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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

Seventeenth meeting

Geneva, 26–28 February 2014

Item 3 (c) of the provisional agenda

Substantive issues: access to justice

Report of the Task Force on Access to Justice on its sixth meeting

Summary

At its second session (Almaty, Kazakhstan, 25–27 May 2005), 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 (decision II/2, paras. 30–33).¹ 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)².

In accordance with the above mandates, the present document containing the report of the sixth meeting of the Task Force (Geneva, 17–18 June 2013) is being submitted for the Working Group's consideration.

¹ See ECE/MP.PP/2005/2/Add.3, available from <http://www.unece.org/env/pp/mop2/mop2.doc.html>

² See ECE/MP.PP/2011/2/Add.1, available from <http://www.unece.org/env/pp/mop4/mop4.doc.html>

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Introduction

1. The sixth meeting of the Task Force on Access to Justice, established by 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) at its second session (decision II/2, para. 30),³ was held in Geneva on 17 and 18 June 2013.⁴

2. The meeting was attended by experts designated by the Governments of Albania, Armenia, Austria, Azerbaijan, France, Iceland, Ireland, Latvia, the Netherlands, the Republic of Moldova, Serbia, 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 chairs of the Convention's Meeting of the Parties, Compliance Committee and Task Force on Public Participation in Decision-making and representatives of the United Nations Environment Programme (UNEP) also attended the meeting.

4. 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: "Dalma-Sona" Fund (Armenia); Ecoscope (Azerbaijan); Independent Ecological Expertise (Kyrgyzstan); the ECOLEX Environmental Public Advocacy Center (EPAC) (Republic of Moldova); Volgograd Ecopress Information Centre (Russian Federation); Association for Environmental Justice (Spain); Swedish Society for Nature Conservation (Sweden); EarthJustice (Switzerland); Bureau of Environmental Investigation (Ukraine); Resource and Analysis Center "Society and Environment" (Ukraine); Environment-People-Law (Ukraine); and the World Wildlife Fund United Kingdom (WWF-UK).

5. Also present at the meeting were a number of judges and representatives of academic and judicial institutions in France, Japan, Kyrgyzstan, Latvia, Serbia, Switzerland and the United Kingdom, as well as a representative from the EU Forum of Judges for the Environment (EUFJE). Experts from Armenia, Azerbaijan, Belarus, Kazakhstan, the Republic of Moldova and Tajikistan who participated in the study on standing for individuals, groups and environmental NGOs in six countries of Eastern Europe, the Caucasus and Central Asia were also present.

6. Representatives of the Regional Environmental Centre for Central and Eastern Europe (REC) and a representative of the European Chemical Industry Council also attended the meeting.

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 document AC/TF.AJ-6/Inf.1.

9. At the start of the meeting, the Chair recalled the mandate of the Task Force as defined in decision IV/2 on promoting effective access to justice.⁵ He highlighted the aim of the meeting to continue assisting the Parties with implementing decision IV/2 and the

³ See ECE/MP.PP/2005/2/Add.3, available from <http://www.unece.org/env/pp/mop2/mop2.doc.html>

⁴ Documents for the sixth meeting, including a list of participants, statements and presentations are available online from <http://www.unece.org/index.php?id=31693>

⁵ See ECE/MP.PP/2011/2/Add.1, available <http://www.unece.org/env/pp/mop4/mop4.doc.html>

relevant objectives of the Convention's Strategic Plan 2009–2014⁶ and to discuss the way forward for the next intersessional period.

II. Substantive issues

10. At the sixth meeting, the focus was placed on the analytical work of the Task Force undertaken since its fifth meeting (Geneva, 13–14 June 2012),⁷ recent findings of the Convention's Compliance Committee and policy developments that had taken place in Parties, Signatories and other interested States with regard to issues of standing, costs and remedies.

11. Mr. Luc Lavrysen, the President of EUFJE delivered a keynote address on how the judiciary could further the implementation of the access to justice pillar of the Convention. He stressed the importance of raising awareness and disseminating adequate information to all legal professionals at the national level, especially through national environmental law textbooks, specialized journals and trainings, and by including the Convention in the academic curriculum and judicial training. Application of the Convention by courts in the relevant environmental cases was also needed to advance its implementation. Constitutional courts of the Parties in particular could play a vital role in the enforcement of the Convention, while reviewing the constitutionality of national legislation or by applying the Convention in their case law. The Belgian Constitutional Court had referred to the Convention in 13 cases so far.

12. The EUFJE President further noted that differences in the judicial systems, legal history and legal culture of the Parties remained significant and were reflected in the different approaches to legal standing, ranging from broad to narrow ones. Moreover, the interpretation of existing national provisions on standing in cases related to paragraphs 1, 2 or 3 of article 9 sometimes varied over time and between different types of courts. While changes in legislation addressing that matter could be a possible solution, the interpretation of the national provisions on standing by courts in the light of article 9 of the Convention could solve the problem as well. The requirements of article 9, paragraph 4, of the Convention also remained very difficult to fulfil. Even so, while challenges in obtaining interim relief due to its restrictive conditions and the high costs of judicial procedures and lawyers' fees had persisted, the judiciary could occasionally exercise some discretion regarding the cost allocation in environmental cases. The implementation challenges were also linked to more general questions of judicial management and could be addressed through long-term work programmes on the national level. So, while not being able to solve all challenges in implementing article 9 of the Convention, the judiciary could remove the most striking obstacles in this area.

A. Standing

13. The discussion on issues of standing was based on the findings of the synthesis report of the study on the implementation of article 9, paragraphs 3 and 4, of the Aarhus Convention in 17 EU member States and the preliminary findings and conclusions of the study on standing for individuals, groups and environmental NGOs in the countries of Eastern Europe, the Caucasus and Central Asia. In addition, the participants were informed

⁶ See ECE/MP.PP/2008/2/Add.16, available from <http://www.unece.org/env/pp/mop3/mop3.doc.html>

⁷ Documents for the fifth meeting, including a list of participants, statements and presentations are available online from <http://www.unece.org/index.php?id=28215>

about the relevant issues raised in communications to the Compliance Committee from the fourth session of the Meeting of the Parties (Chisinau, 29 June–1 July 2013) to the present.

14. The Task Force Chair, who had acted as coordinator for the study on the implementation of article 9, paragraphs 3 and 4, of the Convention, presented the study's findings. He underlined that the approach to standing in environmental cases varied across EU member States and that there was no level playing field across the EU. That variety followed from the divergence in the areas of national or community law to be applied to a particular case as well as from differences in interpretation provided by courts in different member States. The national courts continued to play an important role in the interpretation of the approach to standing. Thus, the approach to standing for individuals varied from a broad concept of *actio popularis* (Portugal) to the more restrictive "protective interest theory" (*Schutznormtheorie*) (Germany). In addition, while some approaches to standing were (property) right based, most of them were interest based. The scope of the public concerned also varied across EU member States. Criteria for standing for environmental NGOs showed less differences, and often included the scope and geographic area of their activity in accordance with their statutes and registration; the duration of the activity; and sometimes whether the NGO had a non-profit or democratic structure. Rarely, such criteria included the number of members of an NGO.

15. It had further been established that the criteria for standing also had some correlations with the scope of the review, varying from infringement of rights or interests to a full review of substantive and procedural legality. For example, *actio popularis* in some cases could give rise only to a review of the procedural legality of a decision, while the narrow standing provisions under German law provided for a more intense review.

16. Proposals were made to clarify further the scope of the definition of "law relating to the environment", the public (likely to be) affected and the scope of procedural and substantive legality (full legality control), so as to make ex-officio investigation possible and to allow decisions or acts to be challenged without regard to participation in the decision-making procedure relating to the environment, as well as challenging omissions by public authorities and private persons that contravened provisions of national law relating to the environment (i.e., lack of environmental impact assessment (EIA) procedure).

17. 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). A questionnaire had been prepared for national experts to use in preparing their national reports on standing in cases covering paragraphs 1, 2 and 3 of article 9 of the Convention, with responses to be illustrated through case examples. Consultations on the completed questionnaires had already been carried out in Armenia, Azerbaijan, Belarus and the Republic of Moldova. An expert meeting on the study had been held prior to the Task Force's sixth meeting. The final study will include a synthesis report and chapters per each country.

18. The Task Force expressed its appreciation to Armenia, Azerbaijan, Belarus, and the Republic of Moldova for their cooperation in carrying out the study on standing in the selected countries of Eastern Europe, the Caucasus and Central Asia.

19. Mr. Dmytro Skrylnikov, a representative of the Bureau of Environmental Investigation (Ukraine) presented the preliminary findings and conclusions of the study, on the basis of the outcomes of the expert meeting held prior to the Task Force meeting. In the target countries, cases could be considered by courts of general jurisdiction (civil courts), administrative courts and, in some countries, by economic (commercial) courts. As a rule, the legislation in all the countries provided standing for individuals to protect infringement

of their rights, freedoms and legitimate interests (interests protected by law). Environmental NGOs could also bring a case to court if their rights or legitimate interests were infringed and/or those of their members. Concern had been expressed that, if environmental NGOs only had standing where their rights or the rights of their members were infringed, Parties would not be in compliance with article 9 of the Convention. The specific criteria for standing of environmental NGOs had not been formally established in the selected countries. Moreover, the lack of a definition of a legitimate interest (interests protected by law) in environmental cases and conflicts between environmental law — which in some countries provided for a broader standing for the public — and civil procedural law — which did not reflect those environmental law provisions — might adversely affect the implementation of article 9 of the Convention. In addition, there was a need to consider whether environmental NGOs that were constituted as other than a public association would impact the provision of standing in environmental cases. Finally, some general problems related to a lack of court cases brought and general mistrust of the administration and judiciary reported in some of the countries studied. To address those issues it was crucial to raise awareness among judges and other legal professionals, as well as to support environmental NGOs in bringing cases to court.

20. Some participants supported the concern about the lack of the relevant case-law in the countries studied, and proposed that that issue be addressed in the conclusions of the study.

21. The participants also deliberated on whether the registration of an environmental NGO, the duration of its activities and the number of its members should be used as criteria for standing in environmental cases. It was pointed out that good, arguable environmental cases could be brought before the court regardless of whether an NGO consisted of local residents or of experts in a certain area. The same might be relevant to such criterion as the duration of the activity of environmental NGOs. The participants also proposed to consider the existing criteria for standing of environmental NGOs in the light of article 3, paragraph 4, of the Convention, calling for appropriate recognition and support to such organizations.

22. Some participants expressed their views that treating environmental NGOs similar to consumer protection organizations under national legislation 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.

23. Some participants also expressed the view that the right of an environmental NGO to address the court only in the case of infringement of the rights or legitimate interests of its members could be considered restrictive.

24. In some countries (France and Italy), the legislation or the case-law allowed NGOs standing in case of environmental damage. The participants expressed their interest in exploring that basis for standing further in the future.

25. Mr. Jonas Ebbesson, the Chair of the Convention's Compliance Committee drew participants' attention to the relevant issues on standing raised in communications to the Compliance Committee. A background paper had been distributed to participants. He stressed the importance of considering the "general picture" of access to justice and the findings adopted by the Committee with regard to cases (see findings on communications ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2)⁸ and ACCC/C/2006/18 (Denmark) (ECE/MP.PP/2008/5/Add.4) with regard to the implementation of article 9, paragraph 3, of the Convention). The Committee found that no *actio popularis* was required

⁸ The Compliance Committee findings and recommendations referred to herein are available from <http://www.unece.org/env/pp/pubcom.html>

by the Convention, but that national criteria, if any, should not effectively bar access to justice.

26. The Compliance Committee Chair noted that a number of cases related to the implementation of article 9, paragraphs 2 and 3, of the Convention regarding standing for individuals and NGOs had been decided or were under consideration by the Committee. Those included communication ACCC/C/2010/48 (Austria) (ECE/MP.PP/C.1/2012/4), communication ACCC/C/2010/50 (Czech Republic) (ECE/MP.PP/C.1/2012/11) and communication ACCC/C/2011/58 (Bulgaria) (ECE/MP.PP/C.1/2013/4), and several cases currently pending before the Committee (ACCC/C/2011/31 (Germany), ACCC/C/2011/61 (United Kingdom), ACCC/C/2011/62 (Armenia), ACCC/C/2011/63 (Austria), and ACCC/C/2011/71 (Czech Republic)). Most cases related to the review procedure regarding permit and planning decisions, as well as other acts and omissions. Some clarifications had been made by the Committee with regard to the scope of the public affected, which included not only property owners but also tenants, persons with other rights (in rem rights), social rights or other rights relating to the environment that might be impaired. He reiterated that environmental NGOs were deemed to have an interest in accordance with the Convention. He also stressed that the possibility to challenge the outcomes of the EIA screening procedure was covered by article 6, paragraph 1 (b), in connection with article 9, paragraph 2, of the Convention.

B. Costs and financial arrangements, and remedies

27. With regard to costs and financial arrangements, the findings of the synthesis report of the study on the implementation of article 9, paragraphs 3 and 4, of the Aarhus Convention in 17 EU member States were presented by Ms. Carol Day, a national reporter for the study from the United Kingdom and a representative of WWF-UK. She highlighted the different approaches taken by the countries towards court fees, legal representation, expert fees, application of the loser pays principle, injunctive relief and legal aid. In particular, while generally there were no court fees introduced for launching administrative appeals (with a few exceptions), court fees in other cases were widespread, and differed from country to country with the highest in the United Kingdom potentially constituting a barrier to access to justice. In a number of countries the *Streitwert* principle was applied, in other words, the fees reflected the value of the claim in monetary terms from the plaintiff's point of view. Legal representation was mandatory in many countries with some exceptions in first instance proceedings (i.e., in the Czech Republic, Germany, France, the Netherlands and Poland). Expert fees borne by the parties in environmental cases could also be significant and constitute a barrier to justice.

28. The study had found that the loser pays principle was widely applicable, but with numerous exceptions. In Compliance Committee findings (see findings on communication ACCC/C/2008/24 (Spain) (ECE/MP.PP/C.1/2009/8/Add.1)) and case law of the EU Court of Justice (cases C-260/11 *Edwards and Pallikaropoulos v. Environment Agency and others* and C-427/07 *European Commission v. Ireland*),⁹ the loser pays principle had been found not to contravene the Convention. Nevertheless, it was necessary to ensure that the procedures themselves were not prohibitively expensive. For that purpose, in some countries mechanisms for capping costs have been devised (i.e., the United Kingdom) and in some other countries (i.e., the Czech Republic, the Netherlands, Poland and Slovakia) the public authorities could not recover legal costs (essentially one-way costs shifting). To

⁹ The case summaries are available from <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppatoj/jurisprudenceplatform.html>

secure injunctive relief, bonds, securities, and cross-undertakings in damages were often required. Legal aid schemes had been established in almost all the countries studied, but in some countries they were underfunded or otherwise unavailable for NGOs. In some countries (i.e., Hungary, Latvia, Portugal and Slovakia), NGOs were exempted from the court fees.

29. It was proposed that court fees should ensure broad access to justice and early engagement. Most recently, the *Edwards* case had confirmed that determining what was prohibitively expensive for claimants in legal proceedings required the imposition of an objective and subjective test, alongside other factors, such as the consideration of the public interest at stake. In the report, it was suggested that any potential EU measure on access to justice would usefully consider one-way costs shifting, schedules for costs-capping and explicit prohibition of bonds and cross-undertakings in damages to secure injunctive relief in order to reduce that financial barrier.

30. The Compliance Committee Chair introduced the relevant issues raised in communications to the Compliance Committee with respect to costs and remedies. A background paper had been distributed to participants. He highlighted the relevant landmark findings of the Compliance Committee on communications such as ACCC/C/2008/23 (ECE/MP.PP/C.1/2010/6/Add.1), ACCC/C/2008/27 (ECE/MP.PP/C.1/2010/6/Add.2) and ACCC/C/2008/33 (ECE/MP.PP/C.1/2010/6/Add.3) with regard to the United Kingdom, and ACCC/C/2009/36 (ECE/MP.PP/C.1/2010/4/Add.2) with regard to Spain. It was important to consider the costs system as a whole, avoiding unfair allocation of costs and keeping the quantum of costs at the level which met the requirements of the Convention. For example, while considering fees for NGOs to appeal, one should bear in mind the amount of the fee as such and in comparison with similar fees in other areas, the importance of the protected interest and the enforcement of national environmental law and their impact on the quantity of submitted applications (see findings on communication ACCC/C/2011/57 (Denmark) (ECE/MP.PP/C.1/2012/7)). Some pending cases related to costs inflicted when judicial review and/or legal aid for NGOs was refused. With regard to available remedies, Parties were obligated to ensure the practical availability of injunctive relief (see findings on ACCC/C/2008/24 (Spain)). Other issues raised in communications made since the fourth session of the Meeting of the Parties included the timeliness of the review procedure and injunctive relief.

31. In the discussion that followed, some participants noted that the system of administrative review was widely used in many countries of Eastern Europe, the Caucasus and Central Asia instead of judicial review, and suggested that the practice of administrative review should also be analysed by the Task Force.

32. Participants also questioned the financial impact of injunctive relief on the business operators, pointing out that their assets to be used for carrying out the project remained in the control of the operators and could be used for other profitable activities.

33. Costs of experts and their availability in various areas were continuously highlighted as a challenge to bringing environmental cases to court. The experience in that regard was mixed across the region. In any case, the expert costs remained unpredictable. In some countries (Sweden and Austria), technical judges or experts were introduced in the composition of the court trying the case. Sharing good practices in dealing with expert costs across the region would be useful.

34. The timeliness of the procedures and the limited time to submit an appeal to challenge a construction permit or other type of administrative decision were also cited by some delegates as a factor that could affect access to justice. Examples of good practices used by specialized courts and tribunals could be collected by the Task Force to help address that issue.

35. The representatives of the United Kingdom reiterated the Government's commitment to continue a dialogue on the issues of access to justice at the national level. They stressed the importance of taking into account the system of access to justice as a whole, the current economic situation and the differences between the common law system and the adversarial system, while analysing the challenges in the area of access to justice. The common law system relied on the existing case-law and the presentation of the case by the parties.

C. Further work on substantive issues

36. A representative of REC informed participants that, in accordance with the outcomes agreed by the Task Force at its fifth meeting, REC, in cooperation with the United Nations Economic Commission for Europe (ECE) and the Organization for Security and Cooperation in Europe (OSCE), had launched the preparation of a study on the implementation of article 9 of the Aarhus Convention in South-Eastern Europe.

37. Participants welcomed the analytical work undertaken under the Task Force and by the European Commission on substantive issues.

38. The Task Force agreed to consider the progress of the study on standing in the selected countries of Eastern Europe, the Caucasus and Central Asia and the study on access to justice in South-Eastern Europe at its next meeting.

III. Sharing experiences and building capacities

39. The Task Force then focused on promoting the exchange of information and building capacities relating to access to justice in environmental matters in accordance with decision IV/2.

A. Tools for sharing information and building capacities

40. The Task Force acknowledged analytical studies, the jurisprudence database, the resources of the Aarhus Clearinghouse and national implementation reports as key tools for sharing information and exchanging experiences related to access to justice.

41. The Chair outlined the work undertaken since the previous meeting of the Task Force, in cooperation with the secretariat, the national focal points and stakeholders, for the development of the jurisprudence database.

42. The secretariat reported on the expansion of the jurisprudence database, with 65 cases available from 13 countries and 14 cases to be uploaded, other thematic resources available in the Aarhus Clearinghouse and additional resources available from other portals such as ECOLEX¹⁰ and the United Nations Information Portal on Multilateral Environmental Agreements (InforMEA).¹¹ The secretariat also provided a demonstration on how the database could be used, first on the Convention's website and then as part of the Aarhus Clearinghouse for Environmental Democracy. The secretariat was requested to improve the visibility of the available resources on access to justice on the Convention's webpage.

¹⁰ Available from www.ecolex.org/start.php

¹¹ Available from <http://www.informe.org/>

43. The Task Force thanked the experts from Armenia, Belgium, Kyrgyzstan, Lithuania, Spain, Tajikistan, and Ukraine and welcomed the progress in further populating the jurisprudence database and the Aarhus Clearinghouse since its fifth meeting.

44. The Task Force highlighted the importance of improving the Aarhus Clearinghouse's search engine.

45. The Task Force also encouraged national focal points and other stakeholders to inform the judiciary, judicial training institutions, prosecutors, public interest lawyers and other professionals about the jurisprudence database and the Aarhus Clearinghouse and to make links to these resources available on the relevant webpages.

46. In addition, the Task Force requested the secretariat to explore possible linkages with other case-law databases.

47. It was noted that the development of a database of the Compliance Committee findings allowing for word searches could also serve as a tool for information sharing and building capacities in the implementation of the Convention.

48. As an additional tool to share relevant information, Mr. Adam Daniel Nagy, a representative of the European Commission presented the European e-Justice Portal¹² and plans for its further expansion in the area of environmental justice. The portal had been established in accordance with the European Commission communication, "Towards a European e-Justice Strategy" (COM(2008)329),¹³ and the Multi-Annual European e-Justice Action Plan 2009–2013.¹⁴ The portal featured its own content management system and included information with regard to 27 EU member States in 22 languages. It would contain fact sheets developed by national experts in cooperation with the public authorities and judges, and include several main topics, such as access to justice in environmental matters, access to information, public participation in decision-making, standing, procedural rules, and other means of access to justice and transboundary cases. In addition, 13 seminars for national judges on EU environmental law had been held by the Commission's Directorate-General for Environment and an online EU Environmental Training Package¹⁵ had been launched that emphasized the crucial role of national courts and national judges.

49. The Task Force welcomed the EU initiative to expand its e-Justice Portal to environmental matters.

50. Following the statements made by several participants, the Task Force also reiterated its concern that in some jurisdictions decisions of judicial and administrative review bodies were still not publicly available. The Task Force encouraged Parties to make such decisions publicly available through electronic tools, implementing article 9, paragraph 4, of the Convention.

51. The Task Force also took note that, as agreed by the Task Force on Access to Information at its first meeting (Geneva, 7–8 February 2013), a questionnaire regarding implementation of decision II/3 on electronic information tools and the Clearing House Mechanism, including access to the jurisprudence databases, would be circulated before its second meeting (Geneva, 16–17 December 2013).

¹² Available from <https://e-justice.europa.eu/>

¹³ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0329:EN:NOT>

¹⁴ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:075:0001:0012:EN:PDF>

¹⁵ Available from http://ec.europa.eu/environment/legal/law/training_package.htm

B. Multi-stakeholder dialogue on access to justice at the national level

52. Parties then shared their experiences in responding to the call by the Task Force and the Working Group 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.

53. Serbia reported on training for judges of the relevant courts and prosecutors, which had provided a platform to discuss good practices and barriers to the implementation of article 9 of the Convention. A representative of Armenia highlighted the key role universities played in the process, and the importance of studies that could draw attention to the challenges in access to justice. The involvement of ombudsmen in the dialogue might also contribute to the effectiveness of the process.

54. In Belarus and the Republic of Moldova, the completed questionnaire for the study on standing in the selected countries of the Eastern Europe, the Caucasus and Central Asia had been circulated to ministries of justice, the judiciary and other relevant stakeholders to gather their input regarding current practice and possible barriers in that area. The responses had revealed some differences in the understanding of certain legislative provisions related to access to justice by different stakeholders in those countries.

55. A representative of the United Kingdom presented experiences in running public consultations on the issue of access to justice. The engagement of all stakeholders in a logical order, their equal treatment, the accessibility of the consultative documents and an open dialogue constituted important elements of a productive dialogue at the national level.

56. In Belgium, a round table with the involvement of all the competent courts to take stock of and share experiences with regard to various aspects of the implementation of article 9 of the Convention had helped to identify good practices and challenges to implementation on the basis of a case-law analysis that had been done by participating courts.

57. A representative of REC provided further information on round tables gathering the key actors in the area of access to justice and trainings for judges and NGOs in South-Eastern Europe, which had been carried out within two REC projects funded by Germany and Finland through the Environment and Security Initiative. The upcoming study on access to justice in the subregion could also provide a good basis for continuing national dialogues in that area.

58. The Task Force welcomed the sharing of experience by Armenia, Belgium, Belarus, the Republic of Moldova, Serbia and the United Kingdom with regard to facilitating national dialogues on access to justice, as well as the round tables carried out by REC with support from Germany and Finland.

59. It was important to continue such national dialogues and capacity-building activities on access to justice that addressed the needs of various stakeholder groups, such as the judiciary, bar associations and public interest lawyers. The Task Force also urged using the findings and conclusions of the analytical studies undertaken under the Task Force to facilitate such dialogues.

C. National reporting

60. The Task Force recognized the national implementation reports as an important tool to share information. It took note that the 2014 national implementation reports should be submitted by 1 December 2013.

61. An indicative overview of the issues addressed by the Parties in the 2011 national implementation reports was provided in informal document AC/TF.AJ-6/Inf.2.

62. In preparing their national implementation reports, the Task Force encouraged Parties to:

(a) Aim at targeted consultations with experts on access to justice during the preparation of the relevant sections;

(b) Note the new format set out in decision IV/4 on reporting requirements adopted by the Meeting of the Parties at its fourth session (see ECE/MP.PP/2011/2/Add.1),¹⁶ and report on possible implementation of the relevant recommendations of the Meeting of the Parties;

(c) Consider the issues listed in the annex to the guidance on reporting requirements developed by the Compliance Committee (ECE/MP.PP/WG.1/2007/L.4)¹⁷ that were not addressed in the previous national implementation reports;

(d) Address the selected issues in a more concise and user-friendly manner, making an effort to explain the national situation regarding the implementation of the relevant provisions clearly.

III. The way forward

63. The Task Force Chair presented the note on future directions for the work of the Task Force (AC/WGP-16/Inf.3). He recalled the previous mandates given to the Task Force by the Meeting of the Parties at its second through fourth sessions, which had included examination, consideration and analysis of material with regard to costs, remedies, criteria for standing, delays and other obstacles to access to justice; assistance mechanisms; scientific and technical expertise in decision-making on access to justice; and alternative dispute resolution. So far, the Task Force had been involved in preparing analytical studies on standing, remedies and costs, outreach activities, such as subregional workshops in Kyiv in 2007, Tirana in 2008 and Almaty in 2012, and participation in other relevant events organized by partner organizations, as well as the development of training materials and online resources. The conclusions of the evaluation of the current functioning and implementation of the Convention¹⁸ had been very positive for the Task Force. The Chair proposed that the Task Force continue with its work on standing, costs, the effectiveness of the existing procedures, the harassment of whistle blowers and alternative dispute resolution. It was important to keep the mandate of the Task Force open and to continue to use it to explore priority issues, subject to confirmation of those priority work areas by the Working Group of the Parties.

64. An overview of practice in alternative dispute resolution in environmental cases in the ECE region was provided in informal document AC/TF.AJ-6/Inf.3.

65. Ms. Barbara Ruis, a representative of UNEP informed the participants about the benefits of existing alternative dispute resolution methods and their role in international environmental law. While those methods could include negotiation, mediation, arbitration and conciliation, the choice of the particular method would depend on the nature of the dispute. The Aarhus Convention itself, as well as, among others, the Minamata Convention on Mercury and the Cartagena Protocol on Biosafety to the Convention on Biological

¹⁶ Available from <http://www.unece.org/env/pp/mop4/mop4.doc.html>

¹⁷ Available from <http://www.unece.org/env/pp/reports.html>

¹⁸ See ECE/MP.PP/WG.1/2013/8 available from <http://www.unece.org/env/pp/aarhus/wgp16.html>

Diversity, provided a framework for dispute settlement. The topic was gaining momentum, as seen in United Nations General Assembly resolution 65/283,¹⁹ which aimed at strengthening the role of mediation in the peaceful settlement of disputes. However, the text of that resolution could be interpreted more broadly, since it invited Member States to optimize the use of mediation, signifying a new interest in the topic, recognizing links between sustainable development, peace and mediation and the role of civil society in that process and stressing its cost-effectiveness. The Task Force could seek cooperation with organizations like Mediators Beyond Borders International, to see how alternative dispute resolution could be strengthened in environmental disputes.

66. A representative of REC informed participants about three-day trainings in South-Eastern Europe that had included such topics as mediation and conciliation processes, diversity and culture, event and tasks design and facilitation techniques. The trainings could be replicated and contribute to the capacity development of the Parties in that area. In 2014, REC was planning a new desk research study on alternative dispute resolution with the support of the Environment and Security Initiative and a conference on that matter.

67. The Task Force also took note of the initiative of the European Commission to launch a study on environmental complaint handling and mediation mechanisms at the national level that currently covered 10 EU member States.²⁰

68. In the following discussion, the participants deliberated on whether alternative dispute resolution methods were covered by the access to justice provisions of the Convention and whether it would be possible to apply them in environmental cases relating to compliance with the national environmental law and defence of the public interest. It was noted that, while some countries like Belarus and Kazakhstan had adopted legislative changes regarding alternative dispute resolution, the practice of applying such methods in environmental cases as not well known or developed throughout the ECE region.

69. In conclusion, the Task Force welcomed the Chair's note on the future work of the Task Force on Access to Justice.

70. In the light of the discussion on the substantive issues, the Task Force expressed its interest in exploring further: the linkages between standing and the scope of the legal review; the effectiveness of specialized tribunals and administrative review bodies; timeliness; standing of members of the public, including NGOs, in cases of environmental damage, among others; good practices in access to expertise and reducing expert costs; and criteria for injunctive relief.

IV. Approval of key outcomes and closing of the meeting

71. The Task Force revised and approved the key outcomes presented by the Chair and requested the secretariat, in consultation with the Chair, to finalize the report and to incorporate the approved outcomes in it. The Chair thanked the speakers, the participants, the secretariat and the interpreters, and closed the meeting.

¹⁹ See A/RES/65/283 available from http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/283

²⁰ Available from http://ec.europa.eu/environment/aarhus/pdf/mediation_and_complaint-handling.pdf