

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

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The way forward

ALTERNATIVE DISPUTE RESOLUTION OF ENVIRONMENTAL CASES: OVERVIEW OF PRACTICE IN THE REGION OF THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

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 and the analytical study on access to justice in environmental matters (article 9, paragraphs 2, 3 and 4, of the Convention) in countries of Eastern Europe, the Caucasus and Central Asia² that was carried out under auspices of the Task Force on Access to Justice in 2011.

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>

² The study is available from http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/AnalyticalStudies/EECCA_study_AJ/EECCA_study_EN_Final.pdf

Austria³

1. The instrument of environmental mediation provides a reference to article 9, paragraph 3, of the Convention with regard to the inclusion of the concerned public. Environmental mediation is a voluntary and structured procedure in the framework of which all those affected by a project which is relevant for the environment are striving for a joint and durable solution. This process covers mediation procedures with regard to projects laying the emphasis not only on economic and social interests, but also on aspects of environmental protection, quality of life and the development of areas (of unspoiled nature). It is especially about projects subject to environmental law provisions or possibly having an impact on the environment (emissions, consumption of resources, use of areas of unspoiled nature, etc.). The 2000 Austrian EIA Act provides that the public authority shall be entitled to interrupt the approval procedures upon the request of the project applicant in order to enable a mediation procedure. The results of the mediation procedure are submitted to the authority responsible for EIA and can be considered by such authorities in the further stages of the approval procedure as well as in the decision.

Belarus⁴

2. According to the Code of Economic Procedure (as revised in 2011) the resolution of disputes by mediation serves to assist the parties in establishing the facts on the conflict that has arisen between them; to reach understanding on legal realism and reasonableness of their positions in the conflict, their claims and objections; to clarify, comprise and converge their views on the ways to resolve the dispute, to find and recommend them the ways to resolve the conflict that would satisfy both parties. The mediator is appointed by the economic court on the request of a party or on its own initiative, with the consent of the parties.

3. Examples of dealing with disputes relating to the environment with the assistance of the mediator are absent.

Kazakhstan⁵

4. In January 2011, the Law of the Republic of Kazakhstan on Mediation was adopted. This Law shall come into force in August 2011. Under the Law mediation can be applied to resolve disputes (conflicts) that arise out of civil, labor, family and other relationships with participation of individuals and (or) legal entities, as well as cases of minor and moderate crimes heard in criminal proceedings, if not provided otherwise by the laws of the Republic of Kazakhstan. Mediation procedure does not apply to disputes (conflicts) that arise from the relationship noted above, if such disputes (conflicts) affect or may affect the interests of third parties not involved in the mediation procedure, and those found incompetent (incapacitated) by the court.

5. Mediation procedure also does not apply to disputes (conflicts) that arise out of civil, labor, family and other relationships with individuals and (or) legal entities, when one of the party is a public authority.

³ 2011 National Implementation Report from Austria, para. 103

⁴ Study on access to justice in environmental matters in the EECCA countries, p. 49

⁵ Study on access to justice in environmental matters in the EECCA countries, p. 77

Kyrgyzstan⁶

6. The Constitution provides for the possibility of establishing aksakal courts (local courts of elders and prominent individuals). The work of aksakal courts is governed by the Aksakal Courts Act. Aksakal courts hear cases that are submitted to them, as specified by law, with the consent of the parties. The cases relate to property, family or other disputes. There is an established procedure under national law for appealing against a decision of an aksakal court.

7. Courts of arbitration play an important role in the legal system as an extrajudicial mechanism to protect rights and legal interests.

Luxembourg⁷

Based on a law of 22 August 2003, an institute of mediator was established. His mission is to receive, under the conditions set out in that law, claims by persons formulated in relation to an issue that concerns them, related to the functioning of State and community administration, as well as public authorities related to the State and communities, with the exception of industrial, financial and commercial activities. Any natural or legal person under private law who considers, in relation to an issue that concerns him/her, that an authority under article 1 has not acted in conformity with its obligations or against conventions, laws and regulations in effect, can request the case to be brought to the attention of the mediator through an individual claim submitted in writing or orally to the mediator's secretariat. When a claim seems justified, the mediator advises the claimant and the administration and suggests to them any recommendation that might permit a friendly resolution of the case. The recommendations may contain propositions destined to improve the functioning of the institution concerned.

When it appears to the mediator, at the occasion of a claim which was brought to the mediator, that the application of a decision in question may cause injustice, he/she may recommend, in respect of legal and regulatory provisions, any solution to the institution concerned that could permit an equitable resolution of the claim and suggest any modification that seem appropriate to the legal or regulatory text that formed the basis of the decision.

Norway⁸

8. 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

⁶ 2011 National Implementation Report from Kyrgyzstan, para. 252 and 265.

⁷ 2011 National Implementation Report from Kyrgyzstan, para. 252 and 265.

⁸ 2011 National Implementation Report from Norway, para. 28 (d) and (e)

addition to the court fee, costs may be awarded in the case, for example for legal assistance and other expenses for all parties.

Republic of Moldova⁹

9. Indirectly, the possibility of a non-judicial dispute resolution is provided for in Article 94 of the Law on Environmental Protection, according to which disputes in the field of environmental protection in which the interested parties cannot reach a mutual agreement, shall be settled in judicial procedure. The Law on Mediation (2007), provisions of which are applicable to environmental disputes, is in force.

10. However, the practice of mediation is minimal, and there are no examples of resolution of environmental disputes. The number of mediators is scarce; their services are not in demand.

Russian Federation¹⁰

11. The Law on Alternative Procedure of Dispute Resolution involving mediation (mediation procedure) (entered into force from 1 January 2011) regulates relations associated with the application of mediation procedure to the disputes arising from civil relations. However, it says that this procedure does not apply to disputes, if such disputes affect or may affect the rights and legitimate interests of third parties not involved in the mediation procedure, or the public interest. Practice of application of this law in matters relating to the environment is absent.

Serbia¹¹

12. A reference can be given to articles 8, 12 and 18 of the Law on Mediation stipulating that should the parties propose by a mutual agreement or should the court find that the dispute can be settled successfully through mediation, the parties shall be instructed to mediation. A mediator is a third-party neutral person who mediates between two parties for the purpose of settling their dispute in compliance with the mediation principles.

Tajikistan¹²

13. According to the Law on Arbitration Courts (2008) the parties upon their consent have the right to appoint a third party to resolve the dispute ad hoc. The third party acting as arbitrator shall meet certain requirements: shall have a higher legal education, be impartial, capable, have no previous convictions, a judge, prosecutor, etc.

14. The parties to arbitration are legal entities, private entrepreneur and individuals who filed lawsuit to protect their rights and interests to the arbitration court, and those against whom the lawsuits are brought (Article 2 of the Law on Arbitration Courts). In accordance with this provision non-governmental

⁹ Study on access to justice in environmental matters in the EECCA countries, p. 104

¹⁰ Study on access to justice in environmental matters in the EECCA countries, p. 117

¹¹ 2011 National Implementation Report from Serbia, response to question XXVIII (a) (i).

¹² Study on access to justice in environmental matters in the EECCA countries, p. 131

organizations can apply for the arbitration. Disputes arising from civil and economic relations can be decided in arbitration.

United Kingdom¹³

15. The UK Government is also a strong supporter of alternative dispute resolution and has introduced initiatives to encourage and promote its use in all civil disputes.

¹³ 2011 National Implementation Report from the United Kingdom, para. 94.