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## Economic Commission for Europe

### Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

#### **Fifth session**

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 4 (c) of the provisional agenda

**Substantive issues: access to justice**

### **Report of the Task Force on Access to Justice on its seventh meeting\***

#### *Summary*

At its second session (Almaty, Kazakhstan, 25–27 May 2005), by its decision II/2 the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters established the Task Force on Access to Justice to undertake a number of tasks related to promoting access to justice on environmental matters, including analytical work on financial and other barriers to access and the sharing of relevant experience and examples of good practice (ECE/MP.PP/2005/2/Add.3, paras. 30–33).<sup>1</sup> By that same decision, the Meeting of the Parties requested the Task Force to present the results of its work for consideration and appropriate action by the Working Group of the Parties (*ibid.*, para. 33 (i)). At its fourth session (Chisinau, 29 June–1 July 2011), the Meeting of the Parties extended in time the mandate of the Task Force to carry out further work (ECE/MP.PP/2011/2/Add.1, decision IV/2, paras. 12 and 13).<sup>2</sup>

In accordance with the above mandates, the present document containing the report of the seventh meeting of the Task Force (Geneva, 24–25 February 2014) is being submitted for the consideration of the Meeting of the Parties at its fifth session.

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\* The present document is a late submission owing to editorial and secretariat capacity constraints.

<sup>1</sup> Available from <http://www.unece.org/env/pp/mop2/mop2.doc.html>

<sup>2</sup> Available from <http://www.unece.org/env/pp/mop4/mop4.doc.html>



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## Introduction

1. The seventh meeting of the Task Force on Access to Justice under the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held in Geneva on 24 and 25 February 2014.<sup>3</sup>
2. The meeting was attended by experts designated by the Governments of Albania, Armenia, Azerbaijan, Denmark, Estonia, Greece, Ireland, Latvia, Norway, the Republic of Moldova, Romania, Slovakia, Spain, Sweden, the United Kingdom of Great Britain and Northern Ireland and Uzbekistan. The European Commission was present on behalf of the European Union (EU). A representative from the European Investment Bank was also present.
3. The following non-governmental organizations (NGOs), many of which coordinated their input within the framework of the European ECO Forum, were represented at the meeting: Arnika (Czech Republic); Association for Environmental Justice (Spain); Bureau of Environmental Investigation (Ukraine); ClientEarth (Belgium); Coalition for Access to Justice for the Environment (United Kingdom); EarthJustice (Switzerland); ECOGLOBE (Armenia); Environmental Management and Law Association (Hungary); Green Network (Belarus); Independent Ecological Expertise (Kyrgyzstan); Swedish Society for Nature Conservation (Sweden); and Volgograd Ecopress Information Centre (Russian Federation).
4. Also present at the meeting were a number of judges and representatives of academic and judicial institutions in Belarus, Germany, Japan, Kyrgyzstan, Latvia, Serbia, Switzerland and the United Kingdom, as well as a representative from the EU Forum of Judges for the Environment. Experts from Albania, Bosnia and Herzegovina, Montenegro and the former Yugoslav Republic of Macedonia, as well as Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), who participated in the study on access to justice in South-Eastern Europe, were also present.
5. Representatives of the Regional Environmental Centre for Central and Eastern Europe (REC), the Cercle Català de Negocis (Catalan Business Circle) and the European Chemical Industry Council also attended the meeting.

### I. Opening of the meeting and adoption of the agenda

6. The Task Force Chair, Mr. Jan Darpö (Sweden), opened the meeting.
7. The Task Force adopted its agenda as set out in document AC/TF.AJ-7/Inf.1.

### II. Substantive issues: effective standing, remedies and costs

8. At the seventh meeting, the focus was placed on the discussion on standing, remedies and costs in the light of the analytical work of the Task Force undertaken since its sixth meeting (Geneva, 17–18 June 2013) and new developments in legislation and practice that had taken place in Parties, Signatories and other interested States.

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<sup>3</sup> Documents for the seventh meeting, including a list of participants, statements and presentations are available online from <http://www.unece.org/env/pp/aarhus/tfaj7.html>

9. Ms. Sabine Schlacke, a professor of public law from Munster University (Germany), delivered a keynote statement on the Europeanization of access to justice in environmental matters from a German perspective. She addressed the application of the German Code on Administrative Court Procedure and the German Environmental Appeals Act in the light of EU law and recent case law of the German Federal Administrative Court and the Court of Justice of the EU (CJEU) relevant to article 9 of the Convention (namely, the Slovak Brown Bear case,<sup>4</sup> the Altrip case<sup>5</sup> and the Trianel case<sup>6</sup>). She deliberated on the possible reconciliation of the German individual right-based approach and the objective interest approach to access to justice in environmental matters. She also highlighted the necessity to expand the scope of the German Environmental Appeals Act, to shift the burden of proof of the impact of an error in the final decision from the claimant to public authorities and to extend individual rights in the environmental impact assessment procedure. Those changes would require a change in the case law and the amendments to the mentioned legislative acts, ensuring wide access to justice as provided by article 9, paragraphs 2 and 3, of the Convention.

10. Participants were also informed about progress made on the study on standing for individuals, groups and environmental NGOs in six countries of Eastern Europe, the Caucasus and Central Asia (Armenia, Azerbaijan, Belarus, Kazakhstan, the Republic of Moldova and Tajikistan), which the Task Force had decided to undertake at its fifth meeting (ECE/MP.PP/WG.1/2012/5, para. 29).

11. Mr. Dmytro Skrylnikov, a representative of the Bureau of Environmental Investigation (Ukraine), presented the following preliminary findings of the study and the Task Force further discussed the ways to address them:

(a) In most target countries, there was an ambiguous interpretation or application of legitimate interest (legally protected interest) for individuals and NGOs in cases relating to the environment;

(b) The legislation of the target countries needed further improvement in order to address existing conflicts between the relevant environmental legislation, civil procedural legislation (economic procedural or administrative procedural legislation) and legislation on NGOs and to ensure the possibility to challenge actions or omissions of private persons or public authorities violating the laws relating to the environment;

(c) The concept of lawsuits on behalf of an indefinite number of known persons (class actions) in all the target countries in relation to consumers' rights could be extended to the cases relating to the environment by altering legislation and case law;

(d) There was a need to eliminate financial barriers to access to justice in cases relating to the environment and the general mistrust of the judiciary among the public in some countries, as well as to the lack of jurisprudence on the issues addressed in the study ;

(e) Raising awareness of judges, prosecutors, lawyers, other legal professionals and NGOs about legislation and case law relating to the environment, and especially

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<sup>4</sup> Case C-240/09 *Lesoochranárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky* [2011] ECR I-1255, available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-240/09#>

<sup>5</sup> Case C-72/12, *Gemeinde Altrip and Others v. Land Rheinland-Pfalz* [2013], OJ C 204/6, available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-72/12#>

<sup>6</sup> Case C-115/09, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v. Bezirksregierung Arnsberg, Trianel Kohlekraftwerk Lünen (intervening)* [2011] ECR I-3673, available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-115/09#>

concerning the Convention and other international agreements, remained important. Those topics should be reflected in the educational and training programmes for judges, prosecutors and other legal professionals, as well as in the teaching material used for those purposes.

12. Following a discussion, the Task Force:

(a) Welcomed the preliminary findings of the study and requested any comments to be submitted to the secretariat by 10 March 2014;

(b) Requested the secretariat in consultation with the Chair of the Task Force to finalize the study before the fifth session of the Meeting of the Parties;

(c) Encouraged national focal points to translate the study in the national languages, to inform the judiciary, judicial training institutions, prosecutors, public interest lawyers and other professionals about the study and to use its findings and conclusions to facilitate the national dialogues on access to justice matters.

13. Participants were also informed about progress made on the study on access to justice in environmental matters in South-Eastern Europe (Albania, Bosnia and Herzegovina, Croatia, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), Montenegro, Serbia and the former Yugoslav Republic of Macedonia ), which the Task Force had decided to undertake at its fifth meeting (ECE/MP.PP/WG.1/2012/5, para. 31). A questionnaire had been prepared for national experts to use in preparing their national reports in cases covering article 9 of the Convention, with responses to be illustrated through case examples. Consultations on the completed questionnaires had already been carried out with the support of national focal points, REC and the Organization for Security and Cooperation in Europe (OSCE). An expert meeting on the study had been held prior to the seventh Task Force meeting. The final study would include a synthesis report and chapters on each country.

14. Mr. Csaba Kiss, a representative of the Environmental Management and Law Association (Hungary) presented the progress of the work and the preliminary findings of the study regarding access to justice in cases related to access to information, public participation and violations of national law relating to the environment. In particular, standing in environmental cases in the region was primarily based on a traditional right-and legal interest-based approach, except for the cases involving violations of national law relating to the environment, where *actio popularis* was also known. Lack of timeliness and some costs issues potentially could constitute barriers to access to justice. Such issues included court fees proportionate to the value of the case, high costs for evidence and bonds and the absence of legal aid mechanisms in some countries as well as its non-applicability to support NGOs claims. The need to improve access by the public to the full information on administrative and judicial review procedures, as well as to decisions of courts and other bodies on cases related to the environment, was also highlighted.

15. The Task Force:

(a) Welcomed the progress in the preparation of the study on access to justice in South-Eastern Europe;

(b) Took note that the advance version of the study, which would be made available before the fifth session of the Meeting of the Parties;

(c) Expressed its appreciation to the national focal points and national experts from Albania, Bosnia and Herzegovina, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, as well as to the experts from Croatia and Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), REC and OSCE Europe for

their cooperation in carrying out the study and the consultation process on the national studies prepared within its framework.

16. In further discussion, some participants reiterated their support for treating environmental NGOs similarly to consumer protection organizations under national legislation, which might facilitate effective access to justice in environmental cases. That could have an influence on standing, the distribution of the burden of proof and court fees in environmental cases.

17. Recalling objective III.6 of the Convention's Strategic Plan 2009–2014 (ECE/MP.PP/2008/2/Add.16), which invited Parties to establish assistance mechanisms where appropriate, the Task Force focused its further discussion on legal aid schemes for members of the public and possible ways to support public interest lawyers.

18. Ms. Lissie Jorgensen, a representative of Denmark, shared information regarding the application of the legal aid scheme in the country. The criteria for its application included the fulfilment of certain financial conditions and a reasonable cause to conduct litigation. If there was a reasonable cause but not all other conditions fulfilled, legal aid still could be granted depending on the case. The case should be one of principle or in the interest of the public or of significance to the applicant's social or occupational situation. Some circumstances, such as legal expenses insurance and the possibility to bring a case before administrative appeal board, could exclude the application of the legal aid scheme. Legal aid included the appointment of the lawyer and compensation for the lawyer's salary and the expenses of the lawsuit. Some organizations also provided free legal assistance on a voluntary basis.

19. Ms. Beate Ekeberg, a representative of Norway, provided detailed information on the legal aid scheme in Norway. She identified the sources of legal information in general, such as the Internet, public and private institutions as well as lawyers and legal advisers. The State supported private institutions offering legal aid by providing grants. The legal aid scheme aimed to support individuals and non-profit organizations that did not have enough means to pay for legal aid when such aid was of great importance to them and their welfare. Non-profit organizations were entitled to apply if they had a particular reason. Some circumstances, such as insurance and the availability of other sources to cover legal expenses, could exclude the application of the legal aid scheme. A means test would be applicable for the environmental cases. Legal aid could be provided either as legal advice or, if the case had been brought before a court, in the form of free legal representation. Court fees could be also waived.

20. Mr. Brian Ruddle, a representative of the United Kingdom updated participants on the new developments in the application of the legal aid scheme for members of the public in England and Wales. The changes had been introduced in accordance with the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and a new executive agency had been established in 2012 for making determinations on the provision of legal assistance. The scheme could be applicable to judicial review cases if there was potential to produce a benefit for individuals, a member of an individual's family or the environment. It also could be applied in certain cases of nuisance, such as pollution of the environment. Eligibility was broadly based on two tests: a means test depending on the income and capital of the applicant and a merits test. The means test could be waived in cases of public interest. The merits test included a proportionality criterion assessing whether the case justified the likely costs and a prospects of success criterion. The new system aimed to be more efficient in its application, especially given the financial crisis.

21. Mr. Eduardo Salazar, speaking on behalf of the European ECO Forum and Justice and Environment Network, stressed the key role of legal aid in removing barriers to access to justice in cases of public interest relating to the environment. Currently, legal assistance

could be provided by bar associations, local environmental NGOs, university law clinics and through pro bono work by public interest lawyers. However, the various legal aid schemes and their application in environmental cases significantly varied across the region. Legal aid schemes might cover court fees, lawyer and expert fees and other costs. Nevertheless, the application of the legal aid schemes could often be impacted by the financial situation and lack of funds, or restricted with regard to repeated requests from environmental NGOs or a success assessment of particular environmental cases. For example, in Spain some environmental NGOs could be entitled to legal aid but small or new environmental NGOs experienced difficulties. The proposed changes to the legal aid law might not resolve that concern. To address those issues, the speaker proposed the creation of a United Nations Economic Commission for Europe environmental litigation fund to provide non-profit environmental litigation groups with the financial assistance to advocate for environmental issues of public interest.

22. A representative of Spain brought to the attention of the Task Force the key findings of the recently completed study on access to justice in environmental matters<sup>7</sup> with regard to the application of the national legal aid scheme. Two trends in the interpretation of the relevant Legal Aid Law had been identified through the study: (a) the legal persons entitled to exercise the environmental *actio popularis* by meeting the necessary requirements had to fulfil additionally the general standards under the Legal Aid Law to benefit from access to legal aid; and (b) the Legal Aid Law provided an express and unconditional award of the right to free litigation for environmental NGOs, meaning that they would be entitled to benefit from legal aid only by meeting criteria for standing in the relevant cases. The need for further dialogue with the Ministry of Justice and other stakeholder on the matter was clearly identified.

23. In the succeeding discussion, several participants noted the lack of information and experience regarding the application of legal aid schemes to environmental NGOs and other members of the public in environmental cases in their respective countries, as well as regarding access to information on legal aid in environmental cases for interested members of the public.

24. Following the discussion on legal aid and support for public interest lawyers, the Task Force:

(a) Took note of the experiences, including existing good practices and challenges, with regard to the legal aid schemes and support for public interest lawyers shared by Denmark, Norway, Spain and the United Kingdom, as well as the European ECO Forum and the Justice and Environment Network;

(b) Noted that the criteria for eligibility of NGOs to apply for legal aid in environmental cases would need further consideration by the Task Force;

(c) Encouraged Parties, Signatories and other interested States to post information on legal aid schemes that individuals and NGOs could apply for in environmental cases on the national nodes for the Aarhus Convention that could be linked to the Aarhus Clearinghouse and to provide the secretariat with the relevant information.

25. Afterwards, several participants shared their experience with regard to the new developments in legislation and practice in their respective countries.

26. Ms. Noriko Okubo, a professor of administrative and environmental law from Osaka University (Japan), addressed the issue of the judicial review of public authorities'

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<sup>7</sup> Available from <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpftfwg/envppatoj/analytical-studies.html>

omissions in Japan. She referred to the Kansai Minamata disease case, which had resulted in a landmark decision regarding the State's liability for not using its regulatory power in environmental matters. The public authorities were usually given considerable discretion as to how and when to exercise their regulatory power, specifically on pollution control. According to Japanese case law, the failure of public officers in enforcing regulations was considered unlawful if such a failure was deemed to be extremely unreasonable in light of three factors: (a) the purport and purpose of the laws and ordinances that were the basis of the authority; (b) the nature of the authority; as well as (c) the specific circumstances of the case. In 2004, the Administrative Case Litigation Act introduced the "mandamus action" through which the plaintiff was able to seek a certain act of a public authority (e.g., an order to suspend a factory's operation) by demonstrating a legally protected interest. Prior to the amendment, the plaintiff would only have standing if a mandatory administrative response was clearly prescribed in law. The new law contributed to the more effective control of illegal failures by public authorities. However, as for other environmental matters, such as nature protection, judicial review was still hampered because of the lack of standing for local residents, environmental NGOs and local government.

27. A representative of the European Commission detailed the recent developments with regard to the Commission initiative on access to justice in environmental matters at member State level in the field of EU environment policy<sup>8</sup> and its impact assessment procedure which was expected to be finalized in March 2014.

28. Ms. Joanna Cornelius, a representative of the Swedish Society for Nature Conservation addressed new developments in Swedish case law regarding decisions on hunting of protected species and forestry permits. Such decisions had not in the past been covered by the scope of the Swedish Environmental Code and, until recently, standing to challenge them had generally been limited to parties with an interest in the case, i.e., those whom the administrative decision concerned and adversely affected. While reviewing a decision on the hunting of wolves in the light of the already-mentioned Slovak Bear case, the Administrative Court of Appeal had recognized the significance of such decisions for nature conservation and required that the Swedish administrative law be interpreted in such a way that it would be possible for environmental organizations to challenge in court administrative decisions conflicting with EU environmental law. In another case, the court found that forestry permits should also be covered by article 9, paragraph 3, of the Convention and that environmental NGOs should be entitled to challenge such permits.

29. Ms. Carol Day, a representative of the Coalition for Access to Justice for the Environment, spoke about judicial reform in England and Wales, public consultations on further reforms to judicial review and recent developments in the case law regarding costs, as well as limited standing for environmental NGOs and some other challenges in access to justice in Scotland. In particular, the time limits for bringing a judicial review in planning cases had been reduced from three months to six weeks, the right to an oral renewal in cases assessed by a judge as "totally without merit" had been banned and there were increased fees for bringing judicial review (including the introduction of a new fee for oral renewal of a permission hearing), all of which might have an adverse effect on the ability of the public to bring cases. Regarding costs, there had been some new developments following the judgment of the Supreme Court in the Edwards case<sup>9</sup> and CJEU case C-530/11.<sup>10</sup> The Supreme Court had held that the test for prohibitive expense was not

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<sup>8</sup> Available from [http://ec.europa.eu/smart-regulation/impact/planned\\_ia/roadmaps\\_2014\\_en.htm](http://ec.europa.eu/smart-regulation/impact/planned_ia/roadmaps_2014_en.htm)

<sup>9</sup> *R (on the application of Edwards and another) (Appellant) v. Environment Agency and others (Respondents)* [2013] UKSC 78.

<sup>10</sup> Case C-530/11, *Commission v. United Kingdom* [2014], ECR 0000, available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-530/11#>

purely subjective and the merits of the case should be taken into account. That might comprise a reasonable prospect of case success, the importance of what was at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure and the potentially frivolous nature of the claim. With reference to the CJEU judgment, the representative stressed the importance of certainty regarding litigation costs for the claimants; the issue should not be left merely to the court's discretion and possible legislative improvements should also be considered in that regard.

30. Following the discussion on new developments in law and practice regarding standing, remedies and costs, the Task Force:

- (a) Took note of new developments in legislation and practice with regard to standing, remedies and costs in the EU, Sweden and the United Kingdom;
- (b) Noted that the issue would need further consideration by the Task Force;
- (c) Emphasized that the lack of case law related to the Aarhus Convention and the lack of access to court decisions remained a shortcoming in some countries;
- (d) Recognized the need for strengthening support for NGOs and public interest lawyers in order to develop more case law;
- (e) Highlighted that in developing legislation related to access to justice in environmental matters countries should have a more coherent approach with regard to laws relating to the environment, administrative, civil and economic procedures and laws concerning NGOs;
- (f) Reiterated the important role of courts in interpreting provisions on access to justice under national law in the light of the Aarhus Convention.

### **III. Sharing experiences and building capacity**

#### **A. Multi-stakeholder dialogue on access to justice at the national level**

31. Parties then shared their experiences in responding to the call by the Task Force and the Working Group of the Parties at its fifteenth meeting (Geneva, 3–5 September 2012) for them to engage in a dialogue at the national level with all relevant stakeholders to address the issue of effective access to justice and to facilitate the implementation of the relevant objectives of the Strategic Plan 2009–2014.

32. Mr. Vladimir Borisov, a judge of the Supreme Court of Kazakhstan, delivered a keynote statement on the engagement of Kazakhstan in the multi-stakeholder dialogue on access to justice. All stakeholders were important in that dialogue, including the public authorities, the judiciary, prosecutors, bar associations, mediators, law and judicial training institutions, NGOs and journalists, which had been made possible with support from OSCE and other international organizations. Various forms of collaboration with the public were having a positive impact on developing case law. Such activities could include monitoring of judicial acts, synthesis overviews of cases submitted by the public, preparing the draft normative regulation of the Supreme Court, providing expert opinions regarding the implementation of international environmental law, draft amendments to the national legislation and developing recommendations at workshops and other capacity-building events. There had been a positive experience of active stakeholder engagement during the preparation of the draft normative resolution of the Supreme Court. Awareness-raising and capacity-building activities targeting the judiciary remained an important means to advance the Convention's implementation. The success of such collaboration lay in the common interests of the public and the judiciary to protect environmental rights.

33. A representative of REC reported on the Centre's support for national dialogues on access to justice in South-Eastern Europe through the organization of round tables, consultations on the national studies on access to justice mentioned earlier (see para. 13 above) and other capacity-building activities.

34. The Task Force welcomed the engagement of Kazakhstan as well as of Albania, Bosnia and Herzegovina, Kosovo (United Nations administered region, Security Council resolution 1244 (1999)), Montenegro, Serbia and the former Yugoslav Republic of Macedonia in multi-stakeholder dialogues on access to justice matters and the support of partner organizations for those dialogues.

35. The Task Force also urged using the findings and conclusions of the analytical studies undertaken under the Task Force to facilitate such dialogues.

## **B. Strengthening capacities in the area of access to justice**

36. Mr. Adam Daniel Nagy, a representative of the European Commission, presented the future Programme for the Environment and Climate Action (LIFE+) for 2014–2020. A new priority area would focus on governance and information. The programme would aim at broadening stakeholder involvement, supporting networking and supporting projects with a focus on better implementation of, compliance with and enforcement of EU environment and climate law. Through the LIFE Multiannual Work Programme for 2014–2017, an access to justice component would be supported through awareness-raising and trainings for the judiciary, bodies responsible for the administration of justice, public administrations and public interest lawyers. The Work Programme would also seek to promote non-judicial conflict resolution, in particular by training practitioners and sharing best practices in the use of mediation in environmental matters.

37. Mr. Eduardo Salazar, a representative of the Association for Environmental Justice (Spain), provided insights on a project dedicated to environmental mediation for the Natura 2000 Network in the Coastal Region of Murcia, Spain. The project sought to train about 100 existing mediators in environmental mediation in order to facilitate public involvement and conflict resolutions on the coast. The project would include the development of background material as well as the theoretical and practical parts of the training course.

38. The representative of Armenia informed participants about the new Law on the Academy of Justice, which was expected to facilitate the training of judges and future judges, prosecutors and lawyers in the area of environmental law and on the Convention. A proposal for a multi-stakeholder round table to address existing challenges in access to justice in the country had been prepared by Armenia last year, but it was still at the fundraising stage.

39. The representative of the Swedish Society for Nature Conservation also shared the Society's experience in engaging the public and raising its awareness about the Convention through lectures, discussions, manuals, networking and involving various media.

40. REC reported on a number of projects to strengthen capacities in the area of access to justice across the region. In South-Eastern Europe, those activities had included a series of two-day trainings for judges and prosecutors on cooperation with judicial training centres and one-day trainings for environmental NGOs, building knowledge on the implementation of the third pillar of the Convention, the application of national and EU legislation and the jurisprudence of the CJEU and the Aarhus Convention Compliance Committee.

41. Following the discussion, the Task Force welcomed the capacity-building initiatives that had taken place at the regional, subregional and national levels, as presented by the

European Commission, Armenia, REC, the Association for Environmental Justice and the Swedish Society for Nature Conservation.

### C. Tools for providing information on access to justice

42. The Task Force then focused its discussion on the tools to provide the public with information on access to administrative and judicial review procedures (article 9, para. 5, of the Convention), as well as the public accessibility of court decisions as well as decisions of other review bodies (article 9, para. 4, of the Convention).

43. The secretariat reported on the further expansion of the jurisprudence database, new developments with regard to the Aarhus Clearinghouse and other electronic information tools. As requested by the Task Force at its sixth meeting, the jurisprudence database<sup>11</sup> could now be accessed directly from the main page of the Convention website. A number of new cases had been submitted just before the Task Force meeting. Subscription to the Rich Site Summary (RSS) feeds of the Aarhus Clearinghouse would make it possible to receive updates for new cases posted. Participants' attention was also drawn to the summary report on the results of the survey on the implementation of the recommendations on electronic information tools.<sup>12</sup> Information on mechanisms related to access to justice within the meaning of the Convention had been mostly reported as fully available through the Internet. At the same time, many Parties had responded that the decisions of courts, and whenever possible of other review bodies, held in electronic form were only partly available through the Internet.

44. Mr. Gustavs Gailis, a representative of Latvia, presented the country's perspective on tools for providing information on access to justice. The information could be provided through a direct request to the respective authorities, printed material and online tools. The public got access to official publications of acts in electronic form, publication of consolidated and systematized acts, a specialized portal for dialogue between the public and the State, weekly law journals and law books.<sup>13</sup> Access to case law was available from the specialized court portal,<sup>14</sup> websites of the Supreme Court<sup>15</sup> and the Constitutional Court<sup>16</sup> allowing for various search options. The Latvian court portal and the Constitutional Court website also provided practical information for potential applicants, including information on State fees, communication with judges outside the courtroom, etc. Decisions of non-judicial bodies could be publicly accessible in accordance with the Information Transparency Law. Certain categories of decisions had to be published whether or not there was a request from the public.

45. Ms. Despina Bejinaru, a representative of Romania, said that decisions of courts and, whenever possible, of other review bodies, held in electronic form could be accessed on the court portal supported by the Ministry of Justice.<sup>17</sup> According to a recent decision of the Superior Council of Magistracy, all public interest decisions had to be made available on the websites of the courts. Information on the data communicated by the courts concerning public legal aid applications could be consulted in the reports on the state of

<sup>11</sup> Available from <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppatoj/jurisprudenceplatform.html>

<sup>12</sup> ECE/MP.PP/WG.1/2014/4, annex, available from <http://www.unece.org/env/pp/aarhus/wgp17.html>

<sup>13</sup> More information is available from <https://lv.lv/#>

<sup>14</sup> Available from [www.tiesas.lv](http://www.tiesas.lv)

<sup>15</sup> Available from [www.at.gov.lv](http://www.at.gov.lv)

<sup>16</sup> Available from [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv)

<sup>17</sup> Available from <http://portal.just.ro/SitePages/acasa.aspx>

justice for past years.<sup>18</sup> Nevertheless, although statistical data regarding free legal assistance and public legal aid was available, information regarding cases involving environmental matters could not be separately and explicitly individualized, so there was some room for improvement.

46. A representative of the European Commission mentioned that fact sheets on access to justice in environmental matters were accessible on the European e-Justice Portal.<sup>19</sup> The fact sheets aimed at providing easily accessible rules on starting a review procedure before an independent court of law or an administrative body. It had been possible to compile the fact sheets thanks to member States focal points and national judges.

47. The representative of the Environmental Management and Law Association highlighted the importance of the law journal of the Hungarian bar association. In addition, he noted that the Supreme Court of Hungary had proposed to adopt legislation on the accessibility of court data. That new draft legislation would broaden access to judicial data in the country.

48. Following the discussion, the Task Force:

(a) Took note of the information on tools that could be used to provide the public with information on access to administrative and judicial review procedures, as presented by Latvia, Romania, the European Commission and the Environmental Management and Law Association;

(b) Thanked national focal points and experts from Belgium, Belarus, Hungary, Latvia, Spain, Sweden and the former Yugoslav Republic of Macedonia for submitting cases to the jurisprudence database;

(c) Reiterated its concern that in some jurisdictions decisions of judicial and administrative review bodies still had not become publicly available;

(d) Noted that the availability of information on access to justice through the Internet, statistics related to judicial and administrative review as well as information on the relevant e-justice initiatives would need further consideration by the Task Force.

### III. The way forward

49. The Chair presented the draft decision on promoting effective access to justice (ECE/MP.PP/WG.1/2014/L.3). The draft decision had been prepared by the Bureau with the assistance of the secretariat. The document had been based on decision IV/2 on the same subject, the outcome of the work undertaken by the Task Force on Access to Justice in the current intersessional period and the note by the Chair of the Task Force on Access to Justice (AC/WGP-16/Inf.3) submitted to the Working Group's sixteenth meeting (Geneva, 19–21 June 2013). The document had been circulated to Parties and stakeholders for comments by 10 November 2013. The Bureau had finalized the draft decision, taking into account the comments received, to be presented to the Working Group of the Parties at its seventeenth meeting (Geneva, 26–28 February 2014).

50. Following the discussion, the Task Force:

(a) Took note of the draft decision on promoting effective access to justice;

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<sup>18</sup> Available from <http://www.csm1909.ro/csm/index.php?cmd=24>

<sup>19</sup> Available from [https://e-justice.europa.eu/content\\_access\\_to\\_justice\\_in\\_environmental\\_matters-300-en.do](https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-en.do)

- (b) Welcomed the proposal to extend the mandate of the Task Force in time;
- (c) Expressed its appreciation to Sweden for its offer to continue to lead the work of the Task Force.

#### **IV. Approval of key outcomes and closing of the meeting**

51. The Task Force revised and agreed the key outcomes of the meeting (AC/TF.AJ-7/Inf.2) and requested the secretariat, in consultation with the Chair, to finalize the report and to incorporate the agreed outcomes. The Chair thanked the speakers, the participants, the secretariat and the interpreters and closed the meeting.

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