

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

Task Force on Access to Justice

Tenth meeting

Geneva, 27–28 February 2017

Item 4 of the provisional agenda:

Tools to promote effective access to justice

Information document 4

Overview of the availability of the quantitative data relevant to the practical application of the provisions of article 9 of the Convention

Prepared by the secretariat¹

This document contains an update of document AC/TF.AJ-8/Inf.2² comprising of a “cut and paste” compilation of the relevant extracts from the reports with quantitative data on the practical application of article 9 of the Aarhus Convention provided in the national implementation reports submitted by Parties to the Convention in the 2005-2017 reporting cycles (question XXX of the reporting format)³. The information from 2017 national implementation reports is provided in this document as received by 20 January 2017. The document also includes a summary table indicating the Parties that provided specific statistics on article 9 of the Convention or information on its availability.

This data could be also relevant for the implementation of the Sustainable Development Goal 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”) and its target 16.3 (“Promote the rule of law at the national and international levels, and ensure equal access to justice for all”).

The current indicators to monitor the implementation of target 16.3 contained in the Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (E/CN.3/2016/2/Rev.1), Annex IV, included:

16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms

16.3.2 Unsentenced detainees as a proportion of overall prison population

Delegates are invited to consult this document in advance of the meeting in order to gain an overview of the availability of quantitative data on the practical application of article 9 of the Aarhus Convention and to discuss further needs in this area.

¹ This document was not formally edited.

² Available from <http://www.unece.org/env/pp/aarhus/tfaj8.html#/>

³ Available from <http://apps.unece.org/ehlm/pp/NIR/index.asp>

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I Summary table of reporting on the practical application of article 9 of the Convention

Symbols used in table:

X	=	The Party included quantitative data on the practical application of article of the Convention (question XXX of the reporting format)
O	=	The Party provided only explanations regarding the availability of quantitative data or the information on cases in environmental matters (question XXX of the reporting format)
—	=	The Party reported that quantitative data on the practical application of article 9 was not available (question XXX of the reporting format)
n/a	=	The Party did not report anything regarding the statistics on the practical application of article 9 or the information (question XXX of the reporting format)

Party	2005	2008	2011	2014	2017 ⁴
Albania	n/a	n/a	n/a	X	
Armenia	n/a	n/a	n/a	n/a	
Austria	n/a	n/a	n/a	n/a	n/a
Azerbaijan	n/a	n/a	n/a	n/a	O
Belarus	-	n/a	-	-	X
Belgium	n/a	O	O	O	
Bosnia and Herzegovina	n/a	n/a	-	X	
Bulgaria	-	-	-	-	n/a
Croatia	n/a	n/a	X	X	O
Cyprus	n/a	n/a	n/a	n/a	
Czech Republic	X	X	X	O	n/a
Denmark	n/a	n/a	n/a	n/a	
Estonia	n/a	n/a	n/a	n/a	n/a
European Union	n/a	n/a	X	X	
Finland	n/a	X	X	X	
France	X	X	X	X	
Georgia	O	O	O	O	X

⁴ As available by 20 January 2017.

Germany	n/a	X	-	X	X
Greece	n/a	n/a	n/a	n/a	n/a
Hungary	n/a	n/a	n/a	n/a	
Iceland	n/a	n/a	n/a	n/a	
Ireland	n/a	n/a	n/a	O	O
Italy	n/a	n/a	n/a	n/a	
Kazakhstan	X	n/a	n/a	X	X
Kyrgyzstan	X	X	X	n/a	X
Latvia	O	O	O	O	
Lithuania	n/a	n/a	n/a	n/a	n/a
Luxembourg	n/a	n/a	n/a	n/a	
Malta	n/a	n/a	n/a	n/a	
Montenegro	n/a	n/a	n/a	X	X
Netherlands	n/a	n/a	O	O	
Norway	n/a	n/a	n/a	n/a	
Poland	O	O	O	X	
Portugal	n/a	n/a	n/a	n/a	
Republic of Moldova	-	n/a	n/a	n/a	
Romania	n/a	n/a	X	X	
Serbia	n/a	n/a	X	X	
Slovakia	n/a	n/a	n/a	O	O
Slovenia	n/a	n/a	n/a	-	
Spain	n/a	n/a	n/a	X	X
Sweden	n/a	n/a	n/a	n/a	
Switzerland	n/a	n/a	n/a	n/a	
Tajikistan	n/a	n/a	n/a	n/a	
The former Yugoslav Republic of Macedonia	n/a	X	n/a	n/a	
Turkmenistan	n/a	n/a	n/a	n/a	
Ukraine	n/a	n/a	n/a	n/a	
United Kingdom	n/a	n/a	n/a	n/a	

II. Extracts from the National Implementation Reports providing the statistics on the practical application of article 9 of the Aarhus Convention

Albania

Year: 2014

Cases of implementation of this article in Albania are sporadic. Even though the role of NGOs has been strengthened, they nonetheless do not have sufficient capacities to take their cases to court. Practically, there are but few cases when NGOs have undertaken an administrative procedure before the Ombudsman or Court.

Cases brought before the Ombudsman:

During 2010 – 2012, the Ombudsman has examined 35-40 public requests, addressing mainly issues, such as: waste water, smoke, gases, noise and electromagnetic pollution, etc. the office of the Ombudsman notices that the majority of public letter on such issues present community interest complaints against pollution caused by Cement Factories in Fushe Kruje, Cellophane plant in Lushnje, Arsenic Plant remains in Fier, urban waste management plant in Shengjin, mobile companies' antennas, Fish processing Plants, timber processing activities, cattle and fowl breeding yards, etc.

There were 9 complaints related to environmental problems in 2012, of which two were found ungrounded, 4 were beyond Ombudsman competences and jurisdiction, and 3 were settled in the interest of the complainers. (Annual Ombudsman Report, published on official website: www.avokatipopullit.gov.al.)

Azerbaijan

Year: 2017

Reports are compiled annually on the materials sent for examination by the judicial authorities. There are no barriers impeding access to justice.

Belarus

Year: 2005

Statistics on environmental justice are not compiled.

Year: 2011

No statistics are kept on access to justice in environmental matters with the exception of court statistics for matters initiated by the Ministry of the Environment.

Year: 2014

Statistics on justice in matters relating to the environment is not conducted, except for judicial statistics on matters relating to environmental protection, initiated by the Ministry of Environment.

Year: 2017

There is a significant increase of the cases submitted by citizens and NGOs promoting environmental protection to the courts related to exercising their rights in accordance with the provisions of the Aarhus Convention.

During the period of 2014-2016 the NGO "EcoHome" filed 17 legal actions to courts (lawsuits and complaints together) in cases related the Aarhus Convention.

There have been 9 cases refusing to accept the claims by reason of the absence of jurisdiction. The considered claims in most cases were dismissed. In some cases, during the court proceedings the defendant voluntarily provided the requested environmental information. Three of the claims concerned the requirement to suspend the activities, one of which was at the time of preparation of the report under consideration. In the second case, claim was denied. But the positive point in this part is that the court took a decision to recover only partially the lawyer's fees of the defendant from the NGO. The vast majority of unsatisfied court decisions were appealed in cassation.

There have been also cases when citizens defending their environmental rights involved attorneys in court proceedings. But attorneys used civil and other fields of law for the protection of environmental rights, that were more often used in practice by the courts to resolve disputes. This made it possible in some cases to win the dispute.

Belgium

Year: 2008

The Federal Public Justice Service draws up annual statistics of courts and tribunals, including for environmental dossiers: the number of environmental cases registered by the office of the civil court, the number of environmental cases referred to examining magistrates, and so on.

Year: 2011

The Federal Public Justice Service draws up annual statistics of courts and tribunals, including for environmental dossiers: the number of environmental cases registered by the office of the civil court, the number of environmental cases referred to examining magistrates, and so on.
<http://www.just.fgov.be>

Year: 2014

The Federal Public Justice Service draws up annual statistics of courts and tribunals, including for environmental dossiers: the number of environmental cases registered by the office of the civil court, the number of environmental cases referred to examining magistrates, and so on.
<http://www.just.fgov.be>

Bosnia and Herzegovina

Year: 2011

The MSPCE does not keep records on the number of appeals or on environmental law.

Year: 2014

According to the data received from 16 out of 18 relevant Courts in BiH, from January 2011, to August 2013, there were 39 judicial proceedings involving rejection of access to information. These proceedings include the ones not related to environment issues. In one half of these proceedings appeals were approved, while in one out of four cases an appeal was denied. In other cases appeals were either denied, or the Court has not submitted information on the outcome.

Still, the number of cases with access to information denied or not resolved is much higher. Only two NGOs that submitted their responses as a part of the „Second national report“ have exercised their rights to a legal remedy. One of the two received responses to all seven requests submitted, but after addressing the office of the Ombudsman. The other NGO initiated an administrative dispute which was still ongoing at the time this report was being drafted.

As for the number of cases concerning the resolution on environment/ecology permit, there were a total of five cases, with two cases still ongoing.

During the preparation of the Second national report, only the FMET submitted their records on proceedings concerning the issuing of environment/ecology permits.

Finally, pursuant to the LoFAI BiH, the interested parties can address the Office of the Ombudsman and the second-instance body simultaneously, if the administrative body fails to accommodate their request. During 2013, this institution has received five appeals concerning the matters of free access to information

(environment), with most of them related to obtaining environment/ecology permits, responsible inspections not responding, etc.

Bulgaria

Year: 2005

No statistics are available.

Year: 2008

There are no statistics available.

Year: 2011

No statistics available.

Year: 2014

No statistics available.

Croatia

Year: 2011

The court office of the Administrative Court of the Republic of Croatia keeps records of environmental cases and has prepared the following statistics. In pending cases of 2008 (a total of 4 cases) the body refers to the EPA (OG 82/94 and 128/99) which ceased to be in force and which contained no provision stating that judicial proceedings in connection with a suit relating to environmental issues should be considered as urgent. As to pending cases of 2009 (a total of 7 cases), in 5 cases the body refers to the recent EPA passed in 2007 and other cases do not relate to the said law. In 4 cases out of a total of 33 pending cases of 2010 the body refers to the said law of 2007 and the remaining cases do not relate to the law in question. However, there are still 50 open cases concerning waste in which the ruling of the first instance body refers to the EPA of 2007, while the second instance body refers to the Waste Act only.

In connection with the case relating to exercising the right of access to information, on 23 October 2009 the Administrative Court of the RC passed the judgement to dismiss the claim. This is the only judgement passed in which the provisions of the Aarhus Convention are mentioned.

Year: 2014

According to the statistical data held by the High Administrative Court of the Republic of Croatia, 23 cases related to the LRAI and the environment were received and 68 resolved in the period from January 1, 2011 until December 31, 2012. Two of the mentioned decisions/judgements were reached pursuant to the provisions of the LRAI referring to the environment. In the same period, 72 cases were received and 149 resolved with respect to the implementation of the Waste Act, and 4 cases were received and 10 resolved with respect to the implementation of the Water Act.

Year: 2017

With regard to the statistical data held by the High Administrative Court of the Republic of Croatia for the period 2014-2016 related to the realisation of the right to access environmental information (Waste Act, Water Act, Environmental Protection Act), no cases were recorded.

Czech Republic

Year: 2005

The main problem regarding legal protection in environmental matters (as well as in general) remains the slow pace of the courts, the length for resolving individual causes and the high percentage of decisions that are issued at the second appellate level.

The number of criminal offences in the area of the environment, which exhibits an increasing trend, is monitored statistically. An amendment to the Criminal Code was adopted in 2002 (Act No. 134 of 15 March

2002, amending Act No. 140/1961 Coll., the Criminal Code) which defines more precisely the elements of criminal offences. Up-to-date statistics are not available.

The activities of the Czech Environment Inspection can also be used as an indicator.

Activities of CEI in 1993, 1995, –, 2003

Type of activity	1993	1996	1998	1999	2001	2002	2003
Number of inspections, revisions and controls	10,427	14,505	15,182	16,125	19,454	17,774	18,359
Decision-making in administrative proceedings	7,808	10,940	9,192	7,380	9,375	7,971	3,186
Standpoints for other State administrative bodies	6,586	7,336	7,443	8,259	9,592	10,264	10,845
Participation in dealing with accidents	320	171	175	112	104	252	159
Dealing with complaints, notifications and queries	421	628	737	712	764	864	1 253

Year: 2008

The main problem of legal protection in the environmental area (as well as legal protection in general) consists in the slow work of courts (see table 1 in the annex to this document), the length of hearings and a high proportion of decisions that are made by the Court of Appeal (second tier).

Another feature covered by statistics is the number of crimes in the area of environmental protection. Unfortunately, the trend is growing (see tables 2 and 3 in the annex). An important indicator is the structure of decision of the Czech Environmental Inspectorate (see table 4).

Annex

Table 1: Decision-making on actions against decisions by an administrative body in the environmental area.

Year	Number of actions filed	Average length of procedure
2005	63	450
2006	123	468
2007 – first half	96	444

Source: Ministry of Justice of the Czech Republic (grounds for the report)

Table 2: Statistics of criminal offences in the area of environmental protection

	Technical-statistic crime	Name	Identified	Of which examination finished	Total examination in process
2003	850	Endangerment of and harming the environment - fraudulently	35	33	3
	851	Endangerment of and harming the environment - negligently	16	14	4
2004	850	Endangerment of and harming the environment - fraudulently	32	27	6
	851	Endangerment of and harming the environment - negligently	27	21	6
2005	850	Endangerment of and harming the environment - fraudulently	24	15	10
	851	Endangerment of and harming the environment - negligently	15	12	4
2006	850	Endangerment of and harming the environment - fraudulently	39	31	11
	851	Endangerment of and harming the environment - negligently	21	16	5

Source: Ministry of the Interior of the Czech Republic (<http://www.mvcr.cz>)

Annex

Table 3: Statistics of criminal offences in the area of environmental protection

Body of crime	2002	2003	2004	2005	2006	2007 – first half
§181a	24	12	1	4	1	1
§181b	16	7	4	0	3	2
§181c	6	13	14	20	3	0
§181d	0	0	0	0	0	1
§181e	0	1	1	3	0	3

Source: <http://portal.justice.cz/ms> (Ministry of Justice: source materials for the report)

Table 4: Activities of the Czech Environmental Inspectorate in 1993 and 1996–2006

Kind of activity	1993	1996	1998	1999	2001	2002	2003	2004	2005	2006
Number of inspections, revisions and controls	10,427	14,505	15,182	16,125	19,454	17,774	18,359	18,032	17,254	16,649
Decision-making in administrative procedure (lawful-final)	7,808	10,940	9,192	7,380	9,375	7,971	3,186	9,661	8,495	12,445
Statements for other State administration bodies	6,586	7,336	7,443	8,259	9,592	10,264	10,845	12,308	11,868	11,329
Participation in solutions to accidents (E-record keeping, U-participation) ¹	320	171	175	112	104	E 246 + 133 floods U 247	E ??? U 159	E 306 U 120	E 264 U 105	E 205 U 105
Dealing with complaints, announcements and initiatives	421	628	737	712	764	864	1,253	1,654	1,419	1,927

Source: Czech Environmental Inspectorate (annual reports) <http://www.cizp.cz>

Year: 2011

The main problem related to legal protection in the area of protection in environmental matters (similar to legal protection in general) remains the slow work of the courts, the length of resolving of individual cases and the high fraction of decisions that are issued only in the second, appellate instance.

The number of criminal offences in the area of the environment, where the situation is stabilised, is another quantity that is monitored statistically. The structure of decision-making by the Czech Environmental Inspectorate is an important indicator (cf. Table No. 2 in the Annex).

Table 1: Statistics of criminal offences in the area of environmental protection

	TSC*	Name	Cases found Total	of which: investigation closed	under investigation
2010, up to 31 Aug	850	Threat of damage to the environment - intentional	21	13	11
	851	Threat of damage to the environment - negligence	9	4	6
2009	850	Threat of damage to the environment - intentional	24	18	9
	851	Threat of damage to the environment - negligence	17	9	8

Source: Ministry of the Interior of the Czech Republic (<http://www.mvcr.cz>)

*Tactical-statistic classification

Table 2: Activities of the Czech Environmental Inspection in 1998 -2009

Type of activity	1998	1999	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of inspections, revisions and controls	15 182	16 125	19 454	17 774	18 359	18 032	17 254	16 649	15 791	14 255	17 432
Decisions made in administrative proceedings (final)	9 192	7 380	9 375	7 971	3 186	9 661	8 495	12 445	10 754	13 595	14 706
Statements for other governmental authorities	7 443	8 259	9 592	10 264	10 845	12 308	11 868	11 329	14 449	12 013	12 006
Participation in resolving accidents (E-records, U-participation) ¹	175	112	104	E 246 + 133 floodsU 247	E ??? U 159	E 306 U 120	E 264 U 105	E 205 U 105	99	65	80
Dealing with complaints, notifications and instigations	737	712	764	864	1 253	1 654	1 419	1 927	2 464	2 279	2 731

Source: Czech Environmental Inspectorate (Annual Reports) <http://www.cizp.cz>

Year: 2014

The practice of the courts in the area of public participation is largely formed by actions filed by environmental NGOs. Although the prevailing practice of the courts gives NGOs neither a right to a favourable environment nor a right to a substantive-law review of a decision, there are some other court decisions that are not mentioned in this report because they have not constituted a mainstream practice of the courts so far but indicate a change in interpretation towards greater conformity with the Convention.

European Union

Year: 2011

Recent case-law of the ECJ on paragraph 4.

- Costs. In 2009, ECJ ruled that IE must explicitly include a provision in its legislation that costs not be prohibitively expensive in relation to EIA and IPPC (C-427/2007).
- Standing rights of NGOs. Restrictive rules on when NGOs can go to Court are another significant impediment. In 2009, the ECJ ruled that certain restrictive rules in Sweden were not in line with the Directive, opening the way for better access for NGOs in EIA and IPPC cases (Case C 263/08). There are three ongoing cases that can be mentioned in the topic, all of them concerning access to justice.
- Standing rights of NGOs. A German administrative court of appeals has referred several questions concerning the interpretation of Article 10a of the EIA Directive, regarding NGOs standing. If the Court gave a broad interpretation of this provision it would considerably broaden standing of NGOs in the German legal system (Case C-115/09). The hearing was held in June 2010.
- Standing rights of NGOs. The Belgian Council of State has also referred several questions on the interpretation of the EIA Directive, including its provisions on access to justice (Article 10a). If the Court gave a favourable judgement in the matter, standing of NGOs in the Belgian system would be considerably broadened (Joined Cases C-12/09 to 131/09, 134/09 and 135/09). The hearing was held in June 2010.

- Standing rights of NGOs. The Belgian Constitutional Court introduced a preliminary reference in Case C-182/10 lodged on 9 April 2010 - Marie-Noëlle Solvay. This in principle raises similar questions to the Belgian case presented above, linked to access to justice and public participation

On paragraph 3 there are at present several initiatives relating to access to justice. These can be summarised as follows: the Supreme Court of the Slovak Republic referred several questions to the ECJ among which one seeks a declaration from the ECJ Court whether it is possible to recognise Article 9, and in particular Article 9(3) of the Aarhus Convention, which has become a part of EU law, as having the direct applicability or direct effect of EU law within the meaning of the settled case-law of the Court of Justice (Case C-240/09). The Hearing of the case took place on 04th May 2010. Advocate General Sharpston delivered her opinion on the case in July 2010. There is no ruling delivered yet in the case.

There is currently a pending communication that was filed before the Aarhus Convention Compliance Committee against the EU for allegedly not complying with the provisions of Article 9 (2 to 5) of the Aarhus Convention. The communicant indicates that the standing rules to challenge decisions of EU institutions established in the jurisprudence of the ECJ and the Aarhus Regulation. does not fulfil requirements of article 9, paragraphs 2 to 5, of the Convention. The communicant further draws attention to alleged uncertainty about cost rules. The ACCC has decided to wait for the judgment of the ECJ in case T-388/08 brought under Regulation 1367/2006.

<http://www.unece.org/env/pp/compliance/Compliance%20Committee/32TableEC.htm>

Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

Year: 2014⁵

Recent case-law of the CJEU related to Article 9 of the Aarhus Convention:

Costs (C-427/2007): In 2009, the CJEU ruled that Ireland must explicitly include a provision in its legislation that costs shall not be prohibitively expensive.

Standing rights of NGOs (C-263/08): Restrictive rules on when NGOs can go to Court are another significant impediment. In 2009, the CJEU ruled that certain restrictive rules in Sweden were not in line with Directive 2011/92/EU, opening the way for better access for NGOs.

- Standing rights of NGOs (C-240/09): This case concerned an environmental association's entitlement to challenge a ministerial derogation on hunting from the strict species protection provisions of the Habitats Directive (92/43/EU) cited above. The CJEU found that Article 9(3) of the Aarhus Convention had no direct effect, but it stated '[...] it is for the national court, in order to ensure effective judicial protection in the fields covered by EU environmental law, to interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention.

New cases on the topic

- Standing rights of NGOs: Case C-115/09, Trianel[3]. A German administrative court of appeal had referred questions on the interpretation of Article 10a of the EIA Directive, regarding NGO standing. The Court interpreted this provision broadly, which considerably widened the standing of NGOs in the German legal system. National legislation provided that only environmental NGOs able to demonstrate that their rights were impaired could have standing in court for purposes of access to justice. The Court found this to be contrary to EU law: environmental NGOs need not demonstrate an impairment, as they fulfil the EIA Directive's requirement of promoting environmental protection.

⁵ Note by the secretariat: The availability of statistics on environmental cases is also available in annual reports of the Court of Justice of the European Union at http://curia.europa.eu/jcms/jcms/Jo2_11035/en/

- Standing rights of NGOs: C-128/09, *Boxus and Others*; C-182/10, *Solvay and Others*.^[4] In the former case, the Belgian Council of State had referred questions on the interpretation of the EIA Directive, including its provisions on access to justice (Article 10a). In the latter case, the Belgian Constitutional Court introduced a preliminary reference. It raised similar questions to the *Boxus* case, linked to access to justice and public participation. The parliament of the Walloon Region had adopted a legislative instrument approving certain transport projects, thereby appearing to limit the possibility for citizens and NGOs to challenge them pursuant to the EIA Directive. The Court found that by virtue of their procedural autonomy, Member States have discretion in implementing Article 9(2) of the Aarhus Convention and Article 11 of the EIA Directive, subject to compliance with the principles of equivalence and effectiveness. It is for them, in particular, to determine, in so far as the above-mentioned provisions are complied with, which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure referred to in those provisions and what procedural rules are applicable. However, the Court ruled that Article 9 of the Aarhus Convention and Article 11 the EIA Directive would lose all effectiveness if the mere fact that a project is adopted by a legislative act that does not fulfil the conditions set out in paragraph 37 of the judgment were to make it immune to any review procedure for challenging its substantive or procedural legality.
- Costs: C-260/11, *Edwards*.^[5] This case arose out of an unsuccessful challenge in the UK courts to an approval given to a cement works. The unsuccessful plaintiff was ordered to pay the costs of the national proceedings and, in this context, the UK Supreme Court introduced a preliminary reference focusing on the interpretation of the provision that costs should not be prohibitively expensive. In particular, it asked whether there should be a ‘subjective’ test (i.e. how much a specific plaintiff could afford) or an ‘objective’ test (i.e. general affordability independent of the means of the actual plaintiff) or a combination of these. The Court found that the test can include subjective or case-specific criteria but that these should never be objectively unreasonable.

The Court ruled that ‘... not be prohibitively expensive means that the persons covered by those provisions should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of those articles by reason of the financial burden that might arise as a result.[...]’

[...] the national court cannot act solely on the basis of that claimant’s financial situation but must also carry out an objective analysis of the amount of the costs. It may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime. [...]

- Costs: *Commission vs. UK* C-530/11^[6]

The ruling concerns an infringement action the Commission took against the UK for its prohibitively expensive costs for bringing environmental judicial reviews challenging decisions subject (or not) to Environmental Impact Assessment (EIA) or Integrated Pollution Prevention and Control (IPPC) permits. The Court in principle upheld its key findings delivered in C-260/11 as indicated above. It also found that:

‘71 Consequently, it is also necessary to uphold the Commission’s argument that the system of cross-undertakings in respect of the grant of interim relief constitutes an additional element of uncertainty and imprecision so far as concerns compliance with the requirement that proceedings not be prohibitively expensive.

72 In light of all the foregoing, it must be held that, by failing to transpose correctly Articles 3(7) and 4(4) of Directive 2003/35, inasmuch as they provide that the judicial proceedings referred to must not be prohibitively expensive, the United Kingdom has failed to fulfil its obligations under that directive.’

- Injunctive relief: C-416/10, *Križan*.^[7] The Court held that, by virtue of their procedural autonomy, Member States have discretion in implementing Article 9 of the Aarhus Convention and Article 15a

of the IPPC Directive, subject to compliance with the principles of equivalence and effectiveness. It is for them, in particular, to determine which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure and what procedural rules are applicable. The guarantee of effectiveness of the right to bring an action provided for in Article 11 of the EIA Directive requires that the members of the public concerned should have the right to ask the court or competent independent and impartial body to order interim measures to prevent pollution, including, where necessary, by the temporary suspension of a disputed permit.

- Remedies: Case C-420/11, Leth[8] This preliminary reference concerned the consequences of an omission to undertake an EIA, in particular the possibility for citizens to seek compensation. The Court stated:

‘Consequently, it appears that, in accordance with European Union law, the fact that an environmental impact assessment was not carried out, in breach of the requirements of Directive 85/337, does not, in principle, by itself confer on an individual a right to compensation for purely pecuniary damage caused by the decrease in the value of his property as a result of environmental effects. However, it is ultimately for the national court, which alone has jurisdiction to assess the facts of the dispute before it, to determine whether the requirements of European Union law applicable to the right to compensation, in particular the existence of a direct causal link between the breach alleged and the damage sustained, have been satisfied.’

- Scope of review: C-72/12, Altrip.[9] This is a preliminary ruling request from the German Federal Administrative Court concerning Germany’s implementation of the access to justice provisions of the EIA Directive. The court took a broad approach. It ruled that the EIA Directive must be interpreted as meaning that the rules of national law adopted for the purposes of transposition of access to justice provisions into national law were intended also to apply to administrative development consent procedures initiated before the transposition date (25 June 2005) when they resulted in the granting of consent after that date. It also stated that the Directive must be interpreted as precluding the Member States from limiting the applicability of the provisions transposing that article to cases in which the legality of a decision is challenged on the ground that no EIA was carried out, while not extending that applicability to cases in which such an assessment was carried out but was irregular.

Ongoing cases

- Remedies: C-404/13, ClientEarth.[10] The Supreme Court of the UK has asked the CJEU what remedies a national court must provide (if any) in the event of non-compliance with the Air Quality Directive.

Finland

Year: 2008

The Ministry of Justice monitors access to justice in environmental matters as part of its guidance work of administrative courts. As a consequence of this work, different statistics on environmental justice are produced and included into different reports published by the Ministry of Justice. In addition, Statistics Finland (http://www.stat.fi/index_en.html) publishes statistics from administrative courts. These reports are available at the following website: <http://statfin.stat.fi/>

In addition, the administrative courts publish a common annual report showing, among other things, the numbers of cases taken up and resolved per case category and the average time taken to resolve cases. The annual report of the administrative courts is also published on the Internet (the 2006 Annual Report is available, for example, on the website of the Supreme Administrative Court).

Of all cases submitted to the Supreme Administrative Court in 2006 (3,793 in total), 524 (13.8% of cases) were building matters and 288 (7.6%) were environmental matters. Cases falling within the scope of the Aarhus Convention thus account for about one fifth of all matters annually submitted to the Supreme Administrative Court.

At the beginning of March 2007, a leave-to-appeal system was introduced for building related matters. The system limits further appeals to the Supreme Administrative Court in certain permit cases and blocks appeals regarding detailed land-use plans or building ordinances that have already been dealt with in regard to the general plans for the same projects. Experiences of the practical impacts of this system are as yet minimal. In 2006, a total of 24,000 appeals were submitted to the administrative courts, of which 2,829 (11.6%) were environmental or building related cases. The average time taken to process building and environmental related cases in the administrative courts in 2006 was 11.8 months and 12.3 months respectively.

Year: 2011

Appeal in environmental matters is monitored by the Ministry of Justice as part of the performance management of administrative courts. In connection with the performance management, a large amount of statistical data on administrative courts is created, and this information is published for example in various reports and surveys produced by the Ministry of Justice. A description of the information on administrative courts published in the Statistical Yearbook can be found at <http://www.tilastokeskus.fi/til/oik.html>. The statistics of the actual courts are available free of charge at <http://statfin.stat.fi/statweb/start.asp?LA=en&lp=home>.

Administrative courts publish a joint annual report, stating among other things the number of matters filed and decided by category and the average processing times. The annual report of the administrative courts is also published on the Internet (the 2009 annual report can be found at the website of the Supreme Administrative Court, among other places).

Of the matters filed with the Supreme Administrative Court in 2009, 530 from a total of 4,379 related to construction (12.1%) and 390 otherwise to the environment (8.9%). Hence, cases falling within the sphere of implementation of the Aarhus Convention accounted for approximately one-fifth of matters filed with the Supreme Administrative court.

Since the beginning of March 2007, a system of appeal permits has been introduced in matters relating to construction, restricting continued further appeals to the Supreme Administrative Court in certain permit cases, and prevents an appeal on detailed planning on appeal grounds that have been decided on in connection with handling an appeal relating to more generalised planning. The experience gained on the practical effects of this system is still meagre.

In 2009, 22,635 appeals were filed at administrative courts, 2,573 of them pertaining to construction and the environment (11.4% of appeals filed). In 2009, the average processing time in administrative courts in matters relating to construction was 10.4 months and in matters otherwise relating to the environment 13.6 months.

Year: 2014

Appeal in environmental matters is monitored by the Ministry of Justice as part of the performance management of administrative courts. In connection with the performance management, a large amount of statistical data on administrative courts is created, and this information is published for example in various reports and surveys produced by the Ministry of Justice. A description of the information on administrative courts published in the Statistical Yearbook can be found at <http://www.tilastokeskus.fi/til/oik.html>. The statistics of the actual courts are available free of charge at http://pxweb2.stat.fi/database/StatFin/databasetree_fi.asp.

Administrative courts publish a joint annual report, stating among other things the number of matters filed and decided by category and the average processing times. The annual report of the administrative courts is also published on the Internet

(<http://www.kho.fi/fi/index/julkaisut/hallintotuomioistuinyhteisettoimintakertomukset.html>).

Of the matters filed at the Supreme Administrative Court in 2012, 380 from a total of 3,946 related to construction (9.6%) and 296 otherwise to the environment (7.5%). Hence, cases falling within the sphere of implementation of the Aarhus Convention accounted for approximately 17% of matters resolved by the Supreme Administrative Court.

Since the beginning of March 2007, a system of appeal permits has been introduced in matters relating to construction, restricting continued further appeals to the Supreme Administrative Court in certain permit cases, and prevents an appeal on detailed planning on appeal grounds that have been decided on in connection with handling an appeal relating to more generalised planning.

The experience gained on the practical effects of this system is still meagre. Currently there is only limited information available on the effectiveness of the system of appeal permits due to the fact that in some subject areas, the system of appeal permits has only been in use for a few years. In 2007, a total of 117 building permit cases were submitted to the Supreme Administrative Court, but since then the number of cases submitted has fallen below 60. More detailed research data can be found in the access to justice report drawn up by the Ministry of the Environment (Ministry of the Environment reports 19/2013, https://helda.helsinki.fi/bitstream/handle/10138/41376/YMra19_2013_Muutoksenhaku_FINAL_web.pdf?sequence=1). According to the report, the new system has somewhat reduced the processing times of cases. The research material of the report consisted of appeal permit applications concerning land use and construction issues submitted to the Supreme Administrative Court in 2010–2011 (a total of 210 applications). The Supreme Administrative Court granted an appeal permit in 10 of these cases (4.7%). Of the granted appeal permits, four concerned building permits, five concerned planning permissions for minor construction and one concerned a land use plan.

In 2012, 19,313 appeals were filed at administrative courts, 2,468 of them pertaining to construction and the environment (12.8% of appeals filed). In 2012, the average processing time in administrative courts in matters relating to construction was 9.6 months and in matters otherwise relating to the environment 10.8 months.

France

Year: 2005

Litigation relating to environmental information includes that involving the Commission on Access to Administrative Documents and the related administrative case law. To date, only overall statistics are available in this field. This is the case for the Commission's progress reports. As an example, in 2002 the environment and town planning sectors accounted for 8.8 per cent and 12 per cent respectively of requests to the Commission for an opinion.

Statistics relating to litigation concerning breaches of environmental law are more significant and relevant, as can be seen from the number of convictions for damage to the environment between 1998 and 2002 (ordinary or minor offences), as well as the number of substantive applications for damages or requests for interim relief for injury caused by an environmental nuisance lodged in civil courts between 1990 and 2002.¹

Year: 2008

Regarding public access to environmental information, the following are the figures from the Commission on Access to Administrative Documents on requests for access in respect of town planning and the environment:

Sector	2003	2004	2005	2006
Town planning	11.7%	10.9%	11.7%	15%
Environment	7.6%	5.7%	7.4%	7%

Source: Commission on Access to Administrative Documents, annual report, 2006.

The distribution of requests between the two sectors has been remarkably stable.

The environment sector's share has remained at the same level, with the number of requests increasing from 378 in 2005 to 393 in 2006. There have been more requests related to pollution issues, respect for nature and natural hazards such as flood and fire, while a quarter of the requests relate to environmental clean-up. The remainder address the operation of classified facilities such as industrial sites and water treatment plants.

As to convictions and sentences handed down for damage to the environment (ordinary or class 5 minor offences), the statistical yearbook of the justice system provides a few figures for the period up to 2005:

Number of convictions for offences of environmental damage	2001	2002	2003	2004	2005 (provisional estimate)
Convictions for ordinary offences	3 904	2 656	3 029	3 459	3 610
Convictions for class 5 minor offences	3 620	1 693	3 003	3 951	4 438
Total	7 524	4 349	6 032	7 410	8 048

Source: Ministry of Justice, national police records, statistical yearbook of the justice system 2007.

Furthermore, the Ministry of Justice has published a very detailed breakdown showing convictions handed down by book of the Environment Code:

Book of the Environment Code	2001	2002	2003	2004	2005
Book II: physical environment	158	147	198	270	N/A
Book III: natural spaces	68	91	136	144	N/A
Book IV: flora and fauna	2 591	1 257	2 091	2 616	N/A
Book V: pollution, hazard and nuisance prevention	457	439	406	418	N/A
Total	3 274	1 934	2 831	3 448	N/A

Source: Ministry of Justice, national police records, March 2006.

Regarding substantive applications for damages or requests for interim relief for harm caused by an environmental nuisance (civil courts), the trend before appeals courts, courts of major jurisdiction and courts of minor jurisdiction has been as follows:

Court	2001	2002	2003	2004	2005	2006
Appeal court	644	669	543	562	508	500
Court of major jurisdiction	2 576	2 134	1 773	1 748	1 690	1 647
Court of minor jurisdiction	1 458	1 190	958	831	866	N/A

Source: Ministry of Justice, Civil Affairs and Justice Department, Study and Research Unit.

Year: 2011

Regarding public access to environmental information, the following are the figures from the Commission on Access to Administrative Documents on requests for access in respect of town planning and the environment:

Sector	2003	2006	2009
Town planning	11.7%	15%	15.4%
Environment	7.6%	7%	6.0%

Source: Commission on Access to Administrative Documents, annual report, 2009.

The distribution of requests between the two sectors has been remarkably stable.

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Year	Appeal court	Courts of major jurisdiction		Courts of minor jurisdiction and local courts	
		Ordinary proceedings	Summary proceedings	Ordinary proceedings	Summary proceedings
2001	644	985	1591	1 350	108
2002	669	922	1212	1 093	97
2003	543	795	978	868	90
2004	562	709	1039	774	57
2005	508	713	977	808	58
2006	500	664	986	719	57
2007	533	630	825	739	60
2008	460	632	792	618	44
2009	474	770	878	762	31
Source: Subdirectorate for Statistics and Studies (SDCE) General List of Civil Cases			Directorate for Civil Matters and the Seal (DACs) Centre for the Assessment of Civil Justice		

Year: 2014

Regarding public access to environmental information, the following are the figures from the Commission on Access to Administrative Documents on requests for access in respect of town planning and the environment:

Sectors	2003	2006	2009	2012
Town planning	11.7%	15%	15.4%	16.8%
Environment	7.6%	7%	6.0%	6.5%

Source: Commission on Access to Administrative Documents, annual report, 2012.

The proportion relating to the Environment sector has not noticeably increased. Two thirds of cases in this sector relate to natural and technological hazards (classified installations, nature protection, risks of pollution and natural hazards).

As to convictions and sentences handed down for damage to the environment (ordinary offences and Class 5 minor offences), National Police Records and "Minos" Information Centre statistics provide the following figures:

<i>Number of convictions for offences of environmental damage</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Convictions for ordinary offences and Class 5 minor offences	7,027	6,843	6,461	6,398	Not known
Convictions for Class 1 to Class 4	9,049 (including 4,053 for	16,755 (including 12,082 for	18,255 (including 13,138 for	10,200 (including 4,690 for	9,349 (including 4,082 for

minor offences	dumping of waste)				
Total	16,076	23,598	24,716	16,598	Not known

Total excluding Class 1 to Class 4 minor offences relating to dumping of waste (now covered by a fixed penalty fine)	12,023	11,516	11,578	11,908	NC
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Georgia

Year: 2005

- There are no environmental justice statistics. Regarding the right to access to information, 38 cases were lodged from 2000 to 2004; 2 cases of violation of public participation in environmental decision-making are still pending;
- There was a case where, as a result of the Aarhus Convention, the court reduced the State tax on an NGO from 4000 to 1000 lari (this is still a big amount).

Year: 2008

There are no environmental justice statistics. Regarding the right on access to various information, 38 cases of proceedings were initiated from 2000 to 2004; two cases of proceedings in violation of public participation in environmental decision-making have been initiated at the court at the moment. There was a case when, in a result of the Convention statement, the court abated the State tax for the NGO from 4,000 to 1,000 GEL (this is also a large sum).

Year: 2011

The practice of applying the Convention by judges already exists (e.g. decision of a City Court on the complaint (N3/2647-07) of the Association Green Alternative, etc). There are no statistical data on access to justice at the MEPNR. However, the Aarhus Centre collects the information about the cases in the field of the environment and court decisions and post them on its web site.

Year: 2014

The MENRP maintains statistics on environmental court proceedings and their outcomes, which is reflected in the annual report of relevant structural unit. The Department of Environmental Supervision under the MENRP within the limits of its competence maintains registration, systematization and analysis of identified violations. The practice of applying of the Convention by judges is becoming widespread.

Year: 2017

The MENRP maintains statistics on environmental court proceedings, which is reflected in the annual report of the relevant structural unit. The Department of Environmental Supervision under the MENRP within the limits of its competence maintains registration, systematization and analysis of identified violations.

For destruction and damage of forest crops on the lands of the State Forest Fund, 10 persons were charged with administrative responsibility in 2014, 17 persons in 2015 and 3 persons in January-June 2016, which is accordingly 0.04% for 2014, 0.1% for 2015 and 0.03% for given period of 2016 years of total charged administrative responsibilities. For using and violations of protection rules of the lands of forest and Forest Fund, 2002 persons were charged with administrative responsibility in 2014, 1604 persons in 2015 and 695 persons in January-June 2016, which is 7.8%, 6.7% and 7.3% accordingly.

4 administrative cases with decisions on environmental issues were considered in 2015 that is 0,03% of total administrative cases with decisions.

During the reporting period information brochure “What Should We Know About Environmental Inspection” was prepared and disseminated, which aims to inform public, including entrepreneurs, on the State Control of Environment.

The practice of applying the Convention by judges is becoming widespread. Courts conduct statistics on environmental violations and court cases on environmental protection issues.

Germany

Year: 2008

A recent research study undertaken by the BfN produced the following statistics on the legal actions instituted by associations under nature conservation law during the period 2002-2006:

Table: Outcomes of legal actions instituted by associations and concluded during the period 2002-2006

Total number of complaints	Won	Partial success	Lost
124	26	20	78
100 %	21 %	16.1 %	62.9 %

Source: BfN, Daten zur Natur (UNPUBLISHED)

Year: 2011

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Source: BfN, Daten zur Natur (2008)
http://www.bfn.de/fileadmin/MDB/documents/service/Schmidt_Zschesche_Verbandsklage.pdf

Year: 2014

A UBA research project investigated, inter alia, the practice of recognised environmental associations in applying for legal remedies under the UmwRG during the period from 15 December 2006 to 15 April 2012. During this period, a total of 58 proceedings were identified. Of these proceedings, 37 were concluded with a judicial decision. The project produced the following statistics:

Table: Results of legal remedy proceedings concluded during the period under investigation

Total number of applications for legal remedy	Success in the matter (full and partial success, out-of-court settlement)	Failure
37	18	19
100%	48.6%	51.4%

Source: UBA, Research Project: Evaluation of the Use and Effects of the Options for Associations to Take Legal Action under the Environmental Appeals Act (UmwRG), project code number 3711 18 107 (unpublished, peer review forthcoming).

Furthermore, this research project involved an analysis of the effects of the UmwRG before any legal remedy proceedings were initiated. It was investigated whether the mere existence of the options for relief offered by the UmwRG brings about better consideration of environmental concerns during the conceptual phase of projects or as a result of the participation of recognised environmental associations in administrative proceedings (e.g. improved documentation of possible environmental impacts by the project carriers or modification of the project by the project carrier following consultations with recognised environmental associations). Taking into consideration the effects of the legislation prior to any legal proceedings, this analysis produced the following statistics.

Table: Results of legal remedy proceedings concluded during the period under investigation taking into account the effects of the UmwRG prior to the initiation of proceedings

Total number of applications for legal remedy	Success in the matter (full and partial success, out-of-court settlement, effects prior to proceedings)	Failure
37	19	18
100%	51.4%	48.6%

Source: UBA, Research Project: Evaluation of the Use and Effects of the Options for Associations to Take Legal Action under the Environmental Appeals Act (UmwRG), project code number 3711 18 107 (unpublished, peer review forthcoming).

Another BfN research project, which continued an earlier investigation that had covered the years 2002 to 2006, produced the following statistics on legal actions under nature conservation law taken by associations pursuant to the BNatSchG for the years 2007 to 2010:

Table: Results of legal actions taken by associations and concluded from 2007 to 2010

Total number of legal actions	Won	Partially successful	Lost
87	17	20	50
100%	19.5%	23%	57.5%

Source: BfN, *Daten zur Natur* (2012), <http://www.bfn.de/fileadmin/MDB/documents/themen/recht/BfN-Verbandsklagen-Studie-2011.pdf>

Year: 2017

A further UBA research project previously investigated, inter alia, the practice of recognised environmental associations in applying for legal remedies under the UmwRG during the period from 15 December 2006 to 15 April 2012. During this period, a total of 58 proceedings were identified. Of these proceedings, 37 were concluded with a judicial decision. The project produced the following statistics:

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www.umweltbundesamt.de/publikationen/evaluation-von-gebrauch-wirkung-der

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Another BfN research project, which continued an earlier investigation that had covered the years 2002 to 2006, produced the following statistics on legal actions under nature conservation law taken by associations pursuant to the BNatSchG for the years 2007 to 2012:

Table: Results of legal actions taken by associations and concluded from 2007 to 2010

Total number of legal actions	Won	Partially successful	Lost	Settled
149	33	34	78	4
100%	22.1%	22.8%	52.3%	2.7%

Source: BfN, Publications;
www.ufu.de/media/content/files/Fachgebiete/Umweltrecht/Publikationen/Original_Studie_Verbandsklage_Feb_2014-1.pdf

Furthermore, the German Advisory Council on the Environment (SRU) published in autumn 2016 an opinion paper on the amendment of the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz – UmwRG) that contains a review of the available empirical studies on the options for associations to take legal action. The Council concludes for the study period from 1996 to 2012 that legal actions are only rarely taken by associations, but when they do then around one in three cases is won or partially successful.

(Source:

[## **Ireland**](http://www.umweltrat.de/SharedDocs/Downloads/DE/04_Stellungnahmen/2016_2020/2016_10_Verbandsklage.pdf?__blob=publicationFile, p. 9)</p>
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Year: 2014

The list below outlines a number of relevant rulings since the ratification of the Aarhus Convention by Ireland.

Shillelagh Quarries Ltd. v. An Bord Pleanála (No.2) [2012] IEHC 402 where no order to costs was made and each party was obliged to bear its own costs.

Indaver NV t/a Indaver Ireland v. An Bord Pleanála [2013] 1 JIC 2101 where it was contended that the applicant had allowed the costs of the respondent to escalate by not withdrawing proceedings at an earlier stage “The Court may award costs against a party due to manner in which it conducted the proceedings. This section encompasses the unnecessary prolonging of proceedings when the party no longer has a bona fide belief in its case”

Sandymount & Merrion Residents Association -v- An Bord Pleanála & Ors Neutral Citation: [2013] IEHC 291 illustrates the broad access provided for eNGOs in environmental cases; this was upheld by the Supreme Court on 10th October

NAMA -v- CEI [2013] IEHC 86 and [2013] IEHC 166 definition of public authority for the purposes of the AIE Regulations.

Kimpton Vale Developments v An Bord Pleanála [2013] IEHC 442 application of cost rules

Hunter -v- Nurendale Limited t/a Panda Waste [2013] IEHC 430 application of cost rules.

Year: 2017

Information on judicial review in planning and environmental matters is provided on the Citizens Information website (see

www.citizensinformation.ie/en/environment/environmental_law/judicial_review_in_planning_and_environmental_matters.html. This website provides comprehensive information on public services and entitlements, presented in an easy-to-understand way to the public.

A dedicated Aarhus Convention web-section which includes information on access to justice under the Convention is available on the DCCAE website.

An Bord Pleanála has a guide to making an appeal against a planning decision on its website.

The Aquaculture Licensing Appeals Board provides information on its website describing how customers, the public or environmental organisations aggrieved by a decision of the Minister for Agriculture, Food and the Marine on an aquaculture licence application, or by the revocation or amendment of an aquaculture licence, may make an appeal within one month of publication (in the case of a decision) or notification (in the case of revocation / amendment).

The EPA provides information on how to make an environmental complaint.

It is possible to make environmental complaints to the EU Ombudsman. A number of Irish decision making bodies are subject to the Irish Ombudsman e.g. ALAB.

As Ireland has a common law system, case law is relevant to the implementation of the access to justice provisions of the Convention. The following is a list of some relevant rulings since the ratification of the Aarhus Convention by Ireland.

- Browne v Fingal County Council [2013] IEHC 630
- Bullen v O’Sullivan & Ors [2015] IEHC 72
- Callaghan v ABP & ors [2015] IEHC 618
- Callaghan v An Bord Pleanála [2015] IEHC 235
- Callaghan v An Bord Pleanála [2015] IEHC 357
- CLM Properties v Greenstar & ors [2014] IEHC 288
- Coffey and others v Environment Protection Agency [2013] IESC 31
- Delaney v. AIB Bank PLC [2016] IECA 5
- Hunter v. Nurendale Ltd t/a Panda Waste [2013] IEHC 430.
- Indaver NV Ltd t/a Indaver Ireland v An Bord Pleanála & Ors [2013] IEHC 11
- JC Savage Supermarket Ltd & anor -v- An Bord Pleanála & ors [2011] IEHC 488
- Kimpton Vale Ltd v An Bord Pleanála [2013] IEHC 442
- McCallig v An Bord Pleanála [2014] IEHC 353
- McCoy v Shillelagh Quarries [2015] IECA 28.

- Minch v the Commissioner for Environmental Information [2016] IEHC 91
- NAMA v. CEI [2013] IEHC 86 and [2013] IEHC 166
- Nowak v Data Protection Commissioner [2016] IESC 18
- O'Byrne v O Conbhui [2016] IEHC 219
- O'Driscoll & Dunne v McDonald & Ors [2015] IEHC 100
- Pringle v Government of Ireland [2014] IEHC 174
- Rowan v Kerry County Council and anor [2015] IESC 99
- Sandymount & Merrion Residents Association -v- An Bord Pleanála & Ors [2013] IESC 51
- Shillelagh Quarries Ltd v. An Bord Pleanála [2012] IEHC 257
- Sweetman -v- Shell E & P Ireland Ltd [2016] IESC 58
- Swords -v- Minister for Communications, Energy and Natural Resources & ors [2016] IEHC 503
- Tesco Ireland v. Cork County Council [2013] IEHC 580
- Waterville Fisheries Ltd v Aquaculture Appeals Licensing Board & ors [2014] IEHC 522

Kazakhstan

Year: 2005

According to Supreme Court data for 2002-2003 and the first half of 2004, there were 1,734 civil lawsuits involving environmental protection. There are no data on the percentage of court cases brought by the public. At the same time, the records of individual courts in Kazakhstan indicate that the number of such cases is extremely small and that the majority of such cases are instituted by State environmental protection bodies and procuratorial bodies.

Year: 2014

Statistical data from 2009 indicates that 616 applications were made to courts by natural and legal persons, including prosecutors and mandated State bodies, on environmental issues. Of these, 291 were granted by judges. in 2010 – 602 cases, of these 532 cases is considered with decision including 498 were made to court or 95,6% by natural and legal persons on environmental issues, including 13 from natural persons and 159 from public environmental associations. A total of 159 were granted by the courts, including two from natural persons and 53 from public environmental associations; in 2011- 795 case, 677 cases were made by court, of these 653 cases were granted by judges, or 96.5 % of the total number of decisions; in 2012 - 646 cases, of these 538 cases were made by courts, including 518 granted by judges or 96.3 % of total solutions. Quality of review of cases on disputes of this category is as follows. In 2010, the higher authorities canceled 0.4 % of the total number of decisions made in cases of generalizing categories in 2011 - 0.6 % , in 2012 - 0.2 % . In Supreme Court received only 849 cases of this category were made, including cases of public on matters relating to the environment. On matters related to the implementation of norms of AC conducting separate statistical graphs in court reporting forms for 2010 was not included. In 2010, amendments to the statistical forms for civil cases allowed to keep records of cases in the field of the environment on the claims and statements to individuals, environmental organizations in the implementation of the AC. According to the electronic system EAIAS for 2010-2012 in the courts few cases of this category were under consideration, while according to the information of NGO "Green Salvation" each year 4 - 12 such disputes claims of the public is made in the courts. The analysis of cases and judgments showed that the local courts in the main correctly apply the norms of law in cases of this category.

Year: 2017

Supreme Court together with an authorized agency on legal statistic management take measures on collection and consideration of the statistical data on the court cases on claims of individuals and public environmental organizations in the field of the environment protection. At the same time the reconciliation of statistics with the environmental public associations is conducted for the sake of social control provision, and this allows monitoring of all environmental disputes in the court without exception.

According to statistics, total cases of the first instance courts over the republic regarding the claims related to the environment protection resulted in production:

In 2013, 934 civil cases are considered in this category, out of which 702 cases of adjudication.

In 2014 - 437 cases were received, out of which 362 cases of adjudication.

In 2015 - 522 cases reviewed, out of which 428 cases of adjudication.

407 cases, 285 of them are cases of adjudication - during the first 9 months of 2016 of consideration by courts.

Quality of cases on disputes is characterized as follows. In total in 2013 the higher authorities canceled 2.56% of the total number of decisions (or 18 decisions), in 2014 - 3.1% (or 10 decisions), in 2015 - 2.57% (or 11 decisions). During the first 9 months of 2016 the appellate / cassation quashed only 1 decision or 0.35%.

High number of court decisions cancellation by higher court instances in 2013-15 in comparison with 2016 on the issues regarded in the appropriate category are explained by the obsolete normative regulation of the Supreme Code of RK date 22 December, 2000 #16 "On the practical application of the legislation on environmental protection by the courts". Separate norms of that normative regulation do not correspond to changed environmental legislation and their application made a negative impact on the quality of the legal management. In 2015-16 the Supreme Court of the Republic of Kazakhstan conducted two generalizations of the court practice on the issues related to the environment protection where the mistakes of the judges were analyzed and where the ways of resolution were proposed and also where the requirements and provisions of the current environmental legislation were explained taking into consideration all the amendments and additions. 6 times improved quality of the legal management in this category is therefore explained.

Court reporting forms existed prior to 2010 did not imply maintaining a separate statistical graphs on matters related to the implementation of the rules of AC. In 2010, amendments to the statistical forms for civil cases allowed to keep records of cases in the field of the environment on the claims and allegations that brought by individuals, environmental organizations in the implementation of AC.

Reporting analysis shows that a form of judicial and statistical reporting (Form number 2 "Report on the work of regional and equated courts to civil cases hearings") implies a separate account "On Environmental Protection" (line number 72 in 2014 and the line number 78 in 2015), but civil cases for the requested category, moreover, are reflected in lines number 99 "on challenging the decisions of public authorities", number 95 "Others claims".

Statistical reports of the appeal and cassation instance also imply separate lines in appropriate category of disputes - according to form 7 "The report on the courts of the appeal and cassation instance on consideration of civil cases on appeal complains and protests" - table "B" and by form 7 "K" table "A" "Movement of cases on appeal".

Just as in the reports of the courts of the first instance, cases of the generalized disputes category are reflected in other lines of the reports. Such classification of cases of the same category does not cause quality accounting and analyzes of the court disputes.

Currently a Form 2 "Report on the consideration of civil cases by courts of first instance" (Appendix № 1 to the General Prosecutor's Office orders of RK "On approval of forms of judicial statistical reports in the civil sphere and the instructions on their formation" number 52 of 30 March 2016) published in the newspaper "Kazakhstanskaya Pravda" dated August 4, 2016 (effective since 14 August 2016) contains the column "A". Claims related to the protection of the environment are reflected in the line 141 and divided into the following types: in the line 142 "for damages for breach of environmental legislation", line 143, "Claims of individuals" and line 144 "Claims of public environmental organizations". It is assumed that lines 143 and 144 should contain any claims not related to indemnification for breach of environmental legislation. It is also not clear does the concept of "indemnification" includes "harm provided to health and life of a person". Further, column "A" has a line 118 "for damages indemnification", line 120 "for damages to health or death of the citizen", line 121 "caused by the performance of job duties." However there is a dispute on what line should contain the claims related to the damage for the life and health of people caused during the execution of labor responsibilities. According to the data of the electronic system "uniform basis of judicial acts" (UBJA) for 2010-2012 years, only few cases were under court consideration. However, according to the data of the "Zelenoe spasenie" Environmental community each year courts resolve 4-12 such cases on public claims.

According to UBJA, in 2014-15 cases in the framework of AC were not considered at all.

From generalizations presented by regional and equivalent courts, it follows that in 2014 - 2015 years, such cases have not been considered, with the exception of Pavlodar oblast and Almaty city. At the same time the courts of Karaganda region note the passivity of public associations, which have not submitted any claim for the protection of life and health, protection of the environment. So, in 2014 the courts of Pavlodar region considered all 3 of these cases, but in 2015 - 13. In the city of Almaty in 2014 cases of public claims were not considered; in 2015, only one case was considered.

12 December, 2014, public hearing on the claims of "The World of Ecology" PO, "The Akimat of Pavlodar city" SI and "Rosa" JSC were recognized as invalid on 6 December, 2014, the protocol of hearing has been cancelled and the re-hearing on the plan of environment protection measures for 2015-19 has to be hold. In the result of all the above mentioned events, claim was not satisfied. The lawsuit is motivated by the fact that the "Rosa" JSC violated the procedure of public hearings, provided by the Rules of the public hearings. The grounds for denial of the claim was that the Customer has provided access of the public to the project "Plan for environmental protection measures of" Rosa "for 2015-2019 years" in accordance with paragraph 10 of the Rules. Another reason for the denial of the claim was suing for improper defendant. For this purpose "The Akimat of Pavlodar city" SI was attracted, however such institution does not exist. The proper defendant should have been the "Department of entrepreneurship of Pavlodar city" SI. The decision was not appealed.

According to the decision of the Specialized Interdistrict Economic Court (further - SIEC) of Pavlodar region dated 20 March, 2015 "The World of Ecology" PO claim against Akim of Ekibastuz city, "The Akimat of Ekibastuz city" SI and "Kazakhstan Wagon Company" LLP on recognition of public hearing on 24 November, 2014 as invalid and insisting to hold a re-hearing was partially satisfied. The court granted the petition to the invalidation of the public hearings on the discussion of the plan on environmental protection measures for facilities I and II categories to obtain a permit for emissions into the environment when carrying out the state ecological expertise. It has been established that the defendant posted ads about the public hearing only 4 days in advance. Ad was posted to the web-site of the city's akimat only 2 days prior to the hearing. The court declined the claim to organize re-hearing because since it is the prerogative of the customer, ie, LLP.

On March 26, 2015 in a similar case the same court denied the lawsuit of NGO "Peace" to Akim of .Ekibastuz city, SI "Akimat of Ekibastuz» LLP and «The NFC Kazakhstan". The decision is motivated by the fact that violations of the defendants in the actions are not detected.

In the case related to the claim of the NGO "World Ecology" to "AZA" LLP on challenging the public hearing, the protocol of public hearings, the program of environment protection activities and permits for emissions into the environment, the basis for partial satisfaction on 10 July 2015 was the defendant's breach of paragraph 8 of Regulation, namely the timing of placement of the announcement in the media. Thus the plaintiff was deprived of the opportunity to participate in the process of discussing projects which could directly affect the environment and health of citizens. There also were violations in subparagraphs 3), 4), 5) 6) of paragraph 9 of the Rules in the ad, posted on the Internet site of akim of Pavlodar. The address of an Internet resource which contained materials in electronic form or email address where one can request materials in electronic form, e-mail address for submitting proposals and comments were not provided, as well as the address of the place where the public can get acquainted with the project materials in paper form.

In regard to the claim on recognizing the Plan for environment protection measures of the "AZA" LLP for 2015-18, the court denied it since the way of defense of the violated right chosen by the plaintiff is not prescribed by the article 9 of CC, which provides a full list. Moreover, this claim is considered excessive because it was enough for the plaintiff to declare a requirement to recognize public hearings illegal to protect own rights and interests.

At the same time, the claim in terms of the recognition of the illegal permit for emissions into the environment LLP "AZA" was also denied because the authorized body of RSU "Ecology Department" was not attracted as a defendant, which issued the contested document based on the Environmental Action Plan for 2015 - 2018. For these reasons, the claim of the NGO "Ecology of Peace" was partially satisfied.

In the case of the claim of the PO "World of Ecology" to LLP "Al Maktub" challenging the public hearing, the protocol of public hearings, the Environmental Action Plan and permits on emissions into the environment, the claim regarding contestation of public hearings, public hearings protocol was approved, therefore, on 8 July 2015 a claim in this part is satisfied. The rest of the claim denied on the above grounds.

In the case of the claim of the PO "World of Ecology" to LLP "PPCP", Akimat of Pavlodar city challenging the public hearing, the protocol of public hearings, the Environmental Action Plan and permit for emissions into the environment, the basis for partial satisfaction of the claim on 27 July 2015 was the holding of public hearings with gross violations of the order, namely an ad in the newspaper "Star of Irtysh" placed in Russian, whereas in accordance with paragraph 8 of the Rules, the publication of announcements should be made in Kazakh and Russian languages. The violation of paragraphs 11 and 13 of the Rules has also been considered a basis for the recognition of such proceedings as unlawful, namely a hearing held without the participation of local executive bodies, as well as violation of paragraphs 17 and 18 of the Rules of the public hearing

protocol which was not sent to the local executive bodies and did not post publication on Internet resource on time.

The reason for partial rejection of the claim LLP "PPCP" to invalidate the permit for emissions into the environment was the fact that RSU Department of Ecology was not attracted as a defendant authorized body. The rest of the plaintiff's claims were claimed excessive, and therefore, were not a subject to evaluation. However, first instance courts have another practice of considering similar disputes involving public associations.

According to decision of SIEC Pavlodar region on July 29, 2015, the claim of the PO "World of Ecology" to LLP "MTS Jaime", akim of Bayanaul area, SI "Machinery of akim of Bayanaul area", akim Karatomarsk rural district, SI "Apparatus Karatomarsk rural district akim" about contestation of public hearings, the protocol of public hearings, the program (plan) of environmental measures in the years 2015-2016 and permits of emission to the environment is refused.

The court motivated the refusal by the fact that Article 14 EC contains an exhaustive list of rights and duties of public associations in the field of environmental protection, and the right of recognition Environmental Action Plan, a permit for emissions into the environment as illegal is not provided by Environmental Cod. Article 19 of the Law "On Public Associations" does not stipulate such right as well. In regard to public hearings, Court came to decision that within the framework of the legislation public associations may only initiate and arrange such hearings.

Thus, paragraphs 19, 20, 21 of the Regulation of the public hearings, provided that the public take part in the public hearing, giving their suggestions and comments (if any) on the content of the public hearing protocol within seven calendar days from the date of its publication, sending them to the local executive authority, organized a public hearing. Public Appeal is considered in accordance with the Law "On the order of consideration of physical and legal entities." On the basis of the public applications the local executive body shall make the appropriate amendments to the protocol of public hearings, or reject indicating the reasons for rejection.

The protocol of public hearing, taking into account suggestions and comments, is to be published in the manner and time specified in paragraph 18 of the Rules. In case of disagreement with the results of consideration of the application the public must appeal to the court in the manner prescribed by the civil legislation of the Republic of Kazakhstan within ten calendar days from the date of receipt of the response of the local executive body.

The Court concluded that the public (including associations) "participated in such hearings" and the persons who do not agree with the results of their application, has a right to apply to court to protect the violated rights under article 9 of the Civil Code, within ten calendar days from the date of receipt of the local executive body of the response.

Since PO did not send its suggestions and comments, if any, on the content of the protocol on public hearing to the local executive body, did not appeal in a written form, no proofs are provided to the court, when according to the Rules, the plaintiff - Public Organization - may appeal to court according to the results of application and if not agree with it.

According to the court, the PO is improper plaintiff and is not entitled to a court to challenge the matter in dispute in the present case (report), as well other documents - protocol plan, the resolution that does not violate the rights and interests of the plaintiff, while the courts deal with cases of protection of violated or disputed rights, freedoms and interests protected by law (paragraph 1 of article 24 of Code of Civil Procedure, article 9 of the Civil Code). Decision not contested by the parties in the appeal of the case is not considered.

Similarly, SIEC Pavlodar region on August 4, 2015 rejected the claim of the NGO "World Ecology" to RSU Department of Ecology to oblige cancel the conclusion of the state ecological expertise. The decision came into force.

According to the court, the PO is improper plaintiff and is not eligible to challenge the matter of dispute of the current case (protocol), as well other documents - protocol, plan, resolution; it does not violate the rights and interests of the plaintiff, while the courts deal with cases of protection of violated or disputed rights, freedoms and interests protected by law (paragraph 1 of article 24 of Code of Civil Procedure, article 9 of the Civil Code). Decision was not contested by the parties.

Similarly, SIEC Pavlodar region on August 4, 2015 rejected the claim of the PO "World of Ecology" to RSU Department of Ecology to oblige the cancellation of the conclusion of the state ecological expertise. The decision came into force.

In the latter two cases it should be noted that the legality and validity of judicial decisions was not consistent even at the time the legislation and the requirements of the Aarhus Convention, since the list of public associations of the rights provided for in Article 14 EC is not exhaustive. In the light of the amendments to this provision of the Law the right of recourse to the courts to protect the rights, freedoms and lawful interests of individuals and legal entities, including the benefit of an indefinite number of persons for the protection of the environment and use of natural resources, and article 57 EC at all such decisions should be recognized as illegal and unjustified.

In 2015, within the framework of the Aarhus Convention the SIEC of Almaty is considered only one civil case on the application of the Ecological Society (hereinafter - ES) "Green Salvation" to municipal public institution (hereinafter - MPI) "Management of natural resources and regulation of nature use of Almaty", to third parties - MY Novoselov, RSU "Ile-Alatau state National natural park" (hereinafter - IASNP), LLP "Kronverk" on the recognition of the state environmental expertise illegal and its abolition.

Materials of the case confirm that the head of the department of the environmental regulations of the MY Novoselov MPI prepared a conclusion of the SEE on the project "Kokzhailau Ski Complex Road Construction" Environmental impact Assessment".

However, the plaintiff points that the presence of the red-book plants in the area of construction is not reflected in the SEE conclusions. Protection of such kind of plants should be the most strictly provided. Expertise conclusions does not correspond with the requirements of the article 46 of EC. Experts did not define and point possible negative consequences of the construction with respect to red-book plants.

The applicant also relied on Article 31 of the Constitution, Part 2 of Article 9 of the Aarhus Convention and requested the Court to declare the conclusion of the SEE illegal and cancel it.

Almaty SIEC decision of 6 November 2015, denied the request of ES "Green Salvation". According SIEC, ES "Green Salvation" challenged the results of paragraph 16 of the conclusions while this conclusion contained issues not contested by the plaintiff. Therefore, conclusion made on this basis cannot be considered illegal. The Court of Appeal agreed with the conclusion of the court SIEC that demolition and sanitary felling will be carried out in the manner prescribed by law, with the issuance of permits.

It should be noted that, in accordance with Article 57 EC, which operated prior to making additions to the Law dated April 8, 2016 № 491-V, the court should refuse the ES in making a claim under subparagraph 1) of Article 153 of the Code of Civil Procedure (as revised in 1999) as irrelevant for consideration as a part of the procedure of the civil legal management since the decision of the SEE could not be contested.

Analysis of cases and judicial acts showed that local courts generally apply the correct legal standards when considering cases of generalized categories.

Kyrgyzstan

Year: 2005

Every year, about 200 cases involving infringements of the environmental protection legislation are referred to the courts for trial.

Year: 2008

Every year, some 200 cases involving infringements of the environmental protection legislation are referred to the courts.

Year: 2011

Kyrgyzstan's courts hear about 200 cases of violations of environmental protection legislation a year.

In 2007, the public association Independent Environmental Expertise (IEE) filed a claim to the inter-district court of Bishkek city "on recognising that Government Resolution 360 on construction of a ferro-alloy factory in the Kyrgyz Republic contradicts national legislation", which claimed that "building while designing" contradicted national legislation. During examination of the claim, the court decided to repeal the paragraph of the Resolution on Building while Designing.

Year: 2017

Kyrgyzstan's courts hear about 200 cases related to environmental violations legislation a year.

In 2007, the public association Independent Ecological Expertiza (IEE) filed a claim to the inter-district court of Bishkek city to recognise that the Resolution of the Government N360 on construction of a ferro-alloy factory in the Kyrgyz Republic contradicted to national legislation as it allowed carrying out the construction while preparing the development project in contradiction to national legislation. During examination of the claim, the court decided to repeal the paragraph of the Resolution which allowed carrying out the construction with the simultaneous development.

Latvia

Year: 2005

General statistics on judicial operations are available on the home page of the Ministry of Justice: www.tm.gov.lv. The authority subordinate to the Ministry of Justice, the Judicial Administration, gathers more detailed statistics on the operation of the courts.

The State Environmental Inspection and Regional Environmental Boards collect information on cases concerning the environment. They have access to the Penal Register.

Year: 2008

General statistics of court activities are available on the Ministry of Justice website (www.tm.gov.lv). More detailed statistics are gathered by the Court Administration (www.ta.gov.lv).

The State Environmental Service gathers information on cases of administrative violations in the environmental area and uses the Penal Register, where all violations, punished persons and applied penalties are listed.

Year: 2011

General statistics of court activities are available on the Ministry of Justice website (www.tm.gov.lv). More detailed statistics are gathered by the Court Administration (www.ta.gov.lv).

The State Environmental Service gathers information on cases of administrative violations in the environmental area and uses the Penal Register, where all violations, punished persons and applied penalties are listed.

Year: 2014

General statistics of court activities are available on the Ministry of Justice website (www.tm.gov.lv). More detailed statistics are gathered by the Court Administration (www.ta.gov.lv).

The State Environmental Service and the ESB annually gather information on cases of administrative violations in the environmental area and uses the Penal Register, where all violations, punished persons and applied penalties are listed. The information gathered by ESB on administrative cases is available at the following website: <http://www.vpvb.gov.lv/lv/publikacijas>.

Montenegro

Year: 2014

As part of the reform of the inspection system with the aim of unifying inspection or inspection supervision in the special administrative authority, the Government adopted the Decree on the organization and operation of State Administration ("Official Gazette of Montenegro", 5/12) establishing the Inspection Administration, which inter alia took over inspection activities in the field of ecology, space protection, water management, forestry, hunting and other. The Environmental Inspection, in the period 1-31 December 2012, initiated 33 legal proceedings. In 2012, the Environmental Inspection issued 14 misdemeanors, for non-compliance with the substantive regulations (7 misdemeanor warrants) and failure to execute decisions of Environmental Inspectors (7 misdemeanor warrants). The Environmental Inspection, in the course of 2012, filed three criminal charges. All three criminal charges are currently processed by the Basic State Prosecutor.

Year: 2017

As part of the reform of the inspection system with the aim of unifying inspection or inspection supervision in the special administrative authority, the Government adopted the Decree on the organization and operation of State Administration ("Official Gazette of Montenegro", 5/12) establishing the Inspection Administration,

which inter alia took over inspection activities in the field of ecology, space protection, water management, forestry, hunting and other.

In 2014, in the second instance administrative procedure, a total of 243 cases were processed, of which 1 case was originally from 2013. 241 cases were solved in due time, and 1 was solved after the proscribed deadline, whereas 1 case was not solved. Of the total number of solved complaints, 6 were rejected, 90 were refused and 133 were adopted.

A total of 47 administrative disputes against the decisions of the Ministry were initiated, of which 1 decision was changed following the submitted complaint, 12 were annulled, whereas for the others the procedure is ongoing. Of the total number of initiated administrative disputes before the Constitutional Court of Montenegro, in two cases the decision was changed, after which the Constitutional Court halted the procedure, 3 complaints were refused and 2 were adopted. Two complaints were delegated to the jurisdiction of a different authority, and 1 was returned, since it had already been resolved previously.

During 2014, in the second instance administrative procedure, the Directorate for Environment received 13 complaints, of which 5 were submitted against the Administration for inspection affairs – decisions of environmental inspectors, and 8 complaints were made against the decisions of the Environmental Protection Agency. Acting upon complaints, this Directorate reached 7 decisions which rejected complaints as unfounded, 6 decisions that cancelled decisions and brought the cases back to the procedure. During 2014, before the Constitutional Court of Montenegro, one administrative dispute against the decision of the Ministry – Directorate for the Environment was initiated. The Administrative Court reached the verdict which rejected the complaint.

In 2015, in the second instance administrative procedure, the Ministry of Sustainable Development and Tourism initiated a total of 193 cases, with 2 cases remaining unsolved. Of the total number of solved complaints, 11 were rejected, 62 were refused and 109 were adopted, whereas 9 were delegated to the relevant authorities for further resolving.

When it comes to the solving of administrative disputes before the Administrative Court, 45 administrative disputes against the decisions of the Ministry were submitted, of which only one was changed with regard to complaint submitted, 9 were cancelled, whereas for others, the procedure is ongoing.

During 2015, the Directorate for Environment received a total of 15 complaints, of which 9 were submitted against the Administration for Inspection Affairs – decisions of environmental inspectors, and 6 complaints were submitted against the decisions of the Environmental Protection Agency. Acting upon complaints, this Directorate reached 6 decisions which rejected complaints as unfounded, 8 decisions which cancelled the decisions and returned the cases for a new procedure, and 1 conclusion which rejected the complaint as untimely.

In 2015, before the Administrative Court of Montenegro, 3 administrative disputes against the decisions of the Ministry – Directorate for Environment were initiated. For all three cases, the Administrative Court reached decisions which rejected the complaints.

In the second instance administrative procedure by September 2016, the Directorate for Environment received 20 complaints (against decisions of the Administration for Inspection Affairs – environmental inspectors and against decisions of the Environmental Protection Agency). Acting upon the complaints, this Directorate reached 8 decisions which rejected the complaints as unfounded, 11 decisions which cancelled decisions and returned cases for a new procedure, and 1 conclusion which rejected the complaint against the information given by the environmental inspection. During 2016, before the Administrative Court of Montenegro, three procedures against the decisions of the Ministry – Directorate for Environment were initiated, and the procedures are ongoing.

Netherlands

Year: 2011

For statistics we refer to the Council of State's annual report 2009 (jaarverslag 2009, pp. 264-267), also available on www.raadvanstate.nl.

Year: 2014

Verdicts of courts of law and The Council of State are supplied when requested. The verdicts are also accessible via internet: www.rechtspraak.nl and/or www.raadvanstate.nl. The search function of both sites has been improved. The Council of State also provides an option to subscribe to digital press-releases and new verdicts.

For statistics we refer to the Council of State's annual report 2012 (Dutch: Jaarverslag 2012, Bestuursrechtspraak in cijfers), also available on www.raadvanstate.nl.

Poland

Year: 2005

Public statistics do not reflect appeals to authorities of second instance and court proceedings, and there is no comprehensive database allowing for an assessment of the total number of such cases. The number of cases initiated by NGOs before administrative courts is estimated at a few hundred annually, which comprise primarily cases on new locations or the extension of existing investments.

Very few cases are brought before civil courts on the basis of damage to the environment as a common good.

Year: 2008

The survey shows that cases of challenging in court refusals to disclose environmental information or breaches of provisions regarding public participation are rather rare.

Public statistics do not reflect appeals to authorities of the second instance and court proceedings, and there is no comprehensive database allowing for an assessment of the total number of such cases. The number of cases initiated by NGOs before administrative courts is estimated at a few hundred annually, which comprise primarily cases on new locations or the extension of existing investments.

Very few cases are brought before civil courts on the basis of damage to the environment as a common good.

Year: 2011

Public statistics do not reflect appeals to authorities of the second instance and court proceedings, and there is no comprehensive database allowing for an assessment of the total number of such cases.

Very few cases brought to civil courts concern environmental damage as a common good. In the opinion of the non-governmental organizations developed in the course of the consultations on the content of the report, this is due to difficulties in proving the plaintiff's right to submit a case in protection of a common good.

Year: 2014

The Ministry of Justice keeps statistics in civil and commercial matters the subject of which are claims regarding "the protection of the natural environment of man". According to the information provided by the Ministry of Justice in 2011, the district courts (civil and commercial department) received a total of 39 cases of this kind, and settled 24. The district courts (the courts of first instance in civil and commercial departments) received 24 cases concerning the protection of the natural human environment, and settled 49. In 2011, appeal courts received 31, and settled 33 cases in this category. In 2012, district courts (civil and commercial departments) received a total of 76 cases of this kind, and 31 were settled. The district courts (the courts of first instance in civil and commercial departments) received a total of 33 cases concerning the protection of the natural human environment, and settled 60. In 2012, appeal courts received 11, and settled 14 cases in this category.

Very few cases brought to civil courts concern environmental damage as a common good. In the opinion of the non-governmental organizations developed in the course of the consultations on the content of the report, this is due to difficulties in proving the plaintiff's right to submit a case in protection of a common good.

In 2011, complaints to the Voivodeship Administrative Court in Warsaw were submitted on 86 decisions of Chief Inspector for Environmental Protection. From the judgments of this court, parties lodged 15 cassation appeals to the Supreme Administrative Court. In 2012, the corresponding figures are 165 complaints and 18 cassation appeals.

Republic of Moldova

Year: 2005

There are no statistics available on environmental justice.

Romania

Year: 2011

Between 2009-2010, the environmental authorities received 105 requests, as follows:

- 50 have been finalised by the authorities;
- 22 have been finalised in law courts;
- 33 are still pending in law courts.

Year: 2014

Although the databases of the Ministry of Justice contain statistical data regarding free of charge legal assistance/public legal aid, depending on the type of court and the state of the trial, by category of action and objects for the period 01.01.2011 - 01.05.2013, the legal reports in environmental law where protection was requested before a court of law could not be separately and expressly identified.

In the local environmental protection agencies, during 2011-2013, 113 preliminary complaints were submitted in regard to the regulatory document issuance procedures (environmental decision-making). Of these:

- 38 complaints were solved in court;
- 26 complaints are still on the court dockets;
- 49 were solved by the institution.

Serbia

Year: 2011

- The data provided by the Sector for Control and Monitoring of the Ministry of Environment and Spatial Planning show that a total of 885 complaints were lodged in 2009, 235 of which were processed.

Year: 2014

- The data provided by the Sector for Control and Monitoring of the MEDEP show that since 2010 until April 2013th year 584 misdemeanor charges were submitted, for economic offenses 133 requirements, and 19 criminal charges, and proceedings were initiated on 200 charges, but the information is not complete because the court does not provide regular information.

- According to the statistical data of the basic courts in the RS for the year of 2011, the following judgments were rendered for criminal offences in the field of environmental protection: first-instance judgments for 173 persons, out of which judgments of conviction for 124 persons including 7 prison sentences, 88 suspended sentences, 29 fines, 22 judgments of acquittal, 27 judgment denying the charges, 31 security measures of seizure of objects were imposed, 54 decisions on appeal was passed, 27 decisions were confirmed and 15 decisions were set aside.

- According to the statistical data of the basic courts in the RS for the year of 2012, the following judgments were rendered for criminal offences in the field of environmental protection: first-instance judgments for 138 persons, out of which judgments of conviction for 85 persons including 5 prison sentences, 64 suspended sentences, 15 fines, 1 community work, 35 judgments of acquittal, 18 judgments denying the charges, 18 security measures of seizure of objects were imposed, 1 banishment of a foreign national from the country, 59 decisions on appeal were passed, 28 decisions were confirmed and 12 decisions were set aside.

- From 01/01/2011 to 23/10/2013, the Protector of Citizens received 118 complaints related to the violation of the right to a clean environment, out of which 33 in 2011, 49 in 2012 and 36 in 2013. The number of these complaints makes less than 1% of total number of all complaints received in that period. The complaints generally refer to the noise protection in urban areas; air, land and water pollution caused by harmful emissions from plants, environment pollution caused by unprofessional and illegal storage of waste and dangerous products, close location of power transformer stations and TV receivers to residential buildings, etc. The complaints have been often submitted by the citizens' groups or associations established to achieve goals in the environmental protection. Out of all received complaints in this field, 102 were processed, while

16 complaints are still pending; 63 complaints (53%) were rejected on the grounds stipulated in Article 28 of the LO, 25 complaints (21%) were unfounded, and in 12 (10%) cases the authorities eliminated the irregularities after they were informed about the citizens' complaints to their work. The Protector of Citizens delivered one act of recommendations to administrative authorities in the field of environmental protection containing 10 individual recommendations in total where the authorities proceeded partially pursuant to the recommendation, and gave one opinion to the local self-government unit in acting preventively with the view of improving the work of administrative authorities and protection of human rights and freedoms.

Slovakia

Year: 2014

The administrative justice statistics are especially kept on the claims related to the environment administration, however, divided into the nature and landscape protection, water management, air protection, waste, packaging, and waste management, land-use planning, land-use proceedings, building proceedings, house inspection proceedings, deprivation proceedings and others. Statistics in a more detailed division are not kept. The Ministry of Justice of the Slovak Republic keeps statistics on the number of suits (actions) in disputes of civil-law nature in the area of personality protection, protection of legal entity reputation, and liability for damage, and in disputes of criminal-law nature, i.e. crime of slander, which is statistical data of general nature, and the Ministry does not have specific data related only to the environmental decision-making processes.

Year: 2017

The administrative justice statistics are especially kept on the claims related to the environment administration, however, divided into the nature and landscape protection, water management, air protection, waste management, land-use planning, land-use proceedings, building proceedings, final building approval proceedings, deprivation proceedings and others. Statistics in a more detailed structuring are not kept. The Ministry of Justice of the Slovak Republic keeps statistics on the number of suits (actions) in disputes of civil-law nature in the area of personality protection, protection of legal entity reputation, and liability for damage, and in disputes of criminal-law nature, i.e. crime of slander, which is statistical data of general nature, and the Ministry does not have specific data related only to the environmental decision-making processes.

Slovenia

Year: 2014

There are no statistics or substantive reports on the implementation of that part of the Convention.

Spain

Year: 2014

According to data collected by the General Council of Spanish Lawyers, in 2011 there were over 900,000 applications for Legal Aid, which implied that more than 848,000 records were sent from the different Bar Associations to the Legal Aid Commissions, attached to the ACs with competences in Justice or to the Ministry of Justice. An average of 79% of the applications were granted. The top jurisdiction regarding legal aid is the Criminal Jurisdiction, with 64% of the services, followed by Civil (22%), Contentious-Administrative (5%) and Social (2%).

As for the average length of the procedures in the Contentious-Administrative Jurisdiction, where the vast majority of environmental cases are brought, the Judiciary General Council, in its study "Justice: data 2011" provides the following statistics (time is expressed in months):

Contentious-Administrative Jurisdiction Bodies

	2011	2010	2009	2008	2007
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Contentious Judges	12,9	12,0	11,1	10,6	10,2
High Court of Justice (CA level)*	25,9	25,7	26,2	29,0	31,6
Contentious Central Judges	16,9	16,0	14,8	11,8	9,2
National Audience*	18,6	17,1	17,6	18,1	18,2
Supreme Court	18,0	17,2	18,8	19,7	21,3

* Single instance

Year: 2017

According to data collected by the General Council of Spanish Lawyers, in 2014 there were over 900,000 applications for Legal Aid, which implied that more than 848,000 records were sent from the different Bar Associations to the Legal Aid Commissions, attached to the ACs with competences in Justice or to the Ministry of Justice. An average of 79% of the applications was granted. The top jurisdiction regarding legal aid is the Criminal Jurisdiction, with 64% of the services, followed by Civil (22%), Contentious-Administrative (5%) and Social (2%).

As for the average length of the procedures in the Contentious-Administrative Jurisdiction, where the vast majority of environmental cases are brought, the Judiciary General Council, in its study "Justice: data 2014" provides the following statistics (time is expressed in months):

	2014	2013	2012	2011	2010
Contentious Judges	12,6	14,2	13,6	12,9	12,0
High Court of Justice (AC level)*	23,7	24,3	24,6	25,9	25,7
Contentious Central Judges	8,0	10,9	14,0	16,9	16,0
National Audience*	15,7	20,4	19,9	18,6	17,1
Supreme Court	14,7	15,5	16,5	18,0	17,2

* Single instance

The former Yugoslav Republic of Macedonia

Year: 2008

The following statistical data in the database:

- Three hundred ninety-six reports for obtaining information - where can the citizens raise questions regarding environmental issues (in this direction, Florozon works in co-relation with the subjects that possess environmental information);
- Six criminal charges prepared against private persons;
- Four misdemeanour denunciations submitted to the competent court;
- Fourteen reports - achieved agreement on reclamation of the state of the environment.

During 2008, Florozon will expand its programme with TAI (The Access Initiative. For information, see <http://accessinitiative.org> research)

The former Yugoslav Republic of Macedonia will be the next European country to implement overall TAI assessment.

TAI partners throughout the world monitor the performance and progress of their Governments in the implementation of the citizens' rights to information, public participation in decision-making and access to justice regarding the environmental issues.

Ukraine

Year: 2005

In 2004, there was only one court case involving environmental protection: the lawsuit of the EkoPravo Lvov charitable foundation against the Ministry of Environmental Protection concerning the declaration of the conclusions of the State environmental assessment by the Ministry of Environmental Resources entitled “Creation of a deepwater shipping canal between the Danube and the Black Sea in the Ukrainian sector of the delta”, as null and void. The disputes that arose in that regard were settled in the courts in accordance with article 9 of the Aarhus Convention. Under article 63 of the Code of Administrative Procedure, court fees consist of State duties and the costs involved in the consideration of the case. The judge or the court may, after considering a citizen’s financial capacity, waive his or her payment of court fees to the State.

III. Observations

1. Since 2005, the number of Parties providing statistics on the practical application of article 9 of the Convention or reporting on its availability has increased. In 2014, 23 Parties (about 50%) reported information on this matter. In accordance with 2017 national implementation reports received by 20 January 2017, 11 out of 17 responded Parties provided quantitative data or reported on the availability of the quantitative data.
2. The availability of the quantitative data on the practical application of article 9 of the Convention through all reporting cycles continues to vary from Party to Party. Some Parties included figures in the national implementation reports, while others reported on the information sources only. Other Parties provided a description of relevant cases rather than quantitative data. In accordance with 2017 national implementation reports received by 20 January 2017, 7 out of the 17 responded Parties provided figures, 3 Parties provided sources, 1 Party provided a list of relevant cases. Kazakhstan provided both figures and a description of the relevant cases before Kazakh courts. Most of the figures, which were provided dealt with the number of actions filed in a certain timeframe. Many Parties also provided figures beyond the number of actions brought and included for instance the success rate of environmental actions, the number of applications for legal aid within the respective jurisdiction, or the average length of the legal procedure. While also some countries provided a mere list of relevant cases, others described the issues addressed in these cases.
3. The relevant data was collected or made accessible by various bodies, such as the ministries of justice, general or administrative courts, administrative review bodies, ministries of the environment or environmental inspectorates, Ombudsman’s offices or other competent authorities. Most Parties did not state whether they were collecting the data on a regular or ad hoc basis. Those that did report on the regularity of data collection were either collecting it annually or on an ad hoc basis in the form of a one-time study following a change in legislation. In some cases, data was collected on the basis of projects carried out by the competent environmental authorities or non-governmental organizations.
4. The reported indicators varied also from Party to Party. In some cases, the number of administrative violations and criminal offences was reported. The description of the types of disputes varied also. Some Parties informed about the availability of general court statistics on civil or administrative cases without distinguishing cases related to environmental matters, others provided information on cases related specifically to the Aarhus Convention. In some cases, the statistics covered only cases decided by the bodies of the first instance while the statistics on appeals was not available.
5. The scope of cases reported under question XXX included not only cases related to deficiencies in access to environmental information and public participation in environmental decision-making but also covered cases related to compliance with law on nature and landscape protection, water and waste management, air protection, hazard and nuisance prevention, land-use planning and building proceedings.
6. In the light of the adoption of the Sustainable Development Goals (SDGs) in September 2015, including SDG 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”) and its target 16.3 (“promote the rule of law at the national and international levels, and ensure equal access to justice for all”),

the information on access to justice in environmental matters in future national implementation reports could contribute to the reporting by Parties on the national implementation of this goal and target.

7. The Parties are encouraged to continue developing specific statistical arrangement(s) in order to collect, coordinate, aggregate and process the information from various statistic providers needed for monitoring the implementation of article 9 of the Convention and therefore contributing to achieving the relevant target of SDG 16.

8. Monitoring of the application of article 9 of the Aarhus Convention could be further enhanced through the regular collection and analysis of the quantitative data in accordance with the following indicators:

- (a) number of new environmental cases received annually per types of courts/tribunals/other review body, types of cases and types of applicants (individual/groups/NGOs);
 - (b) number of cases considered annually per types of courts/tribunals/other review body, types of cases and types of applicants (individual/groups/NGOs) and year;
 - (c) number of cases with issued decisions/judgements annually per types of courts/tribunals/other review body, types of environmental cases and types of applicants (individual/groups/NGOs)
 - (d) number of cases satisfying claims annually per types of courts/tribunals/other review body in which actions were brought, types of environmental cases and types of applicants (individual/groups/NGOs)
 - (e) number of appeals on environmental cases annually;
 - (f) number of appeals satisfied annually;
 - (g) average length of the legal procedure;
 - (h) number of applications for legal aid in environmental cases submitted and approved annually per types of applicants (individuals/groups/NGOs).
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