

**Convention on Access to Information, Public Participation in Decision-making
and Access to Justice in Environmental Matters (Aarhus Convention)**

8th Meeting of the Task Force on Access to Justice

Statement on behalf of Georgia on the implementation of article 9 of the Convention

Ministry of Environment and Natural Resources Protection of Georgia would like to thank the secretariat for having made possible its participation in the Task Force.

On Environmental Policy of Georgia

Generally speaking, since 2012 the environment is the one of the priorities of the new Georgian government, and the situation with regard the public participation and therefore application of the Aarhus convention has been dramatically changed. There was no important decision made without active involvement of the public and interested stakeholders and in this case we apply the Aarhus convention as a primary source of law. Public Involvement includes the publishing the EIA reports and development plans, as well as the draft laws for the public hearing, which means that everyone interested can make comments and propose improvements of these documents.

Brief Overview of Georgian Judicial System

There are three levels in the judicial system in Georgia, the Supreme Court, Court of Appeals and the District Courts. There is also separately to consider the constitutional court. There are no specialized tribunals in Georgia, dealing with environment. Thus, the case related to the environment may fall under the civil, criminal or administrative procedure depending of the content of the claim itself. To be more specific in relation with the article 9 of the convention, in case there is violation, the omission of the public authorities usually may be challenged through the administrative law procedure.

Implementation of article 9 of the Convention.

According to the constitution of Georgia article 37 (5) everyone shall have the right to complete, objective, and timely information about environmental conditions. And according to the General administrative code of Georgia article 42 (a) the classification (inadmissible to make confidential) of the environmental information is prohibited. And as there is no specific environmental action, in terms of the court proceedings, the general concept of the public information developed in the code is usually used for the case of the access to justice for the environmental information. The important development to note is also, that the practice of applying of the Convention by judges is becoming widespread.

Implementation of article 9, paragraph 1, of the Convention. According to the General Administrative code of Georgia the environmental information is public, and the administrative authority has to issue the requested information within the 10 days (article 40). According to the same code everyone may challenge the violation of the right to access to the public information, at the supervising administrative authority first, and only after the exhaustion of the mandatory preliminary review procedure, at the general courts. And according to the General Administrative Code of Georgia a public agency shall designate a public servant, responsible for providing public

information (article 36). In particular, the administrative procedural code article 22 (1) states, that the plaintiff should directly suffer from the implementation of the challenged administrative act or omission, or it has to have directly limited his/her rights. However, according to the recently developed practice everyone can challenge the action or act, which is in conflict with the requirements of the environmental legislation, including the challenge, before the court and before the relevant administrative body as well, without considering the fact of the direct effect of the challenged act on the plaintiff/applicant. The final decision is issued in written form and is binding on the administrative authority violated the right. Court decisions are public, as well as the administrative omissions or acts could be publicly viewed, in case there is no classified information included. As for the other quasi-judicial institution authorized to review the environmental related case, there are no such bodies, existing in Georgia, as according to Georgian constitution article 83, law prohibits the establishment of any other courts except for the General courts. As for the accessibility of the justice, in terms of its “price”, there is minimal amount required, decided by the judge on case by case basis in accordance with requirements of the law, and also number of specified categories of the plaintiffs, including the disabled persons, educational unions, and foreigners are free of charge, as well as the review by the supervising administrative body is free of charge for everyone. As for the other costs, the parties are required to cover all the costs for their witness’s participation in the proceedings, as well as the costs for the expert, if the participation of the later is initiated by the party. The same is regarding the attorney’s support, the parties that will lose the case, will usually pay for the representatives of the other party, as well as they will bear the costs for the action, this information is the part of the ruling by the court. In case, the expertise if required by the court, the costs are covered by the state itself.

Implementation of article 9, paragraph 2, of the Convention the right to appeal decision of an administrative body is provided by Chapter XIII - the General Administrative Code of Georgia, An administrative body is obliged to involve the interested parties in the process of consideration of an appeal. The interested parties shall have the right to express its opinion, defend its interests and conduct the oral hearing. The oral hearing is open. Therefore, the person who is not linked directly with the consequences of the administrative act or omission, according to the new practice, inspired by the convention, is now able to bring the action before the court or other competent administrative body. The case is the same with regard to the environmental NGOs. The court may also, decide to include the interested person in the processing with the third party status, which gives the interested party the opportunity to present his/her views before the court.

Implementation of article 9, paragraph 3, of the Convention. According to the newly established practice national legislation the public representatives, are able to bring action before the court or relevant administrative body even if their rights were not violated or limited by the decision or action of an administrative authority, as a result of which he incurred damage.

Implementation of article 9, paragraph 4, of the Convention. Chapter IX of the General Administrative Code of Georgia regulates issues of public administrative proceeding. In particular, it regulates the issuance of an individual legal-administrative act through a public administrative

proceeding, publishing of the notice regarding submission of documents for public access, the list of documents to be presented for public access, procedures for presenting of opinions and suggestions, drafting and submission of an individual legal-administrative act for public access, etc. The same law regulates the proceedings before the court for the administrative cases, including the submission of an administrative complain to an administrative body, review and decision-making on the complaint and procedures of filing a complaint to a court by a citizen, if his rights related to access to information and participation in a decision-making process were violated by an administrative agency. So, the detailed procedure is prescribed by law. As for the length, it is also stated in the same law and the length of the procedure is two month (there are exceptions), according to the procedural legislation. It is important to note, that the implementation of the individual administrative act is automatically suspended (there are exceptions), when the case is brought before the court. The court is also authorized to issue a preliminary ruling, as an interim measure, in order to secure the guarantees in case the plaintiff will win the proceedings.

Implementation of article 9, paragraph 5, of the Convention. In the event of refusal to issue information, a public institution is obligated to provide to the applicant within 3 days from the date of adoption of a decision written explanation of his/her rights and ways of appealing of a decision, as well as indicate the structural subdivision or a public agency, with which it conducted consultations in regard to refusal of provision of information And the reason for the refusal.

Challenges in the implementation of article 9 of the Convention

As for the challenges, generally speaking, the main concerns for today, are the following; there is no official court statistics or registration with regard to the violation of the right on access on environmental information, that is disturbing factor to have the real picture. However, the MENRP maintains statistics on environmental court proceedings and their outcomes, which is reflected in the annual report of relevant structural unit. The Department of Environmental Supervision under the MENRP within the limits of its competence maintains registration, systematization and analysis of identified violations.

In conclusion, on behalf of Georgia, the ministry would like to thank you again for having made possible our participation in this Task Force. We look forward to continuing our active involvement in future meetings.