge has been set of DKK 500 (EUR 67) for bringing cases. A bill has in November 2010 been forwarded to the Danish Parliament, suggesting a charge of DKK 500 (EUR 67) for private persons and DKK 3.000 (EUR 402) enterprises, organisations and authorities.

For judicial reviews, a court fee is due for instituting legal proceedings. In addition, there are usually costs for legal assistance and expert assistance etc.

The Administration of Justice Act provides for the possibility to obtain free process and legal aid. Free process means among other things that the relevant party is assigned a lawyer to conduct the case, paid for by the public purse. Furthermore, there is a certain amount of public legal aid. Legal aid covers advice and completion of individual written notifications and reports of the usual type, including application for free process, process documents from legal cases, and participation in meetings etc. Legal aid can also be granted for appeals against decisions by public authorities. Moreover, to a certain extent, the courts may appoint a lawyer for pending legal cases.

Estonia

Extra-judicial proceedings are in principle free of charge, and charges in administrative court proceedings are low except in cases related to compensation for damages in which the fee consists in 5% of the claim for damages. At the same time, procedural expenses are not limited only to fees charged by the reviewing body, but include also other charges such as legal aid and expert expenses, as well as compensation of the defendant for expenses upon losing the case. Expenses are obviously highest in court cases. The court can reduce the legal aid expenses the defendant has to be compensated for, and in certain cases decide not to charge these altogether. It may also decide that the legal aid expenses of an insolvent natural person will be covered by the State. An attempt to provide a more comprehensive solution to providing free legal aid to insolvent natural persons as well as to environmental NGOs acting in the public interest has been made in the State Legal Aid Act. The Memorandum and Clarification Request Reply Act obliges administrative bodies to provide free legal aid to a limited extent. However, most of the NGOs are of the opinion that in financial terms the court proceeding may prove to be too expensive and hence this can be an obstacle for challenging administrative decisions. However, the general opinion was that most of the problems find solutions without the court and the court is seen as an ultimate measure.

European Union

The following observations can be made concerning the costs of commencing proceeding before the General Court (GC) and the Court of Justice of the European Union (or European Court of Justice - ECJ)

Proceedings before the GC and the ECJ are in principle free of charge, subject to the exceptions provided for in Article 90 of the Rules of Procedure of the GC (RoP GC) and Article 72 of the Rules of Procedure of the ECJ (RoP ECJ).

The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings (see Article 87(2) of the RoP GC and Article 69(2) RoP ECJ). The following shall be regarded as recoverable costs:

(a) Sums payable to witnesses and experts;

(b) Expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers (see Article 91 of the RoP GC and Article 73 of the RoP ECJ).

Legal aid is available before the GC and the ECJ. The relevant provisions are to be found in Articles 94 et seq. of the RoP GC and Article 76 of the RoP ECJ.

Recent case-law of the ECJ on paragraph 4.

• Costs. In 2009, ECJ ruled that IE must explicitly include a provision in its legislation that costs not be prohibitively expensive in relation to EIA and IPPC (C-427/2007).

Finland

Legal assistance in accordance with the Legal Aid Act (257/2002), Section 1, includes provision of legal advice, the necessary measures and representation before a court of law and any other authority and the waiver of certain expenses for the consideration of the matter. Granting legal aid relieves the recipient, in part or in full, from liability for the fees and reimbursements for an attorney, the fees and reimbursements arising from interpretation and translation services and handling charges, document charges and the reimbursement of miscellaneous expenses in the authority in charge of the main matter, and corresponding charges collected by other authorities. In accordance with Section 2, paragraph 3 of the Act, legal aid shall not be given to a company or a corporation. Pursuant to Section 3, legal aid is granted for free or against a deductible, depending on the economic status of the applicant. The economic status of the applicant is assessed by the monthly funds or means available to the applicant. The calculation is based on the monthly income, necessary expenses, wealth and maintenance liability of the applicant, his or her spouse, or his or her domestic partner.

France

Certain associations have expressed dissatisfaction at the fact that representation by counsel is mandatory in the courts of major jurisdiction. Here it should be mentioned that such courts are not the only competent bodies at first instance. Local courts and courts of minor jurisdiction, where representation by counsel is not mandatory, are competent to hear cases for claims not exceeding €4,000 and €10,000, respectively.

Furthermore, except in special circumstances, applicants bringing appeals before the Court of Cassation or the Council of State must be represented by a special counsel with the sole right to work with those bodies. Some associations have stated that these counsel's fees are sometimes very high in relation to some people's financial situation and may constitute a barrier to access to the court, but it should be said that there is a legal aid mechanism that makes it possible to overcome such barriers.

Georgia

The State Tax Privileges do not apply to legal entities (among them, the NGOs). In previous years there also was a case, when the NGO paid the tax equivalent to 1500$. This amount of money is too large for Georgia.

Germany

The costs of administrative court proceedings in environmental matters are as a rule not determined according to the full economic interest in the authorities´ contested decision.

Greece

Concerning fees in the judicial procedure will increase through the new law that comes into force in 2011.

The president of the court may at the applicant's request, exempt poor litigants from the duty to pay stamp fees and the deposit for the submission of an application if it is deemed that the applicant is in poor financial condition. In addition, Law 3226/2004 (OJG A24/2004) provides for legal aid for poor litigants in cases of civil, commercial and criminal law.

Hungary

The costs associated with administrative procedures, including administrative appeal fees, in environmental cases are specified by Decree No. 33/2005 (XII. 27) of the Minister of Environment and Water. The filing fee of appeal is fixed, as a general rule, at 50 per cent of the administrative fee of the contested procedure.

Exceptions from the 50 per cent rule are also determined by the Decree. Thus, the filing fee for a private person contesting an administrative decision concerning an activity subject to EIA and preliminary EIA is significantly less, equalling 1 per cent of the otherwise applicable fee.

Similarly, NGOs may make an appeal in permitting procedures for 1 per cent of the otherwise applicable fee (unless the procedure itself has been initiated by the same NGO). These fees can be considered equitable and not prohibitively expensive.

Act XCIII of 1990 on Duties specifies preferential duty tariffs for the judicial review of administrative decisions at a rate of HUF 20,000 (approx. € 80) and HUF 7,500 (approx. € 30) in non-litigated procedures, which is very equitable in comparison to duties imposed on general civil court proceedings.

Beyond the payment of the procedural duty, additional costs may arise for the client which are determined according to the specific case (e.g. lawyer's fee or expert fees).

Italy

Legal aid, which is usually applied in criminal and labour proceedings, has been extended to civil and administrative proceedings (Law 1034/1971 on TARs). The provisions concerning legal aid have been amended by Legislative Decree 113/2002.

Not only individuals but also Non-profit entities or associations are entitled to legal aid.

There are no specific costs related to the introduction of an administrative review. It must be introduced in writing to the administration with stamp duties of around 14,60 €. The lack of a stamp does not render the request for review inadmissible.

Normally, according to the general rules, after the judgment the losing party bears the costs of the proceeding.

However, it is a general practice that the TAR declares that each party should bear its own costs. Costs depend on the subject-matter and amount/value in controversy (so called contributo unificato) and on lawyers' fees which vary from 4,000-5,000 € to 100,000-150,000 €. Other costs are the expenses for notification (which vary from 5 to 10 € each). Members of Legambiente have reported that environmental NGOs costs and lawyers' fees are a major obstacle. An NGO member has expressed worrying for an increase in the contributo unificato and for the insufficient level of funds available for parties entitled of State assistance. However, lawyers often provide legal assistance pro bono, which may be the case for large and well known associations, since lawyers can count on publicity and prestige deriving from these activities.

Furthermore, despite some fragmented initiatives (for instance free legal advice provided by local environmental protection agencies or other institutions), costs still represent an obstacle, especially with regard to lawyers' fees. As the judicial system is regulated in a comprehensive way, it is difficult to foresee specific provisions targeting only "environmental" justice.

Kazakhstan

The losing side pays court costs. However, the state fee for non-property related claims remains low enough for everyone to afford. Current tax legislation does not specify a state duty to be levied for review of court decisions.

Kyrgyzstan

Under the Civil Procedural Code, persons taking cases to court in circumstances established by law with the aim of defending the rights, freedoms and legally protected interests of others or state or public interests are exempted from state court fees.

With adoption of the Law on Guaranteed State Legal Aid, the Kyrgyz Republic guarantees every citizen who does not have the resources to defend his or her legal rights and interests qualified legal assistance funded by the state budget.

Another important step is that court fees are no longer payable when the case is initiated. Now the state fee is recovered based on the court decision.

Latvia

The administrative process in authorities is free of charge, but the administrative process in court is available upon payment of a State fee (20 LVL / €28).

In administrative cases which are too complicated for a party, upon the authority's or court's decision, considering the financial state of the individual, his/her representative gets paid from the State budget in the amount and procedure established by the CM.

According to APL, Article 128, paragraph 3, a court, considering person's financial state, can fully or partially release a person from the duty to pay the State fee. Low-income persons can apply for State-provided legal assistance, including representation at the court.

Montenegro

In April 2011, the Parliament of Montenegro adopted the Law on Free Legal Aid and defined that the establishment of a system of free legal aid would contribute to further strengthening of access to justice and provision of legal equality, which is the main principle of a legal state. Article 1 of this Law stipulates that free legal aid, in accordance with this Law, shall be provided for the purpose of practicing the right to a fair trial to a private entity whose financial situation does not allow practicing of the right to court protection without damaging necessary support of such entity or its family. The free legal aid implies ensuring necessary means for full or partly coverage of costs of legal counselling, making of notifications, representation in the procedure before the court, State Prosecution and the Constitutional Court of Montenegro, and in the procedure of out of court settlement of disputes, and the relieving from payment of costs of the court procedure (Article 2).

Netherlands

Financial assistance mechanisms:

- The submission of reservations about the draft decisions is free of charge;

- For appeals there is no obligation to be represented by a solicitor or a barrister;

- In the Netherlands one does have to pay court charges. In case of environmental disputes this amounts to € 150 for natural persons and € 298 for NGO?s. In case of appeals € 224 c.q. € 448 must be paid;

Furthermore there is an opportunity to receive legal aid for those who do wish to be represented by a solicitor or a barrister (Wet op de Rechtsbijstand). This only applies to persons who cannot afford legal aid. There are specific conditions for this provision. It also applies for small companies and NGO?s. For NGO?s the condition is that their total means may not exceed € 10.000.

Norway

The principle of strict liability applies, which means that the claimant may be liable to pay damages even if he acted in good faith, and substantial sums of money may be involved. The amendment to section 3-5 provided that in cases relating to the environment, a claimant may only be ordered to pay damages if he knew or should have known that his claim was not valid when his application for interim measures was granted. Similarly, section 15-6 was amended so that in cases relating to the environment, the claimant cannot be ordered to provide security to cover his possible liability for damages if interim measures are

granted after oral proceedings and the claim has been shown to be probable. These amendments, now found in sections 32-11 and 34-2 of the Civil Procedure Act, ensure that procedures under article 9 of the Convention are not prohibitively expensive.

Bringing a case to court always involves costs, which will depend on the legal procedure involved and the time a case is expected to take. The simplest procedure in the Norwegian legal system is to use a conciliation board (forliksrådet), where parties seek to reach a settlement. As a main rule, the conciliation board does not settle disputes where the public administration is one of the parties. Taking a case to a conciliation board costs NOK 860. If a case is not resolved through a conciliation board or is brought directly to a district court, the standard court fee is NOK 4300 for a main hearing that is stipulated to last for one day. It is only in special cases that a main hearing is stipulated to last for more than one day. In addition to the court fee, costs may be awarded in the case, for example for legal assistance and other expenses for all parties.

Poland

In the case of challenges brought to administrative courts the fixed court fee is PLN 100 (€ 30). In civil cases concerning the access to information, the court fee is PLN 30 (€ 7.50); in cases concerning the environment PLN 100 (€ 30).

In civil proceedings, courts can provide protection (the Code of Civil Procedure) by applying preventative measures such as abstaining from a particular action for the duration of the trial.

In administrative and judicial proceedings, the principle that the party having lost the case covers the costs of the successful party, is only valid when the successful party is the person challenging the decision. If the person loses the case, he or she does not bear the costs.

Persons without sufficient financial means can request an exemption from proceedings costs before civil or administrative courts. Such an exemption does not include the obligation to reimburse the costs to the opposite party in the event of losing a civil trial.

In the course of the report consultation, the non-governmental organizations (WWF Poland) indicated that in practice, the request submitted to the court, because of its specialized nature, must be prepared by a lawyer or a legal counsel. The cost of those services may be even several thousand zlotys (about € 1000).

Republic of Moldova

The legislation in force provides some incentives for the payment of state fees. Thus, under Article 85, para. (1), item a) CPC, exceptions can be made for:

- the plaintiffs – in the case of actions with respect to compensation for health damage caused by the bodily injury or other harm to health or the death as a result of a breach of environmental legislation;

- the plaintiffs - in the case of actions with respect to compensation for damage caused by environmental pollution and unreasonable use of natural resources.

Another reason for exemption from payment of state tax may be acting of the plaintiff in the interest of the society, which can be in the case of direct application of the law, if the person or NGO initiates an action to obtain compliance with environmental legislation.

State fees, from which the applicant is exempted, are paid by the defendant proportionally to the satisfied requirements of the action.

According to para. (3) of Art. 16 of the Law on Administrative Court, plaintiffs in actions arising out of administrative reports are exempted from the payment of the state tax.

Romania

Law 554/2004 on administrative contentions provides specific deadlines and reasonable taxes.

Serbia

- The Constitution of the Republic of Serbia guarantees everyone the right to legal assistance (Article 67). This is the first time in our legal system that this right has become guaranteed in the Constitution where it is stated that the right to legal assistance, including free legal assistance is exercised in accordance with the law.
- Provisions on legal assistance are incorporated in several laws, each regulating specific forms of legal aid. Law on Self-Government, Article 20, Item 31, specifies that the municipality organizes a legal assistance service available to the public. The Law on Lawyers, Article 25, stipulates that Bar Association can organize free legal aid on the territory of the first-instance court. In terms of criminal law protection, legal assistance, including free legal assistance is partially regulated by the Criminal Procedure Code and Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (Official Gazette of the Republic of Serbia No. 85/05). Free legal representation of parties in civil proceedings is regulated by Article 164 of the Civil Procedure Code.

- One of the principles of the Law on General Administrative Procedure (Article 15) is the principle of assistance to the parties. Article 110 of the Law on General Administrative Procedure states that a party may be exempt from payment of costs, if such costs cannot be borne without prejudice to the necessary sustenance of the party or his/her family.

Slovakia

Pursuant to the Act on court fees ecological organizations are exempted from court fees in terms of § 4 paragraph 2 subparagraph c). Moreover, in case of an organization other than an ecological organization and in case the applicant requests the provision of information and the obliged person is idle, the applicant can appeal to a court pursuant to § 250 of the Civil Procedure Code (OSP) so that it orders the obliged person that he/she start acting. In this case the judicial proceedings are exempted from court fees. The exemption shall apply also to cases where a person initiated proceedings against an illegal intervention of a public administration body which is not a decision but which injured his/her rights and interests protected by law. In other cases the person shall pay a court fee in the amount of EUR 66 upon the proposal to examine the legality of the body decision which shall be returned to him/her in case of a successful dispute solution. New proceedings start due to the application of the cassation principle of administrative justice repealing the administrative body decision and returning the matter to the administrative body for further proceedings.

The court fee in the amount of EUR 66 for proceedings related to examination of decision of administrative bodies could constitute some financial barrier

Slovenia

Since, due to financially unfavourable position of environmental Non-governmental organization (with status) in turn due to financial undernourishment, the NGO cannot finance attorney´s services, the implementation of non-governmental legal aid in combination with attorneys is necessary to cover this lack. Despite the fact that the MoE has begun to understand this issue and through its invitations to tender partly financially supports also such endeavours, there is no special webpage, which would contain user-friendly information on legal means in the field of environment. In relation to the problem described under item 1, more intensive informing of NGOs, with the status of operating in public interest on the basis of the Environmental Protection Act and Nature Preservation Act, along appropriate financing of legal support, would also result in actual implementation of legal means in environmental procedures. Case law would be formulated and given rights under the Convention would be perfected which would lead to improved practice also under the 1st and the 2nd pillar.

Sweden

There are no court fees or requirements concerning legal representation to gain access to justice in appeals of a permit decision or a decision on the examination or release of environmental information. Nor is a person who appeals against a decision responsible for the opposite party's litigation costs. The same applies to supervisory decisions.

Ukraine

Any claim filed to protect rights guaranteed by the Constitution, as well as claims relating to the environment, is examined according to the general rules of the type of procedure in question. There are no special rules on the time frame for hearing such actions, the cost of initiating and examining such actions, legal aid and so forth. So, for example, the procedure for examining a claim appealing a refusal to provide environmental information is no different from the procedure for examining a claim challenging a refusal to provide information in any other area.

Costs depend on the type of proceedings and the category of claim. The court fee for filing an administrative claim is not prohibitive (it is less than four euros). It costs twice as much to file an administrative or cassational appeal.

Procedural laws and the state duty (court fee) that is fixed by legislation completely fulfil Ukraine's international obligation to guarantee access to a quick procedure that requires minimal or no fees for a case to be examined.

In civil and commercial cases, court fees are a little higher but still do not impede access to justice.

However, claimants are obliged to pay for a lawyer (if they wish to be represented by a professional) as well as for legal and other expert reports that they initiate and expenses incurred by witnesses and expert witnesses. If s/he loses, the claimant must pay the respondent costs. This does not happen automatically – a winning respondent must file an application.

United Kingdom

We will treat any member of the public equally, regardless of nationality, citizenship and domicile. Any legal person has equal access to the courts. We believe that court fees for bringing a case are reasonable, for example the fees for bringing a judicial review in England and Wales are currently:

(a) £50 to apply for permission;

(b) £180 to bring a substantive case in the Administrative Court of the High Court, if permission is granted.

Court fees in Scotland are made separately. The current fee for petitioning the Court of Session is £170. In Scotland, there is no requirement to apply for permission to petition the Court for judicial review and, consequently, there is no associated fee to apply for permission.

The fees for Judicial Review in Northern Ireland are £200 for a leave application and £200 for notice of motion if leave is granted.

The Government's firm view is that while it is right that there should be access to the courts, there is no automatic right of free access to the courts. Those who can afford to pay fees should be expected to do so. It would not be appropriate for taxpayers to bear the full cost of civil proceedings when those who bring these proceedings can afford to pay. We continue to look for ways to improve access to justice and to provide fair and simple means of resolving disputes. These include helping people to help themselves through better advice and information or through mediation.

For England and Wales, Ministry of Justice has a court fees strategy that aims to deliver a fair system that makes best use of the taxpayer's money and protects access to justice through a well-targeted system of remissions for the less well-off. A remission is available to people who are in receipt of specified means tested benefits, people whose income is below a certain level or people whose financial commitments leave them with little or no disposable income. Public funding (formerly civil legal aid) is available for environmental cases and judicial review, subject to the statutory tests of the applicant's means and merits of the case and where no alternative source of funding is available. This enables us to target resources towards those who need them the most.

For public interest cases, the Legal Services Commission (LSC) (www.legalservices.gov.uk/) which administers the Legal Aid Scheme in England and Wales has revised its definition of Wider Public Interest. The LSC will regard a case as having Wider Public Interest where it is satisfied that:

(i) the case has the potential to produce real benefits for individuals other than the client (other than benefits to the public at large which normally flow from proceedings of the type in question); and (ii) the case is considered on its particular facts to be an appropriate case to realise those benefits. 106. For Judicial Review proceedings funding is not normally available where the prospects of success are assessed as "borderline" (i.e. there are difficult disputes of fact, law or expert evidence, it is not possible to say that Prospects of Success are better than 50%). However, funding is still available for 'borderline' cases which concern matters of Significant Wider Public Interest.

In addition in April 2010 the rules were changed so that legal aid would only be granted for judicial review cases where the claim would bring real benefits for the applicant or the applicant's family. In order to ensure that environmental challenges were not excluded, the rules specified that legal aid for judicial review would also continue to be available where the proceedings had the potential to bring real benefits for the environment. The LSC has also revised its guidance when looking at whether there is an alternative source of funding available for cases which have a significant wider public interest. The revised guidance sets out the LSC's approach to collecting contributions in public interest cases, with specific reference to the Aarhus Convention.

Legal Aid is available in Northern Ireland for Judicial Reviews where the applicant satisfies a financial means test and a merits test. Depending on the level of their disposable income and their disposable capital, a person may be assessed as being financially eligible with a contribution. Although there is no

exemption for applicants in receipt of legal aid, there is a general Court Service policy for remission and exemption of fees in place to assist those in receipt of state benefits or who feel they would suffer from hardship if they did pay the fee (http://www.courtsni.gov.uk/NR/rdonlyres/DB65E415-A99D-4C16-BBB9-C6C3537FF826/0/TMCourtFeesDoIhaveto.pdf).

In Scotland, justice policy is devolved to the Scottish Ministers, who are also moving progressively towards full cost recovery of civil actions as a matter of policy because it is not appropriate for the general public to bear the cost of resolving civil disputes: access to justice remains assured through the continuing (and recently enhanced) provision of civil legal aid and provisions for exemption from court fees for those in receipt of specified state benefits.

The general principle in civil proceedings in the UK is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the court has wide discretion to make a different order, taking into account all the relevant factors. Furthermore, the court is not limited simply to ordering (or not ordering) costs against the losing party, but can make a range of different orders, such as that only a proportion of the other party's costs should be paid.

The Civil Procedure Rules (CPR) (http://www.justice.gov.uk/civil/procrules_fin/) in England and Wales provide considerable flexibility to enable the court to give balanced consideration to all the circumstances, to reach decisions on costs in individual cases which are fair, and to meet the overriding objective of the CPR of dealing with cases justly. Similar flexibility is found in the provisions in Scotland and Northern Ireland. The Court of Appeal has given rulings and guidance in a range of cases relating to the interpretation of the CPR provisions.

In addition to these general provisions there are a variety of ways in which the courts can take action to ensure that costs are proportionate and fairly allocated. The CPR provides the courts with extensive case management powers to control and direct the course of proceedings to ensure that these are conducted on as timely and efficient a basis as possible. The courts also have extensive powers to control costs at different stages of the proceedings. As well as detailed provisions which govern the assessment of costs at the conclusion of proceedings, the CPR sets out the powers of the court to make an order capping costs in an individual case at any stage of the proceedings.

Special provisions exist to limit the costs of judicial review proceedings. So for example the CPR provide that the courts will generally consider permission to proceed with judicial review proceedings without a hearing and that where there is a hearing, the court will not generally make an order for costs. In addition costs awarded against a claimant who fails to obtain permission are generally limited to the costs of the defendant's acknowledgement of service.

Provisions also exist for the court to make a Protective Costs Order (PCO) – (a "protected order for expenses" in Scotland) – at the outset of proceedings (or at any other stage) where the claim raises issues of public interest. Guidance on PCOs has been established by the Court of Appeal, which means that judges hearing judicial reviews in England and Wales are obliged by the doctrine of binding precedent (based on the hierarchy of the courts) to take it into account in considering any application for a PCO. These provisions on PCOs can help to provide certainty to a party as to their potential exposure to an adverse costs order if they are ultimately unsuccessful. The UK authorities are currently working to codify the case law on PCOs into court rules. This codification will give added clarity and transparency to the law and the procedure for making an application for a PCO, thereby providing certainty for applicants at the outset of the proceedings about the costs they will face if their claim fails and certainty as to the modest costs of applying for a PCO. It is anticipated that these rules will be in place by April 2011.

Decisions of the Court of Session have confirmed that protective expenses orders are available in Scotland. The Court of Session Rules and new rules of court are in preparation to regulate the award of such orders in environmental cases. Decisions of the Court of Session have confirmed that protective expenses orders are available in Scotland. The Court of Session Rules Council has considered and recommended draft rules on such orders in environmental cases (minutes from the relevant meeting of the Council are available at http://www.scotcourts.gov.uk/session/rules_council/Meeting%20of%2011%20Oct%202010.pdf). The Scottish Government has made these draft rules available to the European Commission for comment.

In relation to England and Wales, the costs arising from civil litigation were considered in Lord Justice Jackson's Review of Civil Costs, published in January 2010. (http://www.judiciary.gov.uk/publications-and-reports/reports/review-of-civil-litigation-costs/index?knownurl=http%3a%2f%2fwww.judiciary.gov.uk%2fpublications-and-reports%2freports%2freview-of-civil-litigation-costs.) This independent report includes a wide range of recommendations aimed at making the costs of civil litigation more proportionate, including in the area of Judicial Review. The Ministry of Justice will shortly be consulting on the key recommendations. A review of the Civil Courts was carried out in Scotland by the Rt Hon Lord Gill, the Lord Justice Clerk. Amongst many other things, Lord Gill recommended that express power should be conferred upon the courts in Scotland to make special orders in relation to expenses in cases raising significant issues of public interest. That recommendation is likely to be superseded, as far as environmental cases are concerned, by the new rules of court referred to in paragraph 114.