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

**Working Group of the Parties****Twenty-third meeting**

Geneva, 26–28 June 2019

Item 3 (c) of the provisional agenda

**Substantive issues: access to justice****Report of the Task Force on Access to Justice  
on its twelfth 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 in environmental matters, including analytical work on the 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). By that same decision, the Task Force was requested to present the results of its work to the Working Group of the Parties for consideration and appropriate action. At its sixth session (Budva, Montenegro, 11–13 September 2017), the Meeting of the Parties renewed the mandate of the Task Force to carry out further work under the authority of the Working Group of the Parties (see ECE/MP.PP/2017/2/Add.1, decision VI/3).

Pursuant to the above mandates, the present report of the Task Force on its twelfth meeting (Geneva, 28 February–1 March 2019) is being submitted for the consideration of the Working Group of the Parties at its twenty-third meeting.

\* The present document was submitted late owing to the additional time required to liaise with speakers on their presentations and interventions and for the finalization of the report.



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## Introduction

1. The twelfth meeting of the Task Force on Access to Justice under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held on 28 February and 1 March 2019 in Geneva.
2. The meeting was attended by experts designated by the Governments of Albania, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, France, Georgia, Germany, Ireland, Latvia, Malta, the Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom of Great Britain and Northern Ireland. A representative of the European Commission was present on behalf of the European Union. Representatives of the European Ombudsman and the European Investment Bank were also present.
3. Delegates from Guinea-Bissau attended the meeting.
4. Also attending the meeting were judges and representatives of judicial institutions and independent review bodies from Albania, Armenia, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Georgia, Greece, Iceland, Ireland, Kazakhstan, Kyrgyzstan, Mauritius, Montenegro, North Macedonia, the Republic of Moldova, Serbia, Slovakia, Sweden, Tajikistan and Ukraine. Some of these participants also represented the European Union Forum of Judges for the Environment.
5. Representatives of the Office of the United Nations High Commissioner for Human Rights and the United Nations Environment Programme (UNEP) were also present.
6. Representatives of Aarhus centres, regional environmental centres, international financial institutions and business, professional, research and academic organizations were also present, as were representatives of international, regional and local non-governmental organizations (NGOs), many of whom coordinated their input within the framework of the European ECO-Forum.

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

7. The Task Force Chair, Mr. Jan Darpö (Sweden), opened the meeting.
8. The Task Force adopted its agenda as set out in informal document AC/TF.AJ-12/Inf.1.<sup>1</sup>

### II. Thematic focus: access to justice in cases relating to air quality

9. In a thematic session on access to justice in cases relating to air quality, participants discussed good practices, innovative approaches and challenges encountered with regard to: (a) the selection of a forum for the consideration of cases, the standing for members of the public to bring a case and assistance for members of the public in that regard; (b) proceedings, in particular scope, evidence and expertise, burden and standard of proof, costs, etc.; and (c) available remedies, including injunctive relief, and their enforcement. The discussion aimed to support the implementation of article 9, in conjunction with articles 6, 7 and other relevant provisions of the Convention, and to contribute to the achievement of target 16.3<sup>2</sup> of Sustainable Development Goal 16 and other relevant

<sup>1</sup> All documents for the twelfth meeting, including background documents, a list of participants, statements and presentations, are available at [www.unece.org/index.php?id=50570](http://www.unece.org/index.php?id=50570).

<sup>2</sup> Promote the rule of law at the national and international levels and ensure equal access to justice for all.

Sustainable Development Goals, such as Goals 3 (health), 11 (cities) and 12 (sustainable production and consumption).

10. The Chair recalled that, at its previous meeting, the Task Force had decided to focus on access to justice in cases challenging acts or omissions that contravened permit requirements or laws relating to the environment, focusing on cases relating to air quality (for example, permits for industrial installations and plans and projects concerning infrastructure, land use and air quality management).<sup>3</sup>

11. The Chair underscored the fact that the primary objective of the Aarhus Convention was to contribute to the right of every person to live in an environment adequate to his or her health and well-being and that effective judicial and administrative review mechanisms should be accessible to the public, including environmental NGOs. Such review mechanisms had proved to be effective tools not only with regard to ensuring timely and effective access to information and public participation in decision-making procedures but also with regard to compliance with and enforcement of laws relating to air quality, releases into the air and pollution prevention.

12. The Chair highlighted the importance of setting the scene for the discussion and invited the participants to explore the linkages between States' obligations relating to human rights and the prevention of air pollution.

13. Mr. David Boyd, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (Special Rapporteur on human rights and the environment), presented the key findings from his most recent report on the issue of human rights obligations relating to clean air.<sup>4</sup> Air pollution had become an environmental hazard that caused an alarming number of adverse health effects from childhood to old age, as well as premature death. The right to breathe clean air could be recognized as a substantive element of the right to a healthy environment, alongside its procedural aspects, such as the right to access information and to participate in decision-making and access to justice. The report identified at least seven fundamental obligations that States should fulfil in order to respect, protect and fulfil the right to breathe clean air. Such obligations included: (a) monitoring air quality; (b) identifying the main source of air pollution; (c) engaging with and informing the public; (d) enacting legislation, regulations and air quality standards; (e) adopting a national air quality action plan; (f) implementing and enforcing that national action plan; and (g) evaluating progress regarding compliance with air quality standards and plans. One good practice that supported those obligations took the form of measures to enable members of the public to bring lawsuits to enforce compliance with air quality legislation.

14. Ms. Alben Karadjova, secretary to the United Nations Economic Commission for Europe (ECE) Convention on Long-range Transboundary Air Pollution (Air Convention),<sup>5</sup> highlighted the work undertaken under the auspices of the Convention and its Protocols to promote international cooperation, the science-policy interface for clean air and health protection and the review of compliance with emission reduction commitments and reporting obligations. Such work included: (a) developing national policies and strategies, including air quality management systems, and control measures on the basis of best available technology; (b) determining critical loads and levels; (c) establishing emission limit values; and (d) providing guidance for the use of possible abatement techniques and economic instruments. Informed policy development under the Convention was supported by the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), which also provided freely accessible data on the respective platform.<sup>6</sup> The Joint Task Force on the Health Aspects of Air Pollution scientifically evaluated the risks to health from air pollution (for example, those resulting from particulate matter) and the benefits arising from the effective implementation of the Air Convention.

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<sup>3</sup> ECE/MP.PP/WG.1/2018/3, para. 69 (a).

<sup>4</sup> A/HRC/40/55, available at [ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/55](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/55).

<sup>5</sup> See [www.unece.org/env/lrtap/welcome.html](http://www.unece.org/env/lrtap/welcome.html).

<sup>6</sup> See [www.emep.int](http://www.emep.int).

15. The speaker further reported on the Protocols to the Convention, in particular the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol), as recently amended, that established legally binding obligations on their Parties to reduce emissions of specific pollutants (for example, sulphur, nitrogen oxides, volatile organic compounds, ammonia, particulate matters PM<sub>2.5</sub>, and others). The work under the Convention had become particularly important given the significant influence on air quality of transboundary sources, in particular in urban areas, established risks to health and premature death, governance and public engagement. The long-term strategy under the Convention identified strategic priorities and tasks for the period up to 2030 and beyond for improving international and regional cooperation to advance efforts to address air pollution more broadly.

16. The Chair recalled that the majority of case summaries received prior to the current meeting had been submitted by experts from Member States of the European Union and invited participants to share their relevant experiences, with a focus on the role that the European Commission and the public concerned played in the enforcement of European Union legislation in matters relating to air quality.

17. The representative of the European Commission highlighted a dual approach to access to justice in environmental matters for the cases brought before national courts as far as legal standing was concerned. This approach was based both on procedural and substantive rights envisaged in European Union law for individuals and environmental NGOs and on obligations of the European Union Member States arising from provisions of a directive which are unconditional and sufficiently precise (direct effect). The Court of Justice of the European Union had indicated that it was incompatible with the binding effect laid down in the current article 288 Treaty on the Functioning of the European Union to exclude the possibility of the obligation imposed by a directive being relied on by the persons concerned. The Court of Justice of the European Union mentioned initially directive on air quality<sup>7</sup> and drinking water to protect health but this rationale also covered other rights. This general approach applied to air quality directives. The speaker outlined several cases in which decisions, acts and omissions at the national level could be in non-compliance with the European Union Air Quality Directive. He explained the application of the Commission Notice on access to justice in environmental matters<sup>8</sup> in such cases and the crucial role of national courts in implementing relevant European Union legislation. Guarantees related to standing, scope of review, effective remedies, reasonable costs and practical information enabled members of the public to successfully seek justice before national courts. Such guarantees for standing derived from article 9 (2) and (3) of the Aarhus Convention, article 288 of the Treaty on the Functioning of the European Union, relevant European Union secondary legislation and the effects of relevant judgments of the Court of Justice of the European Union.<sup>9</sup>

18. The speaker referred to several judgments of the Court of Justice of the European Union<sup>10</sup> relating to air quality plans and national emissions ceilings for atmospheric

<sup>7</sup> See <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008L0050&qid=1559483084644>.

<sup>8</sup> See [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2017.275.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2017.275.01.0001.01.ENG).

<sup>9</sup> In relation to article 9 (2), see: Court of Justice of the European Union, *Lesoochranárske zoskupenie VLK v. Obvodný úrad Trenčín*, Case No. C-243/15, *Official Journal of the European Union*, C 6, pp. 16 and 17, 9 July 2017. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1524821344493&uri=CELEX:62015CA0243>; and Court of Justice of the European Union, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v. Bezirkshauptmannschaft Gmünd*, Case No. C-664/15, *Official Journal of the European Union*, C 72, p. 4. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1524756309045&uri=CELEX:62015CA0664>. In relation to article 9 (3), see Court of Justice of the European Union, *Lesoochranárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, Case No. C-240/09, *Official Journal of the European Union*, C 130, p. 4. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1524820923077&uri=CELEX:62009CA0240>.

<sup>10</sup> See Court of Justice of the European Union, *Dieter Janecek v Freistaat Bayern*, Case No. C-237/07, *Official Journal of the European Union*, C 236, pp. 3 and 4, 13 September 2008. Available at

pollutants, highlighting the fact that the members of the public concerned could rely on the provisions of European Union legislation of a directive which were unconditional and sufficiently precise. As far as possible, competent national authorities and courts should interpret national law in a way compatible with the purpose of the above-mentioned Air Quality Directive. Additional aspects could be considered with regard to review of regularization decisions, plans, including on air quality, national legislation and regulatory acts. Addressing the scope of review, the speaker concluded that scrutiny should cover both substantive and procedural legality and that its level should be determined by the objectives of substantive European Union law.

19. The representative of ClientEarth highlighted the fact that the Air Quality Directive did not contain a specific provision related to access to justice, leading to uncertainty and inconsistency of court practice across the European Union and its Member States. The matter was increasingly dealt with by the Court of Justice of the European Union, for example, cases Nos. C-237/07 (*Dieter Janecek v Freistaat Bayern*) and C-404/13 (*The Queen, on the application of ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs*) had empowered members of the public to protect the right to clean air. A number of cases brought by ClientEarth and other environmental NGOs before national courts of nine European Union Member States had also resulted in positive outcomes. Nevertheless, some barriers to access to justice, such as standing (see, for example, certain cases in Poland and Bulgaria), timeliness and access to effective remedies, including compliance with court judgments, persisted on both national and European Union levels.

20. During the ensuing discussion, the participants highlighted the following issues:

(a) The recently released Opinion of the Advocate General in case No. C-723/17, *Lies Craeynest and Others v Brussels Hoofdstedelijk Gewest and Others*, regarding the siting of air monitoring sampling points, and a judgment by the Constitutional Court of Belgium on the constitutionality of low emission zones in cities;

(b) The approaches to using data collected through “citizen science” projects and “citizen data” platforms as evidence in court, including the reliability of such data, the use of certified equipment, standards and the burden of proof in relation to such data;

(c) The advantages of using resources to promote a dialogue with the public on air pollution rather than for numerous court trials relating to the same issue;

(d) Different approaches with regard to standing for members of the public seeking justice across different Parties to the Convention, especially with regard to challenging omissions that contravened air quality legislation;

(e) The need to study further not only the possibility of challenging acts and omissions but also claiming damage resulting in adverse health impacts or death caused by air pollution;

(f) Serious concerns regarding the lack of timeliness in cases relating to air quality, especially in situations in which several different review bodies or court instances were involved at the European Union or national levels;

(g) The role of Ombudsman institutions in assessing whether public authorities had resolved in a timely fashion, unnecessary delayed or acted in an impartial and independent manner when processing complaints regarding air quality.

21. Participants considered the perspectives of other Parties and stakeholders on access to justice in cases relating to air quality.

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<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1524751382094&uri=CELEX:62007CA0237> ; *The Queen, on the application of ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs*, Case No. C-404/13. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CJ0404> ; and joined cases C-165 to C-167/09, *Stichting Natuur en Milieu and Others v College van Gedeputeerde Staten van Groningen (C-165/09) and College van Gedeputeerde Staten van Zuid-Holland (C-166/09 and C-167/09)*, *European Court Records*, 2011 I-4599. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1524754215601&uri=CELEX:62009CJ0165> .

22. The representative of the Netherlands reported on the legal framework and case law regarding recourse by members of the public to national courts in cases related to climate change and air quality. When using administrative remedies, interested parties could request the administrative courts or the Council of State to review relevant decisions, acts or omissions by public authorities. The civil courts could uphold environmental rights or halt or prevent environmental harm through claims for damages, including financial damages. In addition, NGOs were entitled to bring “class actions”, in accordance with article 3:305(a) of the Civil Code, by representing common interests and acting on behalf of unidentified individuals and group of persons, except for in the case of financial claims. Environmental claims could be ruled admissible by the civil courts if no effective remedy could be obtained through review by the administrative courts or if there was sufficient interest in the case.

23. The speaker also pointed to recent developments in the case *Urgenda vs the State of the Netherlands*. The case had been declared admissible and a decision had been issued in its regard by the Hague District Court, which had found that the State had been in breach of its duty of care in not reducing carbon dioxide emissions to the required level. That decision had been upheld by the Court of Appeal on new grounds, with reference to articles 2 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. As a part of the case, the State had also lodged an appeal with the Supreme Court of the Netherlands. At the same time, claims for State civil liability for air pollution in several cities had been declared inadmissible by the civil courts because effective remedies such as decisions by local authorities to uphold air quality regulations could be obtained under administrative law. In another ruling that had been appealed against, the State had not been held liable for exceeding European Union air quality standards for nitrogen dioxide and particulate matter 10 based on the following findings: (a) the World Health Organization (WHO) guidelines for emission limit values were not considered to be legally binding; (b) minimal exceeding of the emission limit values set by the European Union did not amount to liability; and (c) the damage suffered by the plaintiffs and the NGOs representing them had not been established to the minimal level required.

24. The representative of Germany shared experiences drawn from cases regarding air quality before the national courts, in particular regarding compliance with European Union air quality standards for nitrogen dioxide. Courts had found legal actions brought by environmental NGOs against inadequate air quality plans in many German cities to be admissible and had ordered the defendants to amend the plans to include measures such as restrictions for diesel-powered vehicles, where such restrictions were the only appropriate measure, to ensure compliance with nitrogen dioxide limits. At the same time, the way in which case law had developed raised certain enforcement issues, for example, regarding the enforcement court’s power to interpret and further develop the judgment in cases of insufficient update of air quality plans (the legal issue of the scope of enforceability) or of the refusal by a public authority to implement judgments despite enforcement orders. The latter issue had been submitted to the Court of Justice of the European Union by the Bavarian Administrative Court in a preliminary ruling procedure in 2018 (case No. C-752/18, *Deutsche Umwelthilfe*)<sup>11</sup>. The speaker underlined the fact that compliance with the European Union air quality standards remained on the political agenda, which was marked by a desire for more ambitious action. Following legal challenges, some German cities had imposed traffic bans on diesel-powered vehicles as the only appropriate measure to reduce air pollution.

25. The representative of the Office of the Prosecutor General of Kazakhstan reported on the role of prosecutors in ensuring compliance with environmental legislation, including that related to air pollution, and their interaction with the public. The Aarhus Convention played a significant role in the country regarding the promotion of the rational use of natural resource and environmental protection and the strengthening of engagement between the authorities and the public to address the public’s environmental concerns, including regarding air pollution. Prosecutors’ offices ensured the enforcement of Kazakh legislation by carrying out reviews of compliance and assessment of judicial acts. Reviews

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<sup>11</sup> Additional information is available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-752/18&td=ALL> .

of compliance could be carried out to ensure the protection of public rights and legal interests, civil society and the State. In some large regions, specialized prosecutors' offices for environmental protection had been established. Such prosecutors could establish that environmental offences had been committed, bring offenders to justice, claim damages, consider public claims, initiate reviews of compliance and adopt acts of prosecutorial supervision regarding illegal actions and decisions by authorities and officials. The prosecutors could also participate in environmental cases before the courts. The speaker highlighted the importance of coordinated efforts between law enforcement agencies and the public to prevent, investigate and penalize environmental offences.

26. The representative of the environmental association *Za Zemiata* reported on barriers to access to justice in clean air cases in Bulgaria. The failure of Bulgaria to comply with European Union legislation by exceeding emission limit values had triggered case No. C-488/15, *European Commission v. Bulgaria*<sup>12</sup>, ruled on by the Court of Justice of the European Union in 2017. Nevertheless, in several cases, the Supreme Administrative Court of Bulgaria had concluded that air quality plans could not be appealed against by individuals and NGOs due to the lack of standing. Grounds for refusal included: (a) the lack of claimants' legal interest in the cases because such plans had not been considered as affecting their rights, freedom or legal interests; and (b) the plans had been considered to be internal acts that established rights and obligations for the bodies and organizations subordinate to the body adopting those acts. The speaker argued that the Aarhus Convention, the case law of the Court of Justice of the European Union, the Constitution of Bulgaria setting out the supremacy of international law and the right to a healthy and favourable environment had not been sufficiently considered in those cases. Although Bulgaria did not have a formal precedent system, judgments of the Supreme Administrative Court definitely had an informal impact on future cases. Those situations could be addressed through a legislative amendment to the respective air quality legislation enabling the public to bring challenges on those matters or to lodge further complaints with the European Union and international redress mechanisms.

27. The representative of the Frank Bold Society outlined the three-step strategic litigation approach used in Czechia to improve air quality. The first step of such litigation had triggered cases related to the absence of air quality plans for areas where limit values had been exceeded. The courts of the first instance courts had accepted the procedural standing of the claimants but had refused to consider their lawsuit on merits. Considering the appeal, the Supreme Court had noted that the condition of the claimants' "individual encroachment" should be considered as fulfilled in the light of case No. C-237/07 (*Dieter Janecek v Freistaat Bayern*) and other case law of the Court of Justice of the European Union. On the basis of that judgment, the regional court had declared the omission to adopt the air quality plan to be unlawful. The second step had focused on cases related to the poor quality of air quality plans. The courts of the first instance had accepted the procedural standing of the claimants but had refused to consider the cases on merits. Considering the appeal, the Supreme Court had aligned the findings with case No. C-404/13 (*The Queen, on the application of ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs*) and had cancelled substantive parts of the challenged plans. The plans had failed to comply with the Air Quality Directive owing to their lack of: (a) a detailed time frame for the implementation of individual measures; (b) clear prioritization of proposed measures; and (c) a qualified estimate of each measure's impact on abating air pollution. In cases related to compensation for material and non-material damages caused by unlawful decisions, neither the courts of first instance nor the courts of appeal had established direct causal links with regard to specific damage, but their judgments had been further appealed against and the final outcome was still pending. Although the first two successful steps had resulted in the declaration of unlawfulness and had prompted the revision of air quality plans, the actual improvement of air quality looked like a distant goal. Therefore, if the right to clean air was to be effectively promoted, then more must be done than simply challenging acts and omissions of public authorities that contravened the respective laws.

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<sup>12</sup> See Court of Justice of the European Union, *European Commission v. Republic of Bulgaria*, Case No. C-488/15, *Official Journal of the European Union*, C 168, p. 11, 29 May 2017. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62015CJ0488>.

Further efforts should be made to render judicial mechanisms more effective and more accessible to the public, including organizations, to protect air quality and fulfil the objectives of the Aarhus Convention.

28. Following the discussion, the Task Force:

(a) Noted the close links between exposure to air pollution and effects on human health, especially for vulnerable groups, taking into account the findings of the report of the Special Rapporteur on human rights and the environment underlining the right to breathe clean air<sup>13</sup> and the work undertaken under the ECE Convention on Long-range Transboundary Air Pollution;

(b) Recalled that effective access to justice in cases related to air quality was crucial for the successful implementation of Sustainable Development Goals 3 (health), 11 (cities), 12 (sustainable consumption and production) and 16 with its target 16.3 (rule of law and access to justice);

(c) Encouraged Parties in consultation with stakeholders to take the necessary legislative and other measures to address existing challenges and further promote effective access to justice in cases relating to air quality, especially with regard to standing, choice of forum, timeliness, scope of review and access to adequate and effective remedies;

(d) Called for the facilitation of access to information, assistance and guidance for the public, especially vulnerable groups, in seeking access to justice in cases related to air quality;

(e) Encouraged the continuation of the exchange of information, experiences, challenges and good practices with regard to access to justice related to air quality through the Aarhus Clearinghouse and the jurisprudence database.

### **III. Follow up to the previous thematic session on access to justice in cases on the right to environmental information**

29. Following up on the outcomes of the thematic session at the eleventh meeting of the Task Force,<sup>14</sup> delegates continued to identify good practices, challenges, innovative approaches, priority actions and needs to further promote effective access to justice in cases on the right to environmental information.

30. The Chair recalled that the discussion would be based on the preliminary findings of a survey launched since the previous meeting to collect in-depth information on the matter and further support the implementation of article 9 (1), in conjunction with article 4 and other relevant provisions of the Convention.

31. The Chair introduced the progress report on the study, which had targeted the following Parties to the Convention: European Union, Germany, Georgia, Ireland, Kazakhstan, Malta, Montenegro, Portugal, Republic of Moldova, Slovakia, Sweden, Serbia and Switzerland. The report was based on the responses received to a questionnaire circulated to the national focal points and stakeholders and the 2017 national implementation reports. The study identified unproblematic issues such as standing, formal time frames for decision-making on information requests, issuing refusals in writing with stated reasons, no costs during reconsideration or internal review by the public authorities and formal administrative and criminal sanctions for serious maladministration and unlawful information refusals. No substantial evidence of harassment or defamation claims had been identified. Main barriers included: (a) the length of the procedure, especially in judicial review, and the lack of suspensive effect to allow for recourse to other available review procedures; (b) weak enforcement, including in the case of administrative silence, “ping-pong” between courts and administration, separate enforcement processes; and (c) to a certain extent, costs, including court fees, experts’ and lawyers’ fees. Examples of good practice included: the establishment of environmental tribunals and information

<sup>13</sup> A/HRC/40/55.

<sup>14</sup> See [www.unece.org/env/pp/aarhus/tfaj11.html](http://www.unece.org/env/pp/aarhus/tfaj11.html).

commissioners empowered to issue binding decisions; the possibility of lodging an appeal in cases where an administration had failed to reply within the established time frame (“negative silence rules”); and the application of mediation and sanctions for non-compliance with the decisions of the review bodies. The speaker further explained key issues regarding putting article 9 (1) into practice and outlined key steps for the way forward regarding the study.

32. During the ensuing discussion, the participants highlighted the following issues:

(a) The need for the content of national implementation reports to be improved in order to allow comparative analysis to be carried out;

(b) The benefits of receiving responses from multiple institutions of a given Party with a view to obtaining more detailed information;

(c) The need to further examine the criteria for of review bodies to be fair, equitable and timely, especially when they formed a part of the administration;

(d) The need to further improve the procedures for dealing with repetitive requests or wide scope requests;

(e) The lack of effective remedies regarding refusals of information requests in connection with the limited time frames of ongoing public participation procedures or with regard to sensitive information;

(f) The role of Ombudsman institutions regarding the remedying of maladministration and unlawful information refusals;

(g) The importance of strengthening the culture of transparency and good governance as to minimise the need for recourse to justice in such cases.

33. In that context, two representatives of NGOs raised the issue of the mandate of the Task Force during the discussion, claiming that some sections of the study addressed the interpretation of the Convention and the findings of the Compliance Committee, and that those issues did not fall within the mandate of the Task Force. In that regard, concerns were expressed about the text commenting on the Compliance Committee’s findings concerning communication ACCC/C/2013/93<sup>15</sup>, which had been found to be too negative concerning the role of the Ombudsman institution. It was pointed out that the study should aim to analyse trends concerning the Convention’s implementation and further inform consideration by the Working Group of the Parties and the Meeting of the Parties to the Convention, for example, with regard to problematic issues and good practices. The Chair replied that he regretted the fact that the text regarding the findings concerning communication ACCC/C/2013/93 had been perceived as being too evaluative and promised that the issue would be dealt with in the next draft of the study. Furthermore, he stated that his text had been drafted with the aim of remaining faithful to the Convention and the findings of the Compliance Committee, while leaving room for analysis and the drawing of conclusions from those sources of law, in accordance with the mandate. Lastly, he noted that said approach had been the common ground for all analytic studies undertaken under the auspices of the Task Force since 2008, and that wide room for discussion was essential for the functioning of that body.

34. The Chair thanked the participants for their thoughtful interventions and suggested that they should consider the recent developments with regard to access to justice in right to information cases.

35. The representative of Albania reported on the role of the Commissioner for the Right to Information and Protection of Personal Data in protecting the right to environmental information. The Commissioner had been established by law as an independent entity in 2009 but had only been granted the competence to protect the right to information in 2015 with the adoption of a new law. The law on the right to information had in fact provided a definition of public information and public authority, shortened the deadline for responding

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<sup>15</sup> See <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/acccc201393-norway.html> .

to information requests to 10 days and obliged public authorities to proactively disclose certain types of information and designate a coordinator for the right to information. The law had also established severe sanctions, including monetary fines, in case in which public officials violated its provisions. The Commissioner was entrusted with supervising and monitoring compliance with the new law, including monitoring of the publication of information on websites and the updating of request and response registers. The Commissioner was entitled to: (a) examine complaints from members of the public; (b) carry out the necessary administrative investigations; (c) access to information and documents relating to complaints, including classified material; (d) impose administrative sanctions; (e) promote the principle of transparency; (f) conduct surveys; (g) make recommendations to public authorities regarding transparency programmes; and (h) submit a written opinion if a court requested an examination. The Commissioner should consider the admissibility of a given complaint within 30 days and issue a decision within 15 working days. The majority of cases received to date had been triggered by NGOs and resolved through the mediation procedure. The public authorities holding environmental information aimed to strengthen their compliance with the new law and, as of 2018, the number of environmental cases before the Commissioner had dropped significantly.

36. The representative of the Commissioner for Environmental Information of Ireland provided an update on a review of decisions of public authorities related to access to environmental information. The decision-making procedure regarding environmental information requests was governed by the Access to Information on the Environment Regulations, which aimed primarily to implement the provisions of European Union Directive 2003/4/EC<sup>16</sup> and, indirectly, the Aarhus Convention. While being legally separate and independent, it had initially been the intention that the Commissioner would fulfil his or her functions under article 6 (2) of the Directive and provide customer-oriented services with the support of the staff and resources of the Office of the Information Commissioner. However, the question of the required “expeditious procedure” remained undecided, although an organizational review for the purpose of procedural reform had allowed the closing of more cases and setting the goal of completing reviews within nine months. The Commissioner carried out the review of decisions of public authorities on the basis of the *de novo* approach, with the power to affirm, vary or annul such decisions, specifying the reasons, and where appropriate, to require the public authority to make the environmental information available to the applicant. The Commissioner’s decisions were final and binding on public authorities holding the requested information but could be appealed against before the High Court on a point of law. Court appeals raised a concern regarding the cost implications for the Commissioner’s office over time, especially with a 12.5 percent appeal rate in 2018, with the majority of those appeals focusing on matters of interpretation. If the public authority failed to comply with the decision issued, the Commissioner could apply to the High Court for an order directing the compliance. A number of challenges should be addressed by public authorities holding environmental information, such as lack of awareness of obligations under the access to environmental information regime and confusion with general freedom of information legislation, failure to meet statutory deadlines and poor decision-making. In addition, dealing with third parties rights caused complexity in some cases.

37. The representative of Leuphana University of Lüneburg, Germany, presented the preliminary findings of a sociolegal research project entitled “Evaluation of the German Environmental Information Act”, launched with the support of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Environmental Agency. The German legal framework for public access to environmental information was based on the Constitution and further detailed in the Federal and sixteen States’ Environmental Information Acts. The review procedure comprised of an obligatory preliminary review proceeding before the next highest public authority (however, optional for cases against private bodies falling under the environmental impact assessment procedure), and a judicial proceeding before an administrative court, with the possibility of further appeal to the Higher Administrative Court and the Federal Administrative Court on points of law. In cases involving a third party, a specific *in-camera* procedure had proved to be effective in allowing judges to assess sensitive information and documents requested

<sup>16</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0004> .

without disclosure to the claimant before the issuing of the judgment. Having considered over 350 cases, the administrative courts had paved the way for a wide interpretation of access to information provisions, especially with regard to the definition of public authority and environmental information and carrying out administrative procedures. Exception clauses were mostly interpreted in a narrow manner in cases related to the protection of public or private interests. At the same time, costs could be a barrier to access to courts in certain cases, especially when they were considered in two instances, the “loser pays” principle was applied and fees were charged in the preliminary proceeding before the higher administrative authority. With regard to the Freedom of Information Acts, the Federal and State Commissioners for Freedom of Information were entitled to perform Ombudsman functions, supervise public authorities and promote freedom of information. They had also recommended that their responsibilities be extended to encompass the implementation of the Environmental Information Acts to support the protection of the right to environmental information.

38. The representative of Ecohome shared experiences from a recent campaign regarding access to information, mainly related to public participation procedures and related cases where access to information had been refused. More than 200 requests, mainly for documents related to public participation procedures, had been sent to the information holders concerned. In all, 15 complaints had been brought before the courts by NGOs on behalf of individual members, allowing costs to be minimized. A total of 10 cases had been ruled inadmissible by the courts, which had referred to the lack of standing to represent individual members or the lack of jurisdiction to consider such cases. Other cases had resulted in the obtaining of the information in question. Challenges to be further addressed included the lack of awareness of public authorities in some cases and the lack of guidance regarding competent review bodies from courts that did not have jurisdiction to consider such cases. Mediation could be also considered as a tool to resolve such disputes effectively in order to avoid the need for judicial review and law enforcement procedures.

39. Following the discussion, the Task Force:

(a) Welcomed the progress in carrying out the study on access to justice in information cases in the European Union, Georgia, Germany, Ireland, Kazakhstan, Malta, Montenegro, Portugal, the Republic of Moldova, Serbia, Slovakia, Sweden and Switzerland launched under the auspices of the Task Force;

(b) Thanked the national focal points and stakeholders of the above-mentioned Parties for submitting responses;

(c) Took note of the draft report prepared by the Chair and invited interested Parties and stakeholders to provide comments by 8 April 2019;

(d) Requested the secretariat to make the comments received available on the website<sup>17</sup> and circulate the updated report for further comments;

(e) Requested the Chair to report on the progress to the Working Group of the Parties at its twenty-third meeting (Geneva, 26–28 June 2019);

(f) Invited the secretariat and partner organizations to explore the possibility of translating the final report into other languages and partner organizations to inform the secretariat about available translations;

(g) Noted the initiative by Germany to carry out the sociolegal research project entitled “Evaluation of the German Environmental Information Act” and invited Germany to share the final outcomes of the project with the secretariat for further dissemination;

(h) Encouraged Parties in consultation with stakeholders to take the necessary measures, and allocate sufficient resources to address, existing challenges and further promote effective access to justice in cases on the right to environmental information, especially with regard to timeliness, access to adequate and effective remedies and enforcement of final decisions;

<sup>17</sup> Available at <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envpftfaj/envpftfajanalytical-studies/ajai-comments-received.html> .

(i) Invited Parties and stakeholders to continue the exchange of experience, good practices and challenges with regard to the application of article 9 (1) and other relevant provisions of the Convention through 2021 national implementation reports, the jurisprudence database and the Aarhus Clearinghouse.

#### IV. Stocktaking of recent and upcoming developments

40. In a discussion on recent and upcoming developments, participants shared their experience with issues related to: (a) standing; (b) scope of review; (c) adequate and effective remedies; (d) financial barriers; and (e) collective redress.

41. Opening the discussion, the Chair invited participants to share recent relevant developments at the global and national levels, as well as existing challenges across the region. In that connection, he thanked the contributing experts for providing their summaries for the jurisprudence database available through the Aarhus Clearinghouse<sup>18</sup> and the Convention's website.<sup>19</sup> He also drew attention to information documents AC/TF.AJ-12/Inf.2, an overview of the main challenges in implementing article 9 (1) of the Aarhus Convention encountered by the Parties and reported in the national implementation reports, and AC/TF.AJ-12/Inf.3 and AC/TF.AJ-11/Inf.3, overviews of the Compliance Committee considerations, findings and recommendations of a systemic nature. He also recalled that the umbrella group Environment Links UK had provided a written update on access to justice matters in the United Kingdom of Great Britain and Northern Ireland in advance of the meeting.

42. The Chair stated that the Task Force would have one more meeting during the intersessional period in 2021 and would contribute to the preparation of the thematic session at the meeting of the Working Group of the Parties in 2020, including a note by the Chair about the work undertaken by the Task Force to date and the possible way forward after 2021.

43. The representative of the Supreme Court of Greece discussed the influence of the Aarhus Convention and the related European Union environmental law on the Greek legal framework. Environmental protection had been enshrined in the Constitution, environmental laws and the Criminal Code. While the European Union had implemented the Aarhus Convention through secondary legislation, the lack of a horizontal instrument regarding access to justice in environmental matters remained a gap that was filled with case law by the Court of Justice of the European Union. Although that situation had some practical implications in the country, the Council of State of Greece safeguarded the right of individuals to access to justice in environmental matters in accordance with the general principles of international and European Union environmental law. Several cases had been considered by the Council of State upon submission by NGOs with regard to planned activities, public participation procedures and access to information. In those cases, the Council had made it very clear that the procedural rights of the public to information, participation and judicial protection should be guaranteed.

44. The representative of France highlighted recent developments regarding "class actions" to promote environmental protection and facilitate access to justice of the most affected groups. Such "class actions" were known not only in France but also in other countries. Such actions had initially been introduced into French competition and consumer law in accordance with the European Commission's recommendation of 11 June 2013.<sup>20</sup> Further improvements had been made in the area through the law on the modernization of justice in the twenty-first century adopted in 2016. The law had established the procedural base for all "class actions" within its scope, including those related to the environment, human health and data protection. In particular, a class environmental action could be

<sup>18</sup> Available at <https://aarhusclearinghouse.unece.org/jurisprudence> .

<sup>19</sup> Available at <http://www.unece.org/env/pp/tfaj/jurisprudenceplatform.html> .

<sup>20</sup> See Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, *Official Journal of the European Union*, L 201, pp. 60–65, 26 July 2013. Available at <http://eurlex.europa.eu/legal-content/EN/ALL/?uri=celex:32013H0396> .

brought when any physical or legal persons had been harmed in a similar situation as a result of damage caused to the environment by the same person (for example, oil spills, environmental violations, improper advertising related to environmental matters, with regard to the impact of pesticides). In addition, further legislative initiatives also allowed for claims for compensation for pure environmental damage that could be triggered by NGOs defending victims of environmental damage or acting in accordance with their statutory objectives. Remediation of such damage should primarily be in kind, the award of other damages and interest should be possible only in cases when such restorative action was not possible. Cases could be brought before the civil or administrative courts depending on their jurisdiction. “Class actions” allowed for more conspicuous protection of environmental rights. While at the current stage it might be premature to assess the impact on environmental protection, victims affected by environmental deterioration and the behaviour of offenders, such analysis would be carried out the following year.

45. The Chair noted that Sweden had also had some experience with “class actions” regarding large infrastructural projects and that it would be useful to continue the exchange on the topic.

46. The representative of Environment-People-Law shared experiences of recourse to justice in environmental matters in Ukraine. The lack of standing and financial barriers continued to hinder access to justice. The organization focused its efforts on raising awareness among the judiciary of the importance of protecting the environmental rights of the public and the environment. An online course on human rights and the environment and a specific module on article 9 of the Aarhus Convention had been developed for judges. Judicial reforms were also expected to improve efficiency. In a positive development, the Grand Chamber of the Supreme Court of Ukraine had handed down a judgment in a case initiated by Environment-People-Law challenging the use of a protected species in commercial activities (dolphins) without a permit, regardless of the fact that no procedure for the issuing of such a permit had yet been developed. The court had reiterated that environmental NGOs should be authorized to represent society’s environmental interests and its individual members in court, in order to protect human rights and citizens’ environmental rights or to remedy violations of environmental law.

47. The representative of BlueLink Foundation and of Justice and Environment presented the outcomes of research related to barriers to access to justice in seven Member States of the European Union (Austria, Bulgaria, Croatia, Czechia, Estonia, Hungary and Romania). The research focused on the following issues: (a) sufficient standing; (b) extent and effectiveness of legal remedies; (c) timeliness; (d) costs; and (e) availability of capacity- building activities. The analysis had been based on national expert assessment using a questionnaire with certain criteria for each issue. Using that approach, it had been possible to gauge the strength of the existing barriers. The research revealed that barriers to access to justice remained relevant in all the countries studied to different degrees and that additional efforts were needed to improve timeliness and carry out capacity-building activities on a regular basis. The speaker further highlighted the positive developments in overcoming barriers that had been identified in the above-mentioned Parties.

48. Addressing recent developments at the international level, the representative of the United Nations Environment Programme (UNEP) reported on the latest activities under the Environmental Rights Initiative that had brought together Governments, judiciary, human rights institutions, NGOs and international organizations, media, academia and the private sector to promote Principle 10 of the Rio Declaration on Environment and Development. The Initiative also focused, among other things, on the protection of environmental defenders, a group affected by a rising death toll that had reached an alarming level. To support environmental defenders at risk, UNEP had established a policy that included a three-pronged response mechanism, comprised of, among other things: (a) a rapid response mechanism through statements, letters and media releases; (b) legal assistance; and (c) the scaling up of partnerships. The speaker also outlined recent developments with regard to the Global Pact for the Environment,<sup>21</sup> including the report of the Secretary-General on gaps in international environmental law and environment-related instruments<sup>22</sup> and the

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<sup>21</sup> See <https://globalpact.informea.org/>.

<sup>22</sup> A/73/419.

work undertaken by the ad hoc open-ended working group established in accordance with General Assembly resolution 72/277.<sup>23</sup> Key resources recently released included a report entitled *Legal Limits on Single-Use Plastics and Microplastics*<sup>24</sup> and the publication *Environmental Rule of Law: First Global Report*.<sup>25</sup> Further support had been provided regarding the functioning of the Global Judicial Institute on the Environment and the development of the Global Judicial Portal,<sup>26</sup> which would host resources related to environmental jurisprudence, e-learning and judicial networking.

49. In the discussion that ensued, the participants highlighted the following points:

(a) The 2018 legislative changes in Austria that had widened access to justice for members of the public related to waste-, water- and air-quality matters. With regard to air quality, natural persons directly concerned and environmental NGOs within certain geographical areas could submit a reasoned application for the examination or revision of a given programme. The competent public authorities must respond to any such application through an official notice, which could be appealed against before the provincial administrative courts;

(b) The fact that, with the adoption of the Law on Mediation in Belarus, environmental mediation had been further developed, with efforts being made to raise public awareness and prepare the pool of environmental mediators, including through the introduction of the subject into the respective curriculums;

(c) The 2016 legislative changes in Armenia relating to the standing of NGOs, limiting the possibility to appeal regarding flaws in decision-making procedures to those organizations that had participated in the corresponding public participation procedure, and the lack of timeliness and effective remedies in some environmental cases that had led to the escalation of social conflicts and strategic lawsuits against public participation;

(d) The importance of and the need to continue the partnership action for the protection of environmental defenders;

(e) The role of the UNEP Programme for the Development and Periodic Review of Environmental Law (the Montevideo Programme) in promoting the rule of law in environmental matters;

(f) The advantages of synergies between relevant activities of various organizations promoting judicial cooperation in environmental matters.

50. Participants exchanged views on the focus of the next Task Force meeting in 2021, in accordance with decision VI/3 of the Meeting of the Parties, also considering recent and upcoming developments and the challenges encountered, and on the main issues that could be considered in the next intersessional period.

51. In the ensuing discussion, the participants suggested focusing on the following issues:

(a) Access to justice in cases related to air quality, focusing on the issues raised under agenda item 2. Such study might link environmental and human rights dimensions and could contribute to the discussion under other international forums, for example WHO;

(b) Public interest litigation and the role of public interest environmental lawyers;

(c) “Class actions”, which could be an innovative tool bringing together all key access to justice elements, such as standing, costs, jurisdiction, mediation, etc.

52. Following the discussion, the Task Force:

(a) Took note of the recent developments, challenges and lessons learned related to access to justice in environmental matters as presented by the speakers;

<sup>23</sup> A/RES/72/277.

<sup>24</sup> See [www.unenvironment.org/resources/report/legal-limits-single-use-plastics-and-microplastics](http://www.unenvironment.org/resources/report/legal-limits-single-use-plastics-and-microplastics) .

<sup>25</sup> See [www.unenvironment.org/resources/assessment/environmental-rule-law-first-global-report](http://www.unenvironment.org/resources/assessment/environmental-rule-law-first-global-report) .

<sup>26</sup> See <https://www.youtube.com/watch?v=myuFQRdW8q0&feature=youtu.be> .

(b) Expressed appreciation to Parties and stakeholders for providing information on recent developments and case law to the Aarhus Clearinghouse and the jurisprudence database;

(c) Encouraged Parties in consultation with stakeholders to develop additional measures and promote national dialogues as appropriate to address challenges with regard to standing, scope of review, burden of proof, access to effective remedies, financial barriers and access to legal aid and to continue to exchange information on that matter;

(d) Agreed to continue to focus on access to justice in cases relating to air quality in the current intersessional period, with the aim of presenting its preliminary conclusions to the next meeting of the Task Force in 2021.

## V. Tools to promote effective access to justice

53. In a discussion on tools to promote effective access to justice, participants shared experiences and lessons learned from initiatives related to: (a) promoting e-justice initiatives and other practical measures to ensure effective review procedure; (b) monitoring and evaluating the effectiveness of review procedures; and (c) promoting capacity-building, raising awareness and cooperation.

54. Opening the discussion, the Chair highlighted the fact that effective access to justice in environmental matters was critical for the achievement of a number of Sustainable Development Goals, in particular Goal 16 and its target 16.3 on promoting the rule of law at the national and international levels and ensuring equal access to justice for all.

55. He also stressed the importance of quantitative data in monitoring the implementation of the Convention and the relevant Sustainable Development Goals and targets. He pointed out that the number of Parties reporting on the availability of statistics on article 9 of the Convention (question XXX of national implementation report template) had generally increased in 2017 but that the approaches to responding had been different and drew attention to document AC/TF.AJ-12/Inf. 4, which provided an overview of the responses.

56. The Task Force considered recent developments regarding the monitoring of the effectiveness of review procedures in environmental matters and the implementation of the e-justice initiatives.

57. The representative of the Institute for European Environmental Policy presented the emerging findings of an environmental governance assessment exercise carried out regarding the European Union Member States. The assessment had focused on five themes: (a) transparency; (b) participation; (c) rule of law and access to justice; (d) accountability and compliance assurance; and (e) effectiveness and efficiency. The assessment had been based on desk research and information available online, combined with a round of online consultations and three workshops. The assessment had identified standing, especially with regard to challenging omissions, and high costs as key barriers to access to justice. The assessment had also revealed the need to improve the communication of practical information on access to justice in environmental matters and the collection of quantitative data on environmental litigation, in order, for example, to more precisely analyse judicial capacities in that area. The power of the courts to award adequate and effective remedies also varied across Member States. For example, the most likely outcome, that of court proceedings ordering the public authority to adopt a decision *de novo*, was considered to be discouraging by some NGOs. No regular capacity-building programmes in environmental matters had been reported. Corruption in the environmental domain remained another area with regard to which only limited information was available. Recent cases, for example, in Slovakia, provided some examples of mechanisms that could be used to address that issue. The Member States' governance assessments and the summary final reports would be published by the European Commission.<sup>27</sup>

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<sup>27</sup> Additional information is available at [https://circabc.europa.eu/ui/group/cafdbfbb-a3b9-42d8-b3c9-05e8f2c6a6fe/library/72e39bf2-bd03-4eb1-a408-8c867b30e2fd?p=1&n=10&sort=modified\\_DESC](https://circabc.europa.eu/ui/group/cafdbfbb-a3b9-42d8-b3c9-05e8f2c6a6fe/library/72e39bf2-bd03-4eb1-a408-8c867b30e2fd?p=1&n=10&sort=modified_DESC).

58. With regard to e-justice initiatives, BlueLink Foundation and Justice and Environment noted the progress in introducing e-justice elements into traditional, paper-based justice systems across Europe, especially with regard to electronic communications related to court proceedings and electronic forms of documents that could be submitted online. The new e-justice initiatives had sped up traditional communication and case handling to a certain extent. However, in practice those initiatives also could pose an additional burden on members of the public in the form of possible mistakes leading to undesired results or in the case of applicants lacking the digital skills required to navigate the system. He provided some examples from Austria, Bulgaria, Czechia, Estonia, Hungary, Romania and Slovenia of experiences of using digital tools in the access to justice. Given the rapid developments, the speaker encouraged participants to continue exchanging experiences and carrying out research in the area.

59. The Chair informed the participants that the Task Force meeting had been preceded by the Judicial Colloquium “Sustainable Development Goal 16: Role of Judiciary in Promoting the Rule of Law in Environmental Matters” on 27 and 28 February 2019, pursuant to decision VI/3 of the Meeting of the Parties to the Convention.<sup>28</sup> The Chair thanked the partner organizations such as UNEP, the Office of the Special Rapporteur on human rights and the environment, the Organization for Security and Cooperation in Europe, the International Union for Conservation of Nature World Commission on Environmental Law, the Global Judicial Institute on the Environment, the European Union Forum of Judges for the Environment and the Association of European Administrative Judges for their support in organizing the event together with ECE.

60. The Judicial Colloquium had provided an opportunity to take stock of progress and challenges and exchange views on the effective handling of cases related to environmental matters and the application of constitutionally entrenched environmental rights in the context of sustainable development. The meeting had addressed the role of the Aarhus Convention in that context, the linkages between the Aarhus Convention and other ECE multilateral environmental agreements in enforcing environmental law and the concept of environmental constitutionalism.

61. The representative of the Association of European Administrative Judges reported on the activities carried out by the Association to promote judicial cooperation in environmental matters. The Association focused its work on information and knowledge exchange on legal redress in administrative matters, strengthening the position of administrative judges in Europe and supporting their professional interests at the national and European levels. The organizational structure of the Association included: (a) the General Assembly, which dealt with reports from subsidiary bodies, reports on the current situation of administrative judges in certain countries and admission of new members from Member States of the European Union and the Council of Europe; (b) the Board; and (c) working groups, including one on environmental law. The Working Group on Environmental Law consisted of 60 members from 23 countries and was represented on the Steering Committee on workshops for judges under the Academy of European Law and in the European Judicial Training Network. The Working Group usually held annual workshops that involved taking stock of recent developments, an introductory presentation of the main theme and a discussion of survey results on the same topic. Moot courts were also sometimes organized. Judicial networking had proved to be instrumental regarding: strengthening identity as a judge; exchange of experiences, good practices and challenges; improving access to up-to-date knowledge and information; and support from colleagues and the Association. He concluded that, at a time of critical environmental challenges, the judiciary had a crucial responsibility to ensure the judicial protection of people and the environment.

62. The representative of the Supreme Court of Kazakhstan reported on activities aimed at developing and strengthening international judicial cooperation in environmental matters. Kazakhstan had actively participated in international forums and processes related to sustainable development and environmental protection and in international judicial cooperation regarding, for example, international legal assistance, as well as agreeing to host the meeting of the International Association of Judges and the International

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<sup>28</sup> Additional information is available at [www.unecce.org/index.php?id=50570](http://www.unecce.org/index.php?id=50570).

Association for Court Administration in September 2019. Given the importance of environmental matters, the Supreme Court monitored and reviewed the quality and quantity of environmental cases. Regular training courses for judiciary on the application of environmental law were organized across the country to raise awareness and improve expert capacity. Possible ways of promoting judicial cooperation could include: (a) the exchange of information about jurisprudence and the latest scientific and analytical legal publications containing comparative legal analysis; (b) regular tutorials, conferences, webinars or video presentations at the international and national levels, with the participation of judges from other countries; and (c) study tours to gain experience in preparing for and carrying out judicial proceedings in environmental matters. Such work allowed judges to be more aware of and apply the provisions of the Aarhus Convention and would inform judicial and law enforcement practice and upcoming amendments of the Environmental Code. An Administrative Procedure Code was also under development that would further strengthen judicial review of decisions, acts and omissions by public authorities.

63. Following the discussion, the Task Force:

(a) Welcomed the initiatives of Parties and stakeholders as reported by the speakers aimed at monitoring the effectiveness of access to justice in environmental matters and at collecting relevant quantitative data on the practical implementation of article 9 of the Convention;

(b) Noted an increasing demand for quantitative data related to access to justice in environmental matters;

(c) Encouraged Parties, stakeholders and partner organizations to promote public participation in the design, testing and implementation of digital initiatives linked to access to justice;

(d) Encouraged Parties to continue developing specific arrangements in order to collect, coordinate, aggregate and process the information from various statistic providers needed for monitoring the implementation of article 9 of the Convention and to provide that information in the 2021 reporting cycle (question XXX of national implementation report template);

(e) Noted that such monitoring could contribute to in-depth review of the environmental dimension of target 16.3 of Sustainable Development Goal 16 and called on Parties and partner organizations to undertake, support and promote similar initiatives;

(f) Called on Parties and partner organizations to promote further capacity-building and strengthen specialization of judges, prosecutors, attorneys, public interest lawyers and other legal professionals in environmental cases, in accordance with decision VI/3 of the Meeting of the Parties.

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

64. The Task Force agreed on the key outcomes of the meeting (AC/TF.AJ-12/Inf.5) and requested the secretariat, in consultation with the Chair, to finalize the report and to incorporate the outcomes therein. The Chair thanked the speakers, the participants, the secretariat and the interpreters and closed the meeting.

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