

## **Economic Commission for Europe**

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

#### **Working Group of the Parties**

##### **Twenty-eighth meeting**

Geneva, 2-4 July 2024

Item 4 (a) of the provisional agenda

**Substantive issues: thematic session on access to justice**

#### **ACCOMPANYING DOCUMENT TO THE REPORT ON THE OUTCOMES OF THE SURVEY ON MEASURES TO ENABLE EFFECTIVE ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS<sup>1</sup>**

##### *Summary*

At its second session (Almaty, Kazakhstan, 25–27 May 2005), by its decision II/2 on promoting effective access to justice, 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 various tasks related to promoting access to justice in environmental matters.<sup>a</sup> 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 seventh session (Geneva, 18–21 October 2021), the Meeting of the Parties renewed the Task Force's mandate to carry out further work under the authority of the Working Group of the Parties.<sup>b</sup>

Pursuant to the above-mentioned mandates, the report on the outcomes of the survey on measures to enable effective access to justice in environmental matters (ECE/MP.PP/WG.1/2024/11) carried out by the Task Force on Access to Justice and this accompanying document (AC/WGP-28/Inf.10) are being submitted for the consideration of the Working Group of the Parties at its twenty-eighth meeting.

<sup>a</sup> ECE/MP.PP/2005/2/Add.3, paras. 30–33.

<sup>b</sup> ECE/MP.PP/2021/2/Add.1, decision VII/3, para. 12.

---

<sup>1</sup> This document was not formally edited.

## Selected measures

**Question 1:** Please describe what measures are taken in accordance with law and practice in your respective jurisdiction (including good practices and challenges) to reduce or remove financial barriers for members of the public to bring environmental cases.

### Waving costs of administrative procedure

#### Italy

In particular, Article 13, paragraph 6-bis, lett. A) of Presidential Decree 115 of 2002 establishes that no contribution is due for the appeals provided for by article 25 of law no. 241 of 1990 against the denial of access to information pursuant to legislative decree no. 195, implementing Directive 2003/4 / EC on public access to environmental information.

#### Serbia

Article 89 of the Law on General Administrative Procedure states that the authority conducting the procedure may exempt a party from payment of costs, either in full or in part, if it finds that such costs cannot be borne without prejudice to the necessary sustenance of the party or his/her family, or if it is provided ratified international agreement.

### Looser Pays Principle

#### European Union: Board of Appeal of the European Chemical Agency

Under Article 17a of the Rules of Procedure of the Board of Appeal ('RoP'), the parties shall bear their own costs. Thus, in cases where the BoA dismisses an appeal as unfounded, the appellant is not liable to pay for the costs incurred by the Agency in the appeal proceedings.

#### Italy

The Italian civil procedural system provides, as a general principle at the outcome of the trial, "the loser pays principle", on the basis of which the legal costs incurred are charged to the non-victorious party.

Indeed, pursuant to the article 91 of the Code of Civil Procedure "*the judge, with the judgment that closes the trial before him, sentences the losing party to reimburse the costs in favor of the other party*".

The *ratio* of such a provision would seem to be identified, on the basis of the doctrinal elaborations, in the purpose of inducing the potential trial parties to a careful assessment of the appropriateness of referring to the judicial authority for the purposes of protection, as well as a deterrent to the establishment of completely spurious and unfounded procedures.

In Italy, the main provisions dealing with the order for costs are Articles 91, 92 and 96 of the Civil Procedure Code. Article 91 of the Civil Procedure Code governs the loser pays principle, according to which the judge sentences the party who lost the case to pay legal fees, which he liquidates in sentence.

This principle, however, provides for temperaments. Indeed, immediately afterwards, the general principle is subject to some exceptions, in the event that the judge has formulated a conciliatory proposal during the course of the case, and one party has rejected it without justified reason. In this case, the loser pays principle finds a partial derogation, and the legal costs of the activity following the conciliatory proposal are charged to the party who refused it, even if it were the victorious party.

The article 92 of the Civil Procedure Code establishes further exceptions to the general principle of the loser pays principle, allowing the judge not to charge the losing party when they are excessive or superfluous, and when the victorious party has violated the duties of loyalty and probity in the trial.

Paragraphs 2 and 3 of the same article, deals with the compensation of expenses, or the case in which each party bears its own legal expenses. The judge can therefore decide to compensate the costs between the parties when there is mutual defeat, when the question dealt with is absolutely new, or there is a change in the jurisprudence on the ditrimental questions, or finally in the case of conciliation of the case.

The loser pays principle was also taken up in the administrative field by law no. 1034/1971 and confirmed by the current art. 26, paragraph 1, of the code of the administrative process (Legislative Decree n.104 of 2.7.2010), according to which the judge provides for the expenses in accordance with articles 91, 92, 93, 94, 96 and 97 of the Italian Code of Civil Procedure, also taking into account compliance with the principles of clarity and conciseness of the documents.

#### **Norway**

When it comes to legal costs, the main rule is that the losing party pays the legal costs of the successful party, see the first paragraph of Section 20-2 of [the Norwegian Dispute Act](#). Nevertheless, the court can make exceptions in whole or in part if it finds that compelling grounds justify exemption, according to Section 20-2. Environmental considerations may qualify as compelling grounds under this rule. The judgement of Borgarting Court of Appeal in the so-called [Norwegian climate case](#) (ref. LB-2018-60499) is one example of the application of the exception in the third paragraph of Section 20-2 of the Dispute Act. We would also like to highlight a new decision from the [Frostatting Court of Appeal, from 26 August 2021](#), which isn't mentioned in the implementation report. The Appeal Court overturned the district court's decision on legal costs in the case of the wind power plant on Haramsøy. The Appeal Court stated that whether the legal costs are in accordance with the requirements of the Aarhus Convention must be assessed, and that the legal costs can neither exceed the party's financial capacity nor be objectively unreasonable. The district court followed this in its new decision on legal costs and reduced them from over 1 million to 450,000 NOK.

#### **Serbia**

Please, refer also to Article 168 of the Civil Procedure Code specifying that the court shall exempt a party from the liability of paying the costs of the proceedings where that party's material situation does not allow them to bear such costs.

#### **Waving costs by public authorities**

#### **Georgia**

This applies only if, according to Article 55, Part 3 of the Code of Civil Procedure, both parties are exempted from paying court costs. In this case, the costs incurred by the court in connection with the consideration of the case will be borne by the state.

#### **Security for injunction relief**

#### **Finland**

No security is required from an applicant for injunction, regardless of whether enforceability is based on a granted right to commence or other order of execution.

## **Norway**

[Chapter 32 of the Dispute Act](#) provides rules on provisional security, including arrest of goods and interlocutory measures. Under Section 32-11 (1) a claimant shall compensate any loss that the defendant has sustained as a result of the security or as a result of measures that have been necessary to avoid the security or have it set aside, provided that the provisional security is set aside or lapses and it transpires that the claim submitted by the claimant did not exist when the security was ordered. However, when an interlocutory measure is granted to secure a main claim based on violation of provisions for the protection of the environment, the claimant is only liable to compensate such costs referred to if they knew or ought to have known that the claim did not exist when the order for provisional security was made.

Likewise, when an interim measure is granted to secure a main claim based on violation of provisions for the protection of the environment, the claimant cannot be ordered to provide security for the claim, see Section 34-2 (3) of the Dispute Act.

## **United Kingdom**

Parties may apply for interim relief in the form of an injunction at any time – even before proceedings have been issued. The court has discretion in Aarhus Convention claims to award interim injunctive relief without requiring a cross undertaking in damages.

### **Protective costs orders**

## **Romania**

Also, in Romania GEO 80/2013 sets a protective cost regarding legal fees in matters concerning administrative contentious, which according to article 16 have to be less than 300 Romanian lei. In matters concerning paying remedies for financial or moral damage resulting from damage to the physical or psychological integrity, the stamp fee is 100 Romanian lei, and for legal actions that cannot be valued in money (article 27) the stamp fee is 20 Romanian lei. Until now, the Gorj Court did not take measures according to Law 86/2000 on the ratification of the Aarhus Convention.

## **United Kingdom**

The CPR provides the courts with extensive case management powers to control and direct the course of proceedings to ensure that these are conducted on as timely and efficient a basis as possible. The courts also have extensive powers to control costs at different stages of the proceedings. As well as detailed provisions which govern the assessment of costs at the conclusion of proceedings, the CPR sets out the powers of the court to make an order capping costs in an individual case at any stage of the proceedings.

### **Costs of experts**

#### **European Union: Board of Appeal of the European Chemical Agency**

Under Article 2(3) of BoA Decision on costs relating to taking of evidence in appeal proceedings, (i.e. implanting measure adopted pursuant to the RoP) the BoA may decide - in exceptional cases and if applied for - that the Agency pays the costs for taking evidence, where the evidence is necessary and decisive for the outcome of the proceedings and is in the interest of the proper administration of justice.

## **Norway**

Pursuant to the [Court Fee Act](#) Section 2 (2), the party who requested the court to appoint an expert, is required to cover the costs of the expert. However, in cases where free legal aid or exemption from court fees have been granted pursuant to Sections 16 or 25 of the [Legal Aid Act](#), this includes the costs of the expert.

## **Other measures**

### **Armenia**

Article 22 of the Law of RA on "State Duty" defines Privileges in relation to the state duty at courts. Among them, privileges are provided to civil society organizations filing with the court as stipulated by Chapter 29.3 of the RA Code of Administrative Court Procedure.

### **European Union: Board of Appeal of the European Chemical Agency**

Under Article 10(4) of the REACH Fee Regulation, the Agency will refund the appeal fee to the appellant if the Executive Director of the Agency rectifies the decision contested by appeal, or the appeal is decided in favour of the appellant;

- According to Article 9 of the RoP, parties or interveners in the proceedings before the BoA do not need to be represented by a qualified lawyer; - According to Article 10(3) of the RoP, the BoA may allow that party's or intervener's documents are lodged by telefax, e-mail or by any other technical means of communication in place of the submission by hand or by post (less cost-efficient means); and  
- According to Article 14(4) of the RoP, the BoA may, following the request of the intervener, authorise it to use an official language of the Community other than the language of the case, thus allowing the intervener to save costs it would otherwise have to bear for translators/interpreters.

### **Finland**

Individual appellants can be exempted from fee under certain circumstances. An essential ground for exemption is that the appellant is successful in his or her challenge. In addition to such categorical exemptions from the trial fee, an exemption can be granted on grounds of unreasonableness on a case-by-case basis by the referendary or rapporteur, who assigns the fee. Although the trial fee is charged together with the decision of the court, it is separately challengeable through a request for reconsideration with the official who has assigned the fee. The decision of the official can be challenged by means of administrative appeal.

### **France**

The website [service-public.fr](http://service-public.fr) provides general information on the cost of a lawsuit, depending on the court and the documents required. The conditions for obtaining legal aid are also specified.

Law no. 2022-401 of 21 March 2022 aiming to improve the protection of whistleblowers now allows a whistleblower who is a party to a dispute to ask the judge, in certain situations, to award him or her, at the expense of the other party, an advance on legal costs. The judge will rule quickly and may decide, at any time during the proceedings, that this advance is definitively acquired.

### **Italy**

The Consolidated Law on Legal and Regulatory Provisions on Legal Expenses (hereinafter for brevity Presidential Decree no 115 of 2002) has adopted some measures aimed at removing or reducing financial barriers in order to allow access to environmental justice.

In particular, Article 13, paragraph 6-bis, lett. A) of Presidential Decree 115 of 2002 establishes that no contribution is due for the appeals provided for by article 25 of law no. 241 of 1990 against the denial of access to information

pursuant to legislative decree no. 195, implementing Directive 2003/4 / EC on public access to environmental information.

Furthermore, according to Article 12 of Presidential Decree 115 of 2002, the exercise of civil action in the criminal trial is not subject to the payment of the court fee, if only the general sentence of the person responsible is requested.

### **Slovakia**

Environmental NGOs are exempted from the obligation to pay court fees. According to § 4 (2) c) of the Act on Court Costs (zákon č. 71/1992 Zb. o súdnych poplatkoch a poplatku za výpis z registra trestov v znení neskorších predpisov), “(2) They are exempt from the fee: c) foundations and charitable organisations, humanitarian organisations, ecological organisations and consumer protection associations”.<sup>2</sup>

### **United Kingdom**

Special provisions exist to limit the costs of judicial review proceedings. For example, the CPR provide that the courts will generally consider permission to proceed with judicial review proceedings without a hearing and that where there is a hearing, the court will not generally make an order for costs relating to that hearing. In addition, costs awarded against a claimant who fails to obtain permission are generally limited to the costs of the defendant’s acknowledgement of service.

**Question 2:** Please describe what measures are taken in accordance with law and practice in your respective jurisdiction (including good practice and challenges) to facilitate access to legal aid and other assistance mechanisms for members of the public to bring environmental cases.

### **Legal aid**

#### **Austria**

In procedures before the administrative courts there is the possibility to apply for legal aid (§ 8a VwGVG).

If the legal aid is granted a lawyer will be appointed.

The criteria for legal aid are that the legal aid is required under Article 6 ECHR, the party is not able to bear the costs and that the legal action is not wantonly or futile. The application for legal aid has to be requested in writing and certain deadlines must be met.

If the legal aid is applied for in time and is granted the appeal period begins to run again. Legal aid can also be granted for a procedure in front of the Supreme Administrative Court (§ 61 VwGG).

#### **France**

In France, access to justice concerns both natural person and legal person. Legal aid is available under certain conditions to non-profit organizations according to eligibility criteria set by law.

A non-profit organization that meets these criteria can appear before a judge to bring an environmental case and benefit from the same total or partial coverage that legal aid offers to any other litigant.

---

<sup>2</sup> Web: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/71/20221101.html>.

## Italy

Free legal aid is an institution recognized by Article 24 of the Italian Constitution to all citizens without wealth: “Everyone can take judicial action to protect individual rights and legitimate interests. The right to defence is inviolable at every stage and instance of the proceedings. The indigent are assured, through appropriate institutions, the means for action and defence before all levels of jurisdiction. [...]”

If admitted, the applicant does not have to pay any sum to the lawyer, who can be chosen by the applicant; legal aid fees are directly paid by the state to the appointed lawyer, who has to be filed (even) as legal aid lawyer; the fees are severely reduced by law provisions and practice..

To exercise his services, the lawyer must be registered in a special register, which can be consulted online on the websites of the various Councils of the Bar, within which the party can choose a professional at his discretion.

The lawyer can receive the remuneration only and exclusively from the State: if he asks or accepts money from the client, he commits an ethical crime, punishable by the Council of the Order to which he belongs.

The same income threshold necessary for access to legal aid, in fact, makes the benefit of the institution de quo really limited: the threshold, in fact, set at an immutable amount during the year of application, can only be assessed in monetary terms, risks becoming preclusive and limiting rights.

Free legal aid is guaranteed in all jurisdictions: civil, criminal, administrative, accounting, tax and voluntary.

Furthermore, on the basis of the combined provisions of articles 119 and 76 of Presidential Decree 115 of 2002, non-profit organizations and associations that do not pursue economic activities are admitted to free legal aid, if they have an income not exceeding 11,746, 68 euros.

The legislator has set a maximum level of income to access the benefit of legal aid (not exceeding € 11,746.68) which is identical for individuals and organizations and associations. The ratio for identifying a maximum level of income also for organizations and associations can be found in the fact that, since the latter are made up of a plurality of subjects and in many cases managing activities from which they derive considerable income, they have a greater capital and financial capacity.

## Romania

The Court of Appeal of Cluj and other courts within its area:

GEO no 51/2008 sets the procedure and the conditions for benefiting of waiving, postponing, postponing for the stamp legal fees, legal assistance by an appointed/chosen attorney, costs of experts, translator or interpreter used during trial, cost of prosecutor officer. This legal frame applies to all cases, no matter their nature, except for criminal cases. Therefore, environmental cases are included. Beneficiaries of these types of aid are natural or legal persons. Relevant information about this GEO is made available on the website of the court and in the building, at the archive office and the register office, in order to facilitate access to information.

According to GEO 51/2008, public legal aid can be offered in the following ways:

- a) Payment of the representation fee, of the legal assistance and, as the case, of the defence, through an appointed attorney or a chosen attorney, for carrying out or defending a right or a legitimate interest or for preventing a litigation;
- b) Payment of an expert, translator or interpret used during trial, with consent from the court or from the authority with jurisdictional attributions, if this payment, by law, devolves upon the person asking for public legal aid;
- c) Payment of the officer of the court fee;
- d) Waiving, reducing, postponing or adjournment from the payment of legal fees provided by law, including for those owed in the phase of foreclosure.

The criteria for granting legal assistance for natural persons take into account the monthly medium net income per family member (in case of an income lower than 300 lei, waiving is offered, in the sense of moving on the expenses by the state, and in case of an income between 300 and 600 lei, 50% of the sums representing the public legal aid are moved on by the state according to article 8 of GEO 51/2008).

The criteria for legal assistance for NGOs (which consists only in reducing, postponing or adjournment of legal stamp fees) take into account the medium net income of the NGO, its situation - liquidation or dissolution or its current activity being significantly affected by the payment of the stamp fee (article 42 para. 2 of GEO 80/2013). The request for legal aid is free of stamp taxes.

Legal persons cannot benefit of legal aid in the form of legal assistance.

The request for public legal aid has to be made in writing and accompanied by a self-declaration about whether during the last 12 month the applicant benefited of public legal aid, what type, for which case and in what amount.

Public legal aid can be offered, separately or cumulated, in any of the above-mentioned forms. The value of the public legal aid offered separately or cumulated, in any of the forms from a) to c), during one year, cannot exceed 10 national minimum gross salaries from the year of the request for aid.

The persons who's monthly medium net income per family member for the last 2 months prior to the aid request is less than 300 lei, benefits from legal aid in the forms mentioned above. The sums representing the public legal aid are entirely moved on by the state.

If the monthly medium net income per family member for the last 2 months prior to the aid request is less than 600 lei, 50% of the sums representing the public legal aid are moved on by the state.

Public legal aid can also be offered in other situations, proportionally to the needs of the applicant, when the known or estimated trial costs might limit the effective access to justice, including due to the differences between the cost of living in the member state where the applicant has the domicile or residence and the cost of living in Romania.

The request for legal aid can be filed anytime during the trial and is maintained for the whole trial.

### **United Kingdom**

The Government provides information and links (<https://www.gov.uk/government/organisations/ministry-of-justice>) on the provision of effective and accessible justice. Details regarding eligibility for publicly-funded advice services and information to help resolve problems in specific categories of law can be found via [www.gov.uk/legal-aid](http://www.gov.uk/legal-aid). Here, members of the public have access to the online information tool 'Can I get legal aid?' (<https://www.gov.uk/check-legal-aid>). This supports members of the public to check whether they might be eligible for legal aid and to signpost them to other sources of information or advice to help people resolve their problems. Other services have been promoted as part of efforts to signpost potential assistance to citizens, such as the Citizens Advice Bureau which provides guidance and support on legal aid and representation across the United Kingdom (<https://www.citizensadvice.org.uk/law-and-courts/legal-system/finding-free-or-affordable-legal-help/>).

Information on applying for judicial review in Northern Ireland and on proceedings in the High Court in Northern Ireland is available at <http://www.courtsni.gov.uk/en-GB/Services/jr/Pages/default.aspx>.

The UK has engaged in extensive activity to provide information to the public on accessing administrative and judicial review procedures, and to remove any unnecessary financial and other barriers to access to justice or to consider how they could be removed. These factors will be further considered in the upcoming Independent Review of Administrative Law (IRAL) chaired by Lord Faulks QC, as announced on 31 July 2020. The IRAL panel conducted a Call for Evidence from 9 September until 26 October, and further information will be provided once the report to Ministers is finalised and published following Government consultation.

The Government provides information and links (<https://www.gov.uk/government/organisations/ministry-of-justice>) on the provision of effective and accessible justice. Details regarding eligibility for publicly-funded advice services and information to help resolve problems in specific categories of law can be found via [www.gov.uk/legal-aid](http://www.gov.uk/legal-aid). Here, members of the public have access to the online information tool 'Can I get legal aid?' (<https://www.gov.uk/check-legal-aid>). This supports members of the public to check whether they might be eligible for legal aid and to signpost them to other sources of information or advice to help people resolve their problems.

### Legal Clinics

#### **Armenia**

There is a Legal Clinic at Yerevan State University (established in 1999), where the best professors mentor undergraduate and graduate students, gets the opportunity enabling them both to complete their theoretical knowledge and acquire practical skills to provide free legal assistance to vulnerable groups and socially disadvantaged citizens.

#### **Austria**

The University of Graz offers an environmental law clinic. ([Legal Clinic für öffentliches Recht und Umweltrecht - Praxisprofessuren \(uni-graz.at\)](https://www.uni-graz.at/praxisprofessuren)).

Field Code Changed

#### **Serbia**

On 24 October 2022, at the Faculty of Law of the University of Belgrade, with the support of the OSCE Mission to RS, the Law Clinic for Environmental Law is opened for the eight generations of students. (<https://www.linkedin.com/company/pravna-klinika-za-ekolosko-pravo-pfub/>).

### Other pro-bono services

#### **Albania**

In Albania there are no environmental layers that protect public interest in the field, who may assist the public and NGOs with counselling and legal expertise to take environmental cases to court. There is one NGO, namely Association of Legal Assistance Tirana, which offers legal assistance to the most vulnerable citizens and groups, mainly in the human rights field.

#### **Armenia**

Free legal services (including representation in court) by the Public Defender's Office to the people who can't afford it.

#### **Austria**

The Green Alternative Association for the Support of Citizens' Initiatives (BIV) supports citizens' initiatives or environmental organizations in legal proceedings and contributes to the costs for lawyers or experts ([www.buergerinitiativen.at](http://www.buergerinitiativen.at)).

Field Code Changed

#### **Finland**

Many law firms, especially bigger ones, do pro bono legal work, often in accordance with established pro bono programmes of their own. Associations of public utility, including also environmental NGOs, can be recipients of such pro bono legal assistance. There are no widely publicized pro bono programmes providing legal assistance for individuals in environmental matters, specifically. On the whole, pro bono work does not play a significant role in environmental judicial proceedings.

#### **Slovakia**

There is a variety of NGOs (e. g. Via Iuris, Ekopolis Foundation) providing legal assistance in environmental matters.

## United Kingdom

Other services have been promoted as part of efforts to signpost potential assistance to citizens, such as the Citizens Advice Bureau which provides guidance and support on legal aid and representation across the United Kingdom (<https://www.citizensadvice.org.uk/law-and-courts/legal-system/finding-free-or-affordable-legal-help/>).

### Financial support to NGOs

#### Austria

The NGO Ökobüro can be consulted by the public to get assistance with regard to environmental cases. This work is partly funded by the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology ([www.oekobuero.at/de/rechtsservice/umweltrecht](http://www.oekobuero.at/de/rechtsservice/umweltrecht)).

#### France

For non-governmental organizations, there are also mechanisms for access to the courts and, more generally, for financial support. Thus, the benefit of legal aid can be "exceptionally granted to non-profit legal entities based in France and lacking sufficient resources" (article 2 of law n° 91-647 of July 10, 1991). The public authorities also subsidize associations, which enables them to finance their legal actions, if needed. The State facilitates and encourages independent financing of the associative sector. In particular, Article 200 of the General Tax Code provides for a tax reduction for taxpayers making unrequited donations to organizations of general interest. This includes payments of money, donations in kind, contributions, waivers of income or products and expenses incurred in the context of a voluntary activity.

#### Norway

NGOs in the environmental field may apply for financial support from the Government. The annual budget for the Ministry of Climate and Environment sets aside a sum for this purpose. The following are among the criteria for deciding upon applications for support; the level of activity of the organisation nationally and locally, their economy and alternative means available for financing and the number of their members.

**Question 3:** Please describe what measures are taken in accordance with law and practice in your respective jurisdiction (including good practices and challenges) to promote specialization and training of members of judiciary and other legal professionals in environmental law.

#### France

##### *Specialisation in criminal cases related to environment*

In the wake of the sinking of the Erika, the law of May 3rd, 2001, and the decree of February 11th, 2002, created six specialized courts ("JULIS" : juridictions du littoral spécialisées) dedicated to sea environmental crimes (especially oil pollution damage from ships). In each of these JULIS, specialized prosecutors and judges are in charge of investigating and judging these cases.

The law of March 9th, 2004, and the decree of September 16th, 2004 created eight interregional courts ("JIRS": juridictions interrégionales spécialisées). Since the laws of November 15th, 2013 and August 8th, 2016, they have jurisdiction over cases of damage to the natural heritage, wastes trafficking, illegal mining, and plant protection products trafficking, when an organized gang commits them. In each of these JIRS, there are specialized prosecutors and judges in charge of investigating and judging these cases.

JULIS and JIRS prosecutor offices have concurrent jurisdiction with local prosecutors, who decline jurisdiction in favour of the first ones when it comes to complex and serious cases.

Field Code Changed

The law of March 4th, 2002 and the decree of April 22nd, 2002 created two national public health divisions which also prosecute some environmental offences since the law of March 9th, 2004 ("PSPE": pôles santé publique et environnement). The PSPE are located within Paris and Marseille prosecutor offices. They have concurrent jurisdiction with local prosecutors, JIRS prosecutors and PRE prosecutor who decline jurisdiction in favour of the PSPE when it comes to the most complex environmental cases.

The law of December 24th, 2020 and the decree of March 16th, 2021 created the regional environmental divisions ("PRE": pôles régionaux environnementaux). There is one PRE in each court of appeal, within one of the local prosecutor offices (i.e.: regarding the Court of Appeal of Aix-en-Provence, the PRE is established within the Marseille prosecutor office).

The PRE conduct investigations and prosecute offences punished by the environmental code and the forest code, some of the offences regarding plant protection products trafficking, illegal mining, or wood market offences.

In PRE and PSPE, specialized prosecutors are in charge of conducting investigations and prosecuting.

At local and regional scale, the circular of April 21st, 2015 established by the Ministry of Justice enhanced local prosecutor offices (in tribunals) and general prosecutor offices (in courts of appeal) to appoint a prosecutor specialized in environmental cases. These prosecutors are the preferred local points of contact for partners (environmental inspectors, environmental offices such as the National Office of Forests or National Office of Biodiversity, ... ) and other specialized judicial institutions UULIS, JIRS, PRE, PSPE) in these matters.

The environmental referents of general prosecutor offices organise meetings with the local referents on a regular basis, in order to coordinate with each other and establish a summary of their actions and relations with other administrations. This specialization also allows them to implement training programs within their jurisdictions, based on local specific environmental issues.

#### *Specialisation in civil cases related to environment*

The French Parliament recently voted a bill, which provides for the creation of regional courts specialized in civil claims in matters of serious environmental damage or endangerment.

These new courts, made up of specialized judges deal, for example, with pollution of water or soil by industrial activities, breaches of the regime of classified installations that degrade the environment, damage to protected species or areas, breaches of regulations on industrial waste, etc. These courts also deal with specific environmental civil disputes, in particular actions based on compensation for environmental damage provided for in articles 1246 et seq. of the French Civil Code.

#### **Specialized magistrates**

##### **Italy**

Within the public prosecutor's office in the major Italian courts there is a specialized group of magistrates dealing with crimes relating to Ecology and Environmental Protection.

In general these groups have competence in the following crimes:

- Pollution (including articles 29 quattordices, 137, 255 paragraph 3, 256, 259, 279, 261 bis of Legislative Decree no. 152/06) and, following Law no. 68/15, for the offenses referred to in articles:
- 452 bis of the criminal code environmental pollution;
- art. 452 quater of the criminal code environmental disaster;
- art. 452 sexies of the criminal code traffic and abandonment of highly radioactive material;
- art. 452 septies of the criminal code impediment to control;
- art. 452 terdecies of the criminal code omitted remediation;
- Landscape assets (including art. 181 of Legislative Decree no. 42/04);

- Hunting (including art. 30 of Law no. 152/92);
- Animals: crimes against the sentiment of animals (including articles 544 bis, 544 ter, 544 quater, 544 quinquies, 638 and 727 of the criminal code) - possession and importation of protected species (including articles 1, 2 and 6 of Law no. 150/92) - trade in skins and furs (including art. 2 of Law no. 189/04) - trafficking of animals (including art. 4 of Law no. 201/10);
- Management of end-of-life vehicles (including art. 13 of Legislative Decree no. 209/03);
- Protected areas (including Article 30 of Law no. 394/91);
- Navigation safety (including articles 1112 and 1231 R.D.n. 327/42 so called Navigation Code);
- Crimes relating to the peaceful use of nuclear energy (Law no. 1860/62 and subsequent);
- Forest fire art. 423 bis of the Criminal Code;
- Disturbing noises art. 659 of the Criminal code;
- Offensive issues art. 674 of the Criminal code;
- Habitat destruction art. 733 bis Criminal code.

### **Specialized judges in administrative courts**

#### **Austria**

There are no established courts in Austria that deal exclusively with environmental law matters. However, in the administrative courts in Austria chambers are set up that deal with environmental law matters mostly combined with other areas of the law. Certain judges are appointed to deal with environmental law cases.

#### **Finland**

Within the administrative court system, a major part of all environmental cases on the Finnish mainland (not covering the Åland Islands) has been centralized to one of the regional administrative courts, i.e. the Vaasa administrative court. This court deals with all cases under the Environmental Protection Act (EPA) and the Water Act, which makes up for roughly one fourth of environmental cases in administrative courts nationwide. The remaining environmental cases, such as ones dealing with nature protection, soil extraction and quarrying as well as land use planning and building, are handled by the regionally competent administrative court.

Expert judges in Vaasa Administrative Court and in the Supreme Administrative Court (SAC) participate in the consideration of cases on the basis of the Water Act and the Environmental Protection Act. In Vaasa Administrative Court the expert judges work full time, and in SAC there are part-time environmental expert judges. In Vaasa Administrative Court there can be one or two expert judges in the composition with two legally trained judges, depending on the expertise needed in the case. In SAC there can be one expert judge in the composition with three legally trained judges when a leave to appeal is decided on, and there are always two expert judges in the composition with five legally trained judges when the final decision is made. The expert judges as well as other members of the court assess the materials in the case file on the basis of their own expertise. An expert judge shall have an appropriate Master's degree in technology or in the natural sciences. In addition, he or she shall be familiar with the duties falling within the scope of the applicable legislation.

## **Kazakhstan**

A chairman of the court through its internal order determines specializations, according to which judges will consider these cases, including environmental offenses. And also in the Academy of Justice, and in the courts themselves, seminars and trainings are conducted, where this topic is also included. From 1 July 2021, new specialized administrative courts began to work. Judicial chambers to consider administrative cases have been established in the Supreme Court and regional courts.

## **Slovakia**

As part of the reform of the judicial map, separate administrative court were established in Slovakia. The previous competence of regional courts (krajské sudy) in administrative justice is exercised by administrative courts in Banská Bystrica, Bratislava and Košice. Their activity will start as of 1. January 2023 (Act no. 151/2022 Coll. on the establishment of administrative courts and on amendments and supplements to certain acts). The Supreme Administrative Court was established as the supreme body of the administrative justice system by Act no. 422/2020 Coll. amending the Constitution of the Slovak republic no. 460/1992 Coll. as amended with effect from 1. January 2021 and started its activities on 1. august 2021. The structure of the courts and the activities of the judges are regulated by Act no. 757/2004 Coll. on Courts and on Amendments and Additions to certain acts.

### **Specialized Prosecutors**

## **Romania**

The prosecutor's office next to the High Court of Cassation and Justice, with respect to the appointment of prosecutors specialized in environmental cases, replied that, even though there are no internal structures dedicated exclusively or primarily to the investigation of environmental crimes, within the Public Ministry there was created a network of specifically appointed prosecutors to whom the criminal environmental cases are assigned, in order to supervise the criminal research activity performed by the judicial police bodies and to give basic solutions. Currently, this network is formed of 180 active prosecutors, proportionally distributed at all hierarchical levels of each institution and equally distributed in the country.

The personnel movement is regulated by the unit manager, who periodically distributes new prosecutors as part of the network. There is also an electronic mail platform, to which all the members of the network are part of. Through this network, a coordinating prosecutor at national level communicates data and information in this field.

In order to fulfil the need for specialization of the prosecutors from the network, the prosecutor's office next to the High Court of Cassation and Justice coordinates the training activity in the field of environmental crimes, especially by facilitating the carrying out of thematic training and conference, to which these prosecutors are constantly designated to participate.

### **Training Programmes**

## **Armenia**

The Academy of Justice carries out initial training, gradual improvement of educational programs for judges, prosecutors and persons included in the applicants list in candidates for judges, as well as continuous training of judges and persons included in the list of candidates of applicants of judges.

## **European Union: Board of Appeal of the European Chemical Agency**

In addition, internal and external training activities are organised for the BoA members and its Registry staff that assist the BoA, including the alternate BoA members. These trainings focus mainly on scientific areas, such as toxicology

or assessment of technical equivalence in the framework of the Biocidal Products Regulation, but also legally related topics, for instance legal drafting techniques, amendments to REACH Annexes, etc.

### **France**

In 2018, the ENM (National School of Magistracy) redesigned one of its eight teaching departments, which is now called the Economic, Social and Environment Department, in order to strengthen teaching in environmental law.

Since 2020, the initial training curriculum has a specific program on "Justice and Environment". Students can take part in group workshop about topics such as "Justice and Climate", combining research assignments and interviews with specialists.

As part of the initial training, students can also chose to do internships in specialized institutions such as the National Office or Biodiversity. As for continuous training, French Judges and Prosecutors must take at least 5 days of training courses per year; yet, the topics of these courses are optional. The ENM offers several long continuous training programs on environmental law:

a training course on environmental justice of 5 modules of 3 days each, for prosecutors and judges ("CAJE" Cycle Approfondi sur la Justice Environnementale)

a 3 days training course on environmental liability, for prosecutors, judges, lawyers and legal experts ("MAJ" Magistrats Avocats Juristes)

a training course for prosecutors and judges on environ mental crimes investigations, organized with the OCLAESP (Central Office for Coordinating Environmental and Public Health Crime). This program consists in two stages: a first theoretical stage with 10 online modules (24 hours in total) and a second stage of physical exchanges with environment inspectors.

The ENM also offers several shorter training courses (2 to 5 days) on specific topics such as:

introduction to environmental law, European environmental law, law and animals, ...

Ultimately, as part of its bilateral cooperation arrangements, the ENM International department provides training courses to foreign judges and prosecutors on environmental topics.

### **Italy**

The Italian Legislative Decree no 26 of 2006 assigns the updating and training of judges to the exclusive competence of Superior School of Judiciary (Scuola Superiore della Magistratura), an autonomous didactic structure with full organizational autonomy. The Article 2 of legislative decree n. 26 of 2006 specifies that the school's exclusive competence includes, among other things, decentralized training activities and the training of magistrates in charge of training tasks. Italian Superior School of Judiciary on regular basis provides courses of in-depth study of environmental subjects for both public prosecutors and judges at the national level of initial and continuous training .

Furthermore, training activity, may be also provided by decentralized structures of Superior School of Judiciary that work at district level in the continuous training of judges and public prosecutors.

Among the Public research bodies the Italian Institute for Environmental Protection and Research (ISPRA), is worth mentioning. The Institute is a public research body, with legal personality under public law, technical, scientific, organizational, financial, managerial, administrative, patrimonial and accounting autonomy.

### **Norway**

The National Court Administration is the central support and service agency for the courts. The National Court Administration is responsible for professional training and additional education for judges in the first and second instance. Seminars, courses, lectures and educational stays are arranged, and funding for local and regional educational programmes is granted. This includes additional education within environmental law. Justices in the Supreme Court of Norway may attend these seminars and courses, but the training of the Supreme Court Justices is the responsibility of the Supreme Court itself.

The Norwegian Police University College offers various forms of specialization in the investigation of environmental crime, including labour and labour market crime and fisheries crime.

**Question 4:** Please describe, including good practices and challenges, access to independent environmental expertise during judicial and administrative review procedures.

#### **Technical judges**

##### **Finland**

The Administrative Court of Vaasa, with nation-wide competence in appeals matters under the Environmental Protection Act (EPA) and Water Act, makes use of judges trained in natural and technical science in order to ensure it sufficient expertise for such consideration. Also, the Supreme Administrative Court has appointed expert judges that participate in the decision-making in cases concerning EPA and Water Act.

A member of an administrative court, other than a legally trained member, who participates in the consideration of cases on the basis of the EPA and Water Act, shall have an appropriate Master's degree in technology or in the natural sciences. In addition, he or she shall be familiar with the duties falling within the scope of the applicable legislation. The expert judges are equal members of the court with independent decision-making powers and voting right and can therefore independently define the scope of the scientific evidence they deem to be relevant.

##### **Norway**

Pursuant to Section 9-12 of the Dispute Act, if requested by one of the parties or deemed by the court to be desirable, the court shall sit with two lay judges during the main hearing in addition to the professional judges. The lay judges shall be expert lay judges if required for the proper conduct of the case.

#### **Judicial Technical Experts**

##### **Romania**

The Romanian legal system does not have the concept of technical judge for environmental cases, but there are regulations on the judicial technical expert, among the specializations of judicial technical expertise there is also the one on "ecology and environmental protection", as it emerges from the provisions of the Order of the Minister of Justice No 199/2010 for the approval of the Nomenclature of specializations of judicial technical expertise, published in the Official Gazette No 78 of 4 February 2010, with subsequent amendments and additions.

According to article 11, para. 3 of GO no. 2/2000, with further amendments, "the nominal table including judicial technical experts, their identification data, for each specialization and county, depending on their domicile, is published annually on the web page of the Ministry of Justice and Citizens Liberties and is sent to the local bureaus for technical and accounting judicial expertise within courts ('tribunale'). "

A list of forensic technical experts specialising in ecology and environmental protection is available on the Ministry of Justice website, <https://www.just.ro/beta-experti-tehnici-judiciari-rezultate/>, and is accessible to the public.

##### **Slovakia**

The list of (forensic) experts is e. g. available on the website of the Ministry of Justice of the Slovak Republic (<https://www.justice.gov.sk/sluzby/znalci/>), however, it is a list sorted by field and sector, there is no record separately in relation to environmental matters, it is always necessary to into account the specific subject matter of the dispute.

##### **Republic of Moldova**

National Centre of Judicial Expertise provides a list of ecological expertise that are conducted by their institution. Often, the Centre provides this expertise in the trial upon the request of the parties. Also, in the trial the parties have the right to provide/ to conduct additional/repeated expertise, with the judge authorisation.

### **Ukraine**

The organizational and financial basis of forensic expert activity in order to ensure the justice of Ukraine with independent, qualified and objective expertise, focused on the maximum use of science and technology, is determined by the Law of Ukraine "On Forensic Expertise" dated 25.02.1994 No. 4038-XII (<https://zakon.rada.gov.ua/laws/show/4038-12#Text>).

Forensic experts certified in accordance with this Law are included in the state Register of certified forensic experts, the maintenance of which is entrusted to the Ministry of Justice of Ukraine. A person or body that appoints or orders a forensic examination may entrust it to those forensic experts who are included in the State Register of Certified Forensic Experts or other specialists in the relevant fields of knowledge, unless otherwise provided by law.

According to the provisions of Art. 7 of the said Law, forensic expert activity is carried out by state specialized institutions, their territorial branches, expert institutions of communal ownership, as well as forensic experts who are not employees of these institutions, and other specialists (experts) in the relevant fields of knowledge in the manner and on the conditions specified by this Law.

The grounds for conducting a forensic examination is the relevant court decision or decision of the pre-trial investigation body, or an agreement with an expert or expert institution - if the examination is carried out by order of other persons.

Usually, the said Register is open for free public access by the following link: <https://rase.minjust.gov.ua/>.

During the martial law, access to the information of this Register was restricted. At the same time, it is possible for all the interested persons to obtain an extract.

At the request of individuals and legal entities, the Ministry of Justice of Ukraine provides (subject to the provisions of the legislation on citizens' appeals and access to public information) information from the Register.

The legislation of Ukraine allows the possibility of attracting specialists from other countries for joint forensic examinations.

Thus, the heads of state specialized institutions conducting forensic examinations, if necessary, have the right, with the consent of the body or person who appointed the forensic examination, to include leading experts from other countries in the expert commissions. These joint expert commissions carry out forensic examinations in accordance with the procedural legislation of Ukraine. Payment to foreign experts for participation in forensic examination and reimbursement of other expenses related to its conduct is carried out by agreement of the parties (Article 23 of the said Law).

### **Other measures**

#### **Serbia**

The Association of Judicial Experts "Vojvodina" has environmental protection as one of its areas of work. (<https://www.forensicexp-vojvodina.org.rs/clanovi-zastita-zivotne-sredine>)

**Question 5:** Please describe, including good practices and challenges, other measures that are taken to secure timeliness and reduce duration of judicial and administrative review of environmental cases.

**Case weighting**

**Armenia**

According to the decision of the Supreme Judicial Council (ԲԳԽ-65-Ո-165, 2021), benchmark periods for the average duration of the procedures are defined according to the individuality and complexity of the cases.

**Fast Tracking/Prioritization**

**Romania**

With respect to the dossiers pending in courts regarding access to environmental information, the provisions of Law no. 544/2001 *on free access to information of public interest* apply, and these dossiers are subject to prioritization, according to legal provisions. Article 22 para. 5 of this law includes important procedural elements: "both the complaint and the appeal are judged in court, under emergency procedure and are waived of stamp fee." Therefore, the diligence in judging these cases is not only by default, resulting from the European provision to judge a cause in a reasonable duration (article 6 from the Convention for the Protection of Human Rights and Fundamental Freedoms and article 21 para. 3 of the Convention), but also explicit, directly based on the special law applicable at national level.

**Tajikistan**

According to the Civil Procedural Legislation of the Republic of Tajikistan, the deadline for considering environmental cases is set at 3 months.

**Temporary injunctive relief**

**France**

*Regarding civil disputes*

Before the civil courts, it is possible to obtain in summary proceedings a protective measure or a measure of restoration to prevent imminent damage or to stop an illicit disturbance.

These measures may be subject to a fine set by the judge in the event of delay in the execution of the decision.

*Regarding appeals before the administrative courts:*

Interim relief procedures allow the judge to take temporary measures in the context of an environmental dispute.

Article L. 521-1 of the Code of Administrative Justice, which establishes a general interim injunction known as "suspension", provides that in urgent cases and if a serious doubt as to the legality of a litigious decision is established, the interim relief judge may temporarily suspend the execution of the decision or some of its effects. The suspension may also concern a negative decision. The interim injunction, provided for in article L.521-3 of the aforementioned code, allows the judge to pronounce, in case of urgency, any "useful measure", provided that it is not contrary to an existing administrative decision. The interim injunction allows the interim relief judge "upon simple request and even in the absence of a prior administrative decision, to prescribe any useful measure of expertise or investigation" (article R. 532-1 of the Code of Administrative Justice). The provisional interim injunction makes it possible to obtain from the court an indemnity refused by the administration, pending the judgment fixing the final amount of the claim (article R. 541-1 of the Code of Administrative Justice). The interim statement of facts allows to ask the judge to appoint an expert in order to establish the facts concerning the environmental damage (article R. 531-1 code of administrative justice).

Articles L. 554-11 and L. 554-12 of the same code provide for two specific interim measures for the protection of nature or the environment, which make it possible to dispense with the need to justify urgency. The first one can be

directed against authorizations relating to the realization of projects that have not, wrongly, been subject to a prior environmental assessment. The second can be used to obtain the suspension of a planning decision subject to a prior public inquiry which has not been organised, or which has been the subject of an unfavourable opinion by the investigating commissioner. In the same sense, article L. 123-16 of the Environmental Code provides that the administrative judge shall grant a request for suspension of a decision taken after unfavorable conclusions of the investigating commissioner, if there is a serious doubt as to the legality of this decision.

With the exception of a few derogatory rules, environmental law is subject to the ordinary law of administrative litigation.

Some rules specific to urban planning litigation are intended to reduce the time required for processing by the administrative courts. This is the case for the abolition of appeals, tested until December 31, 2027, in disputes relating to certain building permits issued in sensitive areas (article R. 811-1-1 of the Code of Administrative Justice) or the introduction of an indicative ten-month time limit for judgments against certain building permits and subdivision development permits (article R. 600-6 of the Code of Urban Planning).

#### **Lithuania**

Lithuanian courts, following the provisions of Article 70 (3)(1) of the Law on Administrative Proceedings, may oblige legal or natural persons to stop illegal activities against nature. Provisions of a similar nature are established and applied when examining a civil claim (Article 145, Clause 12 of the Code of Civil Procedure establishes the possibility to oblige courts to take actions that prevent the occurrence of damage or its increase), when examining a criminal case, guided by the provisions of Article 151 of the Code of Criminal Procedure of the Republic of Lithuania, the possibility of temporarily restricting property rights is ensured in order to satisfy and successfully fulfil the possible compensation of damages.

#### **Norway**

Chapters 32–34 of the Dispute Act provide rules on provisional security, which includes arrest of goods and interim measures. Interim measure may be granted when the defendant's conduct makes it necessary to provisionally secure the claim because the action or execution of the claim would otherwise be considerably impeded, or when it is necessary to make a temporary arrangement in a disputed legal issue in order to avert considerable loss or inconvenience, or to avoid violence which the conduct of the defendant gives reason to fear. As described under question 1, the Dispute Act contains special rules on providing security for the claim for claims based on violation of provisions for the protection of the environment.

#### **Slovakia**

The provisions of the Administrative Court Procedure Act enable courts to suspend an effect of public authorities' decisions in case their immediate implementation would cause severe environmental harm and such suspension does not violate public interest.<sup>3</sup> The court may suspend an effect of a decision until its final decision in the pertinent matter. The administrative court shall decide on the applicant's application for suspensive effect within 30 days of receipt of the defendant's statement of defence to the application. In the cases described above, if a court suspends effect of a decision, it is obliged to decide the matter within 6 months.

#### **United Kingdom**

Parties may apply for interim relief in the form of an injunction at any time – even before proceedings have been issued.

<sup>3</sup> § 185 a) of the Administrative Court Procedure Act: „správny súd môže na návrh žalobcu a po vyjadrení žalovaného uznesením priznať správnej žalobe odkladný účinok, ak by okamžitým výkonom alebo inými právnymi následkami napadnutého rozhodnutia orgánu verejnej správy alebo opatrenia orgánu verejnej správy hrozila [závažná ujma, značná hospodárska škoda či finančná škoda], závažná ujma na životnom prostredí, prípadne iný vážne nenapraviteľný následok a priznanie odkladného účinku nie je v rozpore s verejným záujmom.”

Measures to take in case judges exceed procedural deadlines

**Finland**

There is no sanction mechanism in place with regard to undue delays, but the courts are subject to the same oversight by the supreme overseers of legality as administrative authorities, as well as possible criminal and tort liability.

There has been since 2009 also a compensation regime in place for undue delays in the general courts, regulated by the Act on Compensation for Excessive Length of Judicial Proceedings (362/2009). The act was amended in 2013 to cover also administrative court proceedings. The act provides that a claim for compensation can be filed with the same court considering the main issue at hand and sets a premise value for compensation at 1 500 euro per year of delay. The maximum sum of compensation is 10 000 euro. In administrative proceedings the right to compensation is limited to those individuals who are directly affected by the matter decided in the court, which means that e.g. NGOs can usually not claim for compensation.

**France**

In the event of excessive length of proceedings before the administrative courts, Article R.311-1 of the Code of Administrative Justice gives the Conseil d'Etat jurisdiction in the first and last instance to hear liability claims against the State.

**Italy**

Article 25 paragraph 4 of the law no 241 of 1990, establishes that, against the denial or postponement of the right of access, the applicant can, as an alternative to the judicial appeal and within the same terms, submit a request for review to the "Difensore civico". He must decide within thirty days whether to confirm the rejection or declare it illegitimate, communicating their assessments to the appellant and to the competent authority.

Article 25, in regulating the review procedure before the "Difensore civico", proposes an optional alternative, as it still remains available to the private individual for the possibility of judicial appeal pursuant to art. 25 paragraph 5, according to the procedures set out in art. 116 c.p.a. . Conversely, since the review is an ordinary administrative appeal, it is not allowed after the deadline for referring to the judge or the same has been seized. The deadline for judicial judgment is intended to be suspended when the through protection review is undertaken before the "Difensore Civico" - suspension not provided for in the accelerated procedure before the European Ombudsman - which, therefore, begins to run or from confirmation, even below form of silence, denial of access by the defender or by the provision motivated against the declaration of illegality of the defender by the authority qualified.

Unlike the judicial remedy, the review before the "Difensore Civico" admits also a trade union on merit, not only that of legitimacy.

At the provincial level Trento was one of the first local realities to foresee the figure of the "Difensore civico" as early as 1982.

**Norway**

The Dispute Act Section 11-7 gives rules on responses in the event of inadequate management of the case. Under Section 11-7 (1) the chief judge shall ensure compliance with the duty to take an active part in the management of the case and shall ensure orders that are necessary for rectifying deficiencies through neglected or delayed management of the case. A party may demand the intervention of the chief judge. In the event of material neglect of duties, the chief judge shall transfer the case to another judge or take over the case themselves if this is necessary for the proper conduct of the continued proceedings, see subsection (2). Under subsection (3), the decision by the chief judge may be appealed. The appeal court has the same powers as the chief judge pursuant to subsection (1) and (2) to determine the management of the case and may also refer the case to another court.

## **Romania**

Articles 522-526 of the Code of Civil Procedure regulate the appeal on delaying a trial, and articles 488<sup>1</sup>-488<sup>6</sup> of the Code of Criminal Procedure regulate the appeal on delaying a criminal trial.

On the other hand, according to article 99, letter h) from Law no. 303/2004 *regarding the status of judges and prosecutors, republished, with further amendments*, it is considered official misconduct the repeated and imputable failure to comply with the legal provisions regarding solving the cases with celerity or repeated delays in carrying out the work, because of imputable reasons.

The legal provisions mentioned above represent the common law in this matter, and do not exclusively refer to environmental cases.

## **Tajikistan**

It should be noted that the unreasonable extension of proceedings by a judge of both administrative and civil cases entails disciplinary liability.

### **Suspensive effect**

#### **Austria**

As a rule an appeal against an administrative decision has suspensive effect (§ 13 VwGVG).

#### **Finland**

According to general provisions regarding enforceability, an administrative decision qualifying for appeal may not be enforced before (ordinary) means of challenge have been exhausted, i.e. the decision has become final or gained "legal force" (saanut lainvoiman, vunnit laga kraft, AJPA, Section 122). This entails that lodging an appeal against a decision ordinarily automatically delays its execution. The same applies also for a request for an administrative review if such a review process is prescribed in the substantive law, but in the case of the municipal appeal lodging of the appeal does not automatically delay the execution of the decision.

Appeal to the Supreme Administrative Court shall nevertheless not prevent enforcement of a decision in a matter in which leave to appeal is required. Enforcement may nevertheless not be undertaken if it renders the appeal useless.

Environmental and other permit regimes often provide for an option to request the right to commence work or activities in accordance with the permit decision irrespective challenges against it (see question 4).

Another form of interim judicial protection is the power of the court to order an administrative decision to remain in force until a new decision has been taken in a situation where the court rules to overturn it. An example of application would be a case where a decision to implement nature protection is overturned and sent back for partial reconsideration or renewal of incorrect procedure.

### **Other measures**

#### **Serbia**

The Law on the Protection of the Right to a Trial within a Reasonable Time ("Official Gazette of RS", No. 40/15) is adopted in 2015. This law regulates the protection of the right to a trial within a reasonable time. The purpose of this law is to provide judicial protection of the right to a trial within a reasonable time and thereby prevent violations of the right to a trial within a reasonable time. Every party in court proceedings has the right to a trial within a reasonable time. The legal remedies that protect the right to a trial within a reasonable time are: 1) objection to speed up the

procedure; 2) appeal; 3) request for just satisfaction. The party does not pay the court fee in proceedings in which the right to a trial within a reasonable time is protected. They are urgent and have priority in decision-making.

**Question 6:** Please describe, including good practices and challenges, e-justice initiatives that can support access to justice in environmental cases

#### **Information on access to administrative and judicial review procedures**

##### **United Kingdom**

The UK has engaged in extensive activity to provide information to the public on accessing administrative and judicial review procedures, and to remove any unnecessary financial and other barriers to access to justice or to consider how they could be removed. These factors will be further considered in the upcoming Independent Review of Administrative Law (IRAL) chaired by Lord Faulks QC, as announced on 31 July 2020. The IRAL panel conducted a Call for Evidence from 9 September until 26 October, and further information will be provided once the report to Ministers is finalised and published following Government consultation. The Government provides information and links (<https://www.gov.uk/government/organisations/ministry-of-justice>) on the provision of effective and accessible justice. Details regarding eligibility for publicly-funded advice services and information to help resolve problems in specific categories of law can be found via [www.gov.uk/legal-aid](http://www.gov.uk/legal-aid). Here, members of the public have access to the online information tool ‘Can I get legal aid?’ (<https://www.gov.uk/check-legal-aid>). This supports members of the public to check whether they might be eligible for legal aid and to signpost them to other sources of information or advice to help people resolve their problems. Other services have been promoted as part of efforts to signpost potential assistance to citizens, such as the Citizens Advice Bureau which provides guidance and support on legal aid and representation across the United Kingdom (<https://www.citizensadvice.org.uk/law-and-courts/legal-system/finding-free-or-affordable-legal-help/>).

#### **Digitalization of judicial system**

##### **Finland**

General information about administrative (and general) court proceedings is available on the website of the Finnish justice system:

<https://oikeus.fi/en/index.html>

The courts publish yearly reports online on their activities, including statistics on environmental cases. These reports and data are available in the national languages Finnish and Swedish on the website <https://oikeus.fi>

The Administrative Court of Vaasa uses the administrative courts’ electronic service system for submission of claims:

<https://asiointi2.oikeus.fi/hallintotuomioistuimet/#/>

Information about the legislation is available in the FINLEX database, owned by the Ministry of Justice. The database contain not only statutes that are in force and those that have been repealed but also information about case law, treaties, government proposals, collections of regulations of the ministries and other legislative information:

<https://www.finlex.fi/en/>

The general website of the environmental administration provides information such as data on the state of the environment in Finland, contact details of authorities and information relating to different environmental procedures, including information on access to court:

<http://www.ymparisto.fi/en-US>

The websites of the four Regional State Administrative Agencies competent in environmental and water permit matters include registers on pending permit matters and permit decisions:

<http://www.avi.fi/en/web/avi-en/>

The documents of pending and completed EIA procedures are published on the environmental administration's EIA website:

<http://www.ymparisto.fi/YVA>

Further information on specific environmental procedures and access to justice may be provided on the websites of municipalities, for example.

### **Kazakhstan**

Information technologies applied in courts included as IS "Torelik", service "Trial Cabinet", mobile application "MVKS", "AVF of court sessions". Implemented online processes, developed digital analytics. Currently, the courts receive electronic cases, the parties in the process are notified via e-mail and SMS to mobile numbers. The Trial Cabinet service allows parties to send electronic applications, track their registration, and also receive copies of judicial acts.

### **Italy**

In the administrative proceedings, as already happened in relation to the civil one, the legislator has chosen to resort to digital administration to bring the advantages offered by ICT to justice, thus life to the so-called "Electronic administrative process", which has also become the exclusive mode of action from 1 January 2018.

In the European and international context, Italy qualifies as one of the most interesting and positive examples of interaction between digitalization and trial, both by extension for the degree of consolidation of the technological innovations used in the work practices of justice. There is an evident link between due process and technology which is no longer simply a tool for reducing the costs of justice but also entails a qualitative change in the governance of the sector, as well as in the *modus operandi* of courts and prosecutors, in the relationship between advocacy and parties and, finally, the accessibility itself of citizens to the judicial system. The field of innovation practice also touches, and above all, the administrative process along three lines: i) dematerialization and standardization; rationalization of the drafting scripts and iii) remotization or despatialisation of the public hearing. Electronic access to environmental legislation and jurisprudence is guaranteed. Complaints in environmental matters can also be submitted electronically.

The recently approved law n. 2022 that will come into force at the beginning of 2023 provides the possibility of remote hearing or the written procedure in order to speed up civil and criminal proceedings, also in environmental cases.

### **Norway**

#### E-access to environment-related legislation and case law

In Norway e-access to legislation, regulations and case law, including on environmental matters, is free of charge and open through [www.Lovdata.no](http://www.Lovdata.no). (There are also several other internet pages available for legal literature collections etc. for paying customers.) We do not have an open collection on environmental case law in specific, but we do have a web-based registry for regulations and decisions by authorities concerning the environment, called "[Miljøvedtaksregisteret](#)" (only accessible in Norwegian). Furthermore, the website "[environment.no](http://environment.no)" contains extensive information concerning environmental issues, and certain administrative bodies use their webpage to inform the public on a number of environmental issues, in addition to international conventions and national legislation, among them the [Norwegian Environment agency](#), which is a public organ under the Ministry of Climate

and Environment. The statements and decisions from the Parliamentary ombudsman ([Sivilombudet](#)) are also available online.

#### Remote court hearings

Under section 13-1 (3) of the Dispute Act, court hearings may be held as distance meetings in whole or in part when it is deemed appropriate and justifiable. A distance meeting is a meeting at which not all participants are present in person, but participate using remote communication technology. Also, the Dispute Act states that Parties, witnesses and experts may be questioned before the court by remote hearing (distance examination) when it is appropriate and justifiable, see [section 21-10](#). Before the court makes a decision on remote hearings pursuant to the first paragraph, the parties shall be given the opportunity to make a statement. Distance examination is carried out by video examination. If equipment for video examination is not available, audio examination can be used if the conditions under the first paragraph are still met.

#### Electronic submission and management of claims for judicial review

Norwegian courts use a digital portal ([Aktorportalen](#)) for their communication with lawyers. All documents from the court are sent to through the portal. It is mandatory for lawyers to use the portal in communication with the court, see Section 3 a of the [Regulation on Electronic Communication with the Courts](#). The portal user uploads all documents as PDF files to the court (and the other party) through the portal. Electronic signing of documents in the portal is equivalent to a signature. The court's decisions are made available in the portal as a confirmed electronic document.

On digitalisation of the courts in general, we can mention that the Norwegian court administration has digitalised their case system through the information system [Lovisa](#), which has become a daily working tool for judges and is used in all criminal and civil cases in Norway.

## **Romania**

According to **the Ministry of Justice**, regarding e-access to information:

The Romanian legislation is fully accessible, free of charge on the webpage of the Ministry of Justice ([www.just.ro](http://www.just.ro)).

Information on dossiers and sessions are automatically updated, every day, at central level (the portal's database) from the courts level (ECRIS CDMS database for each court), and is available at the link: <http://portal.just.ro/SitePages/despre.aspx>

The dossiers pending at the High Court of Cassation and Justice are accessible at <https://www.iccj.ro/>.

With regard to the High Court of Cassation and Justice, we note that in June 2021, the President of the Supreme Court approved the Digitisation Plan for this institution.

According to the Digitisation Plan of the High Court of Cassation and Justice, the Supreme Court launched on 9 July 2021 the new website of the High Court of Cassation and Justice ([www.iccj.ro](http://www.iccj.ro)), which contains a platform of digital services (electronic file, electronic communication of procedural documents service, digital library, including case law, collections of relevant decisions, decisions on preliminary referrals and decisions on appeals in the interest of the law).

As of 19 November 2021, parties and their representatives have the possibility to file documents in electronic format at the chambers of the High Court of Cassation and Justice, using the "Form for filing documents in electronic format" on the website of the Supreme Court; using the form, parties and their representatives also have the possibility to request "Electronic communication of procedural documents (by e-mail)."

Alongside other objectives, the Digitisation Plan also includes providing remote access to court proceedings administered by the Supreme Court.

At the level of the High Court of Cassation and Justice, electronic access to the matters covered by the question is provided for environmental cases under similar conditions to those established for other cases falling within the jurisdiction of the Supreme Court.

With regard to access to environmental standards and legislation, it should be noted that there are websites of public institutions that provide this facility, such as, for example, that of the Ministry of the Environment, Water and Forests, [www.mmediu.ro](http://www.mmediu.ro).

### Slovakia

Information about access to justice in environmental matters can be found also on the website of the Ministry of Environment of the Slovak republic, which also includes the links to the relevant EU sources on access to justice in environmental matters.<sup>4</sup> Relevant information guidelines for citizens on this topic might be found on the website of the NGO Via Iuris as well.<sup>5</sup>

### Ukraine

According to Art. 14 of the Civil Procedure Code of Ukraine dated 18.03.2004 No. 1618-IV (<https://zakon.rada.gov.ua/laws/show/1618-15#Text>), the Unified Judicial Information and Telecommunication System (hereinafter - UJITS) operates in the courts.

Claims and other statements, complaints and other procedural documents stipulated by law, which are submitted to the court and may be the subject of court proceedings, in the order of their receipt, are subject to mandatory registration in the Unified Judicial Information and Telecommunication System on the day of receipt of documents.

Determination of a judge or panel of judges (judge-rapporteur) for consideration of a particular case is carried out by the Unified Judicial Information and Telecommunication System in the manner prescribed by this Code (automated distribution of cases).

According to the law, the UJITS ensures the exchange of documents (sending and receiving documents) in electronic form between the courts, between the court and the participants of the trial, between the participants of the trial, as well as recording of the trial and participation of the participants of the trial in the court session in the videoconference mode.

The court shall send court decisions, court summonses, court summonses - notices and other procedural documents to the participants of the court proceedings to their official electronic addresses, perform other procedural actions in electronic form with the use of the UJITS in the manner prescribed by this Code, the Regulation on the Unified Judicial Information and Telecommunication System and/or provisions that determine the procedure for the functioning of its individual subsystems (modules).

Attorneys, notaries, private executors, insolvency receivers, forensic experts, state bodies, local self-government bodies and economic entities of the state and municipal sectors of the economy shall register official e-mail addresses in the UJITS on a mandatory basis. Other persons register official e-mail addresses in the UJITS on a voluntary basis.

Persons who have registered official e-mail addresses in the UJITS shall be sent by the court any documents in cases in which such persons participate exclusively in electronic form by sending them to the official e-mail addresses of such persons, which does not deprive them of the right to receive a copy of the court decision in paper form upon a separate application.

Registration in the UJITS does not deprive a person of the right to submit documents to the court in paper form.

Persons who have registered official e-mail addresses in the UJITS may submit procedural and other documents, perform other procedural actions in electronic form exclusively through the UJITS using their own electronic digital signature equivalent to a handwritten signature in accordance with the Law of Ukraine "On Electronic Trust Services"

<sup>4</sup> <https://minzp.sk/aarhus/>.

<sup>5</sup> <https://viaiuris.sk/obciansky-kompas/>.

Field Code Changed

Field Code Changed

dated 05.10.2017 No. 2155-VIII (<https://zakon.rada.gov.ua/laws/show/2155-19#Text>), unless otherwise provided by this Code.

The peculiarities of the use of electronic digital signature in the UJITS are determined by the Regulation on the Unified Judicial Information and Telecommunication System and/or provisions governing the operation of its individual subsystems (modules).

The court shall consider the case on the basis of the court case materials in paper or electronic form in the manner prescribed by the Regulation on the Unified Judicial Information and Telecommunication System and/or provisions governing the functioning of its individual subsystems (modules).

Procedural and other documents and evidence in paper form shall be kept as an appendix to the case in the court of first instance and, if necessary, may be examined by the parties to the case or the court of first instance or requested by the court of appeal or cassation upon receipt of the relevant appeal or cassation appeal.

Unauthorized interference in the work of the UJITS and in the automated distribution of cases between judges entails liability established by law.

UJITS is subject to protection with the use of a comprehensive information security system with confirmed compliance.

Regulations on the Unified Judicial Information and Telecommunication System and/or provisions defining the procedure of functioning of its individual subsystems (modules) shall be developed by the State Judicial Administration of Ukraine and approved by the High Council of Justice after consultations with the Council of Judges of Ukraine.

6.5. The Civil Cassation Court within the Supreme Court has the subsystem "Electronic Court", which is a part of the Unified Judicial Information and Telecommunication System (hereinafter - UJITS).

The use of subsystems (modules) of the UJITS is carried out in accordance with the procedure determined by the Regulation on the procedure for the functioning of individual subsystems (modules) of the Unified Judicial Information and Telecommunication System, approved by the decision of the High Council of Justice of August 17, 2021 No. 1845/0/15-21 ([https://zakon.rada.gov.ua/rada/show/v166\\_910-22#Text](https://zakon.rada.gov.ua/rada/show/v166_910-22#Text)), and the rules of procedural law governing the procedure for such actions after the start of operation of the relevant subsystems (modules) of the UJITS.

The relevant announcement was published in the newspaper "Holos Ukrayiny" (Voice of Ukraine) dated 04.09.2021 No. 168 (7668), page 15 ([http://www.golos.com.ua/edition\\_archive/2021-09](http://www.golos.com.ua/edition_archive/2021-09)).

Thus, the Civil Cassation Court accepts procedural documents created by users in the electronic cabinet of the "Electronic Court" subsystem.

This information is available on the official website of the Supreme Court ([https://supreme.court.gov.ua/supreme/pro\\_sud/kcs\\_elektronnyj\\_sud/](https://supreme.court.gov.ua/supreme/pro_sud/kcs_elektronnyj_sud/)).

### **Other measures**

#### **United Kingdom**

The Administrative Court Judicial Review Guide, provides comprehensive information about judicial review procedure ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/913526/HMCTS\\_Admin\\_Court\\_JRG\\_2020\\_Final\\_Web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913526/HMCTS_Admin_Court_JRG_2020_Final_Web.pdf)).

The Digital Justice System (DJS) is the term we are using for the approach we are taking to increasing access to justice online. It refers to the online digital journey to resolving legal disputes in the Civil, Family and Tribunal (CFT) jurisdictions.

We are looking at the way that technology can facilitate a user's journey from when they first realise they may have a legal problem, through to resolving their case in court where necessary.

There are a number of existing digital tools that would form part of the DJS, and are representative of the kind of resources we may consider developing in the future:

- An online signposting tool, available on GOV.UK, which helps users to understand their options for addressing housing disrepair issues in private rented accommodation, which is signposted to users by local authorities;
- The Child Arrangements Information tool;
- The Official Injury Claim (“Whiplash”) Portal;
- The Finding Legal Advice and Information page on Gov.uk

### **Ukraine**

The Supreme Court regularly publishes thematic reviews of its case law in the form of digests on its official website.

In the same manner, the Digest of the case law of the Supreme Court in disputes affecting the protection of duration and environmental rights was published in 2019 ([https://supreme.court.gov.ua/userfiles/media/Daidjest\\_Ekologia.pdf](https://supreme.court.gov.ua/userfiles/media/Daidjest_Ekologia.pdf)).

The Review of the results of the study of the case law of the Commercial Cassation Court within the Supreme Court in disputes arising in the field of environmental protection and environmental rights was published in 2021 ([https://supreme.court.gov.ua/userfiles/media/new\\_folder\\_for\\_uploads/supreme/Oglyad\\_dovkilliya\\_ekolog\\_prava\\_2021\\_11\\_17.pdf](https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Oglyad_dovkilliya_ekolog_prava_2021_11_17.pdf))

**Question 7:** Please describe, including good practices and challenges, whether alternative dispute resolution of environmental cases is available and/or used in practice.

### **European Union: Board of Appeal of the European Chemical Agency**

Although not intended strictu sensu as an alternative dispute resolution, under Article 1a of the RoP, the Chairman may invite the parties to consider resolving their dispute by reaching an amicable agreement. In the future a proper alternative dispute resolution mechanism, whereby parties would be able to initiate alternative dispute resolution mechanism could be developed to resolve the cases before the BoA. - If the contested decision is rectified by the Executive Director of the Agency, the appellant has the option to withdraw the appeal, which leads to the closure of the case by the Chairman without a substantive decision.

### **Finland**

It is ordinarily not possible to officially confirm settlements in administrative court appeals matters, and mediation or other means of alternative dispute resolution are correspondingly not available in administrative environmental matters.

In civil matters, different methods of dispute resolution are available. Court mediation is offered by the general courts, and it is also possible to confirm out-of-court settlements. There are not established forms of out of court solutions in the environmental area, but there have been some experimental and academic research projects on mediation in real estate and environmental disputes (like the SOMARI-project at Aalto University by Finnish Forum for Mediation in 2012).

Finnish Forum for Mediation offers also up to date information on mediation in Finland:

<http://sovittelu.com/in-english/>

### **France**

In civil matters, extra-judicial mediation allows the parties to a dispute to settle it without going to court. In a judicial context, any judge seized of a dispute may, after having obtained the agreement of the parties, order a mediation. The

mediator's task is to hear the parties and compare their views to help them find a solution to the conflict between them. When the judge has not obtained the parties' agreement to mediation, he may order them to have a meeting with a mediator, who will be in charge of informing them of the purpose and progress of a mediation measure. Whether the mediation takes place in a conventional or judicial framework, each party can request the judge to homologate the resulting agreement, in order to give it enforceability.

#### **Regarding appeals before the administrative courts:**

Law No. 2016-1547 of November 18, 2016 on the modernization of justice for the 21st century introduced into administrative law a mediation procedure defined as "any structured process, by whatever name it may be called, by which two or more parties attempt to reach an agreement with a view to the amicable resolution of their disputes, with the assistance of a third party, the mediator, chosen by them or appointed, with their agreement, by the court" (Article L. 213-1 of the Code of Administrative Justice). The definition adopted for mediation allows it to include conciliation.

Mediation can be initiated by the parties outside of any dispute before the administrative judge. As soon as the parties agree on the use of mediation, the time limits for appeal and prescription are interrupted. They may also refer the matter to the president of the administrative tribunal or the administrative court of appeal with territorial jurisdiction so that he or she can organize the mediation.

Resort to mediation may also be at the discretion of the president of the court if he or she obtains the agreement of the parties. In this situation, the judge determines the conditions of remuneration of the mediator. If a party is a beneficiary of legal aid, the costs of mediation will be covered by the State.

Mediation is not reserved for a specific dispute and environmental disputes may be subject to such a procedure. The only restriction imposed by the legislation is that it prevents the parties from reaching an agreement that may affect rights that are not freely available to them (article L. 213-3 of the Code of Administrative Justice).

Finally, the parties who have concluded a mediation agreement may refer the matter to the administrative judge for homologation and enforceability of the agreement (Article L. 2134 of the Code of Administrative Justice).

#### **Italy**

The mediation procedure is currently governed by Legislative Decree 28/2010 and subsequent amendments.

Mediation is: "the activity, carried out by an impartial third party and aimed at assisting two or more subjects in the search for an amicable agreement for the settlement of a dispute, also with the drafting of a proposal for the resolution of the same".

The mediator is: "the natural person or persons who, individually or collectively, carry out the mediation without, in any case, the power to make binding judgments or decisions for the recipients of the service".

Given the effectiveness and success of mediation found over the years and the specific needs of environmental conflicts, the field of action of mediation has widened by applying it to this type of conflict.

In December 2015 the Chamber of Commerce of Milan Monza Brianza Lodi (CAM) started the experimental phase of the environmental mediation project. Then, due to its success and its growth, the service has been established permanently within CAM and an innovative service, named "FacilitAmbiente service", to help businesses, public bodies and citizens to deal preventively with environmental conflicts, through a Facilitation process with qualified subjects.

For what regards the damages compensation in environmental cases, which falls under the competence of civil judges, art. 185 and 185 bis of civil procedural code are applicable: this implies that judges have to try the conciliation of the case at the first hearing or, if it is the case, even later until the last hearing where the case is finally discussed.

#### **Kazakhstan**

In Kazakhstan, parties may fully or partially resolve an administrative case by concluding an agreement on reconciliation, mediation, or dispute resolution through participatory procedures at all stages of the administrative process before the court renders a decision, based on mutual concessions. Reconciliation is possible only if the defendant has administrative discretion.

#### **Norway**

Chapter 6 of the Dispute Act provides rules on proceedings before the Norwegian Conciliation Board. The procedure shall assist the parties in achieving a simple, swift and inexpensive resolution of the case through mediation or judgment. The Conciliation Board can hear cases that can be brought before the district court, with certain exceptions. Notably, the board shall not hear cases against a public authority, institution or civil servant concerning matters which are not exclusively of a private law nature. In addition, Chapters 7 and 8 of [the Dispute Act](#) provide the opportunity for non-judicial mediation, general mediation within the main proceedings before the ordinary courts and a specific procedure for judicial mediation.

#### **Romania**

According to **the Ministry of Justice**, regarding the alternative dispute resolution:

If the applied procedure is the one for administrative contentious, then the preliminary procedure itself and the associated preliminary complaint, provided by article 7 of Law 554/2004 *on administrative contentious*, represent a dispute resolution in an administrative manner, in certain cases and conditions.

If the applied procedure is under common law, then the alternative dispute resolutions are available. Mediation before bringing to court a case is optional. During the resolution of the trial, the judicial authorities are obliged to inform the parties about the possibility to use mediation and its advantages. The relevant legislation is represented by Law no. 192/2006 *on mediation and organization of the mediator's profession*. According to article 2 para. 1 of Law 192/2006, if the law doesn't provide otherwise, then the parties, natural or legal persons, can solve their dispute of any nature through mediation, even after the beginning of the trial in front of a court."

#### **Tajikistan**

Соглашение сторон предусмотрено процессуальным законодательством и законодательством о третейских судах, что стороны в споре могут прийти к соглашению и разрешить спор по совету друг друга до обращения в совещательную комнату суда или судьи.

#### **Ukraine**

##### *Reconciliation*

7.1. As a general rule, in the civil and commercial proceedings of Ukraine the parties may reconcile, including through mediation, at any stage of the trial. The result of the parties' agreement may be formalized in the form of an amicable settlement agreement (part 7 of Article 49 of the Civil Procedure Code of Ukraine dated 18.03.2004 No. 1618-IV (<https://zakon.rada.gov.ua/laws/show/1618-15#Text>).

Based on the provisions of parts 1, 2 of Article 42 of the said Code in such cases the court applies the incentive procedure for the distribution of court costs:

- in case of conclusion of a settlement agreement before the decision in the case is made by the court of first instance, the plaintiff's withdrawal of the claim, recognition of the claim by the defendant before the commencement of the consideration of the case on the merits, the court in the relevant ruling or decision in the manner prescribed by law, decides on the return to the plaintiff from the state budget of 50 percent of the court fee paid when filing a claim, and if the parties reached an agreement on the conclusion of a settlement agreement, the plaintiff's withdrawal of the claim or recognition of the claim by the defendant as a result of mediation - 60 percent;

- in case of conclusion of a settlement agreement, withdrawal of the claim, recognition of the claim by the defendant at the stage of reviewing the decision on appeal or cassation, the court in the relevant decision in the manner prescribed by law, decides on the return to the complainant (applicant) from the state budget of 50 percent of the court fee paid

by him when filing the relevant appeal or cassation appeal, and if the parties reached an agreement on the conclusion of a settlement agreement, withdrawal of the claim or recognition of the claim by the defendant as a result of mediation.

*Mediation*

7.2. In Ukraine, the legal basis and procedure for conducting mediation as an out-of-court procedure for resolving a conflict (dispute), the principles of mediation, the status of a mediator, requirements for his/her training and other issues related to this procedure are determined by the Law of Ukraine "On Mediation" dated 16.11.2021 No. 1875-IX (<https://zakon.rada.gov.ua/laws/show/1875-20#Text>).

This Law applies to social relations related to mediation in order to prevent the emergence of conflicts (disputes) in the future or to resolve any conflicts (disputes), including civil, family, labour, economic, administrative, as well as in cases of administrative offenses and in criminal proceedings in order to reconcile the victim with the suspect (accused).

Mediation may take place before recourse to a court, arbitral tribunal, international commercial arbitration, or during pre-trial investigation, judicial, arbitral proceedings, or in the execution of a decision of a court, arbitral tribunal or international commercial arbitration.

At the same time, mediation shall not be conducted in conflicts (disputes) that affect or may affect the rights and legitimate interests of third parties who are not parties to this mediation.

The fundamental guarantee of the mediator's independence is the prohibition of interference of state authorities, local self-government bodies, enterprises, institutions, organizations regardless of ownership and subordination, public associations, officials and civil servants, individuals during the preparation and conduct of mediation (Part 3 of Article 7 of the said Law).

**United Kingdom**

In addition, the UK Government is also a strong supporter of alternative dispute resolution and has introduced initiatives to encourage and promote its use in all civil disputes. On environmental claims as well as Alternative Dispute Resolution (ADR), if the environmental claim is for compensation to the value of £10k, they will be offered a free mediation session with the Small Claims Mediation Service (SCMS). In principle, there would be no reason why such claims are not amenable to an ADR resolution rather than a judicial settlement.

---