

## 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

#### Eleventh meeting

Geneva, 27 and 28 February 2018

Item 2 of the provisional agenda

#### Access to justice in cases

#### on the right to environmental information

#### Information paper N4

## DRAFT QUESTIONNAIRE

### Access to justice in cases on the right to environmental information

At its sixth session<sup>1</sup>, the Meeting of the Parties to the Aarhus Convention set out the mandate of the Task Force on Access to Justice to promote the exchange of information, experiences, challenges and good practices relating to the implementation of the third pillar of the Convention with special attention to information cases. Available information sources such as Aarhus Convention national implementation reports and e-justice initiatives provide very basic overall description of existing framework but do not go in the details about its elements such as scope of review, time limits, remedies, costs and etc.

To overcome the information gaps, the Aarhus Convention Task Force on Access to Justice will carry out a survey to collect more detailed information, examples legislation provisions and case law relevant to access to justice in cases on the right to environmental information. The survey could be an important contribution to identifying good practices, addressing key challenges, populating the jurisprudence database and fostering capacity-building efforts to support work in this area. The survey outcomes will lay the ground for advancing the implementation of article 9, para. 1, of the Aarhus Convention and contribute to the monitoring of SDG 16 targets 16.3 and 16.10.

The draft questionnaire below will be discussed at the eleventh meeting of the Task Force on Access to Justice in Geneva in Geneva on 27-28 February 2018<sup>2</sup> and revised by the secretariat in consultation with the Chair in the light of the discussion at the meeting.

The final questionnaire will be distributed to a selection of institutions specialized on information cases in a representative number of Parties from different subregions. In addition, representatives of judiciary, judicial training institutions, other review bodies, non-governmental organizations and stakeholders are welcome to contribute with input on any issue in the questionnaire.

The outcomes of the survey will be synthesized with information from the national implementation reports to a report which will be discussed at the next meeting of the Aarhus Convention Task Force on Access to Justice in Geneva in 2019 and further reported to the subsequent meeting of the Working Group of the Parties to the Aarhus Convention.

Those who want to take part in the survey are kindly invited to complete and return the questionnaire to the following email address: [aarhus.survey@unece.org](mailto:aarhus.survey@unece.org) with the subject line “11TFAJ survey from [name of country, organization]” for processing **before 1 October 2018**.

<sup>1</sup> See para. 14(a) (i) of decision VI/3 of the Meeting of the Parties adopted at its sixth session (Budva, Montenegro, 11–13 September 2017) available from [http://www.unece.org/env/pp/aarhus/mop6\\_docs.html](http://www.unece.org/env/pp/aarhus/mop6_docs.html)

<sup>2</sup> More information is available from <http://www.unece.org/env/pp/aarhus/tfaj11.html>

**CONTACT INFORMATION**

Please provide name and contact data of the person who filled in the questionnaire:

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The completed questionnaires will be posted on the website of the meeting. Please tick the box if you prefer your reply not to be posted .

*Questions concerning access to justice in cases on the right to environmental information:*

1. Please indicate *time limits* for public authorities holding environmental information to respond to requests for environmental information. Is there a requirement for the issuance of a *refusal in writing and stating reasons* for the decision? How is the applicant *informed* about the possibilities to appeal the decision?

- **The most important act that regulates access to information is the Law on Free Access to Information. Based on this, each public authority is obliged to make, publish on its website and regularly update the Guide to access information in its possession. This law also regulates the procedure for resolving requests and legal protection.**

2. What are the *time limits to appeal* a decision on access to environmental information? What are the most frequently used grounds for appeal? Are there any issues concerning *who has standing* in such cases? To *what body and in which form* is the appeal made; recourse for review within the public authority or to the higher authority; Information Commissioner, Ombudsman or any other independent and impartial body; or directly to court of law? If appeal to the review body other than a court of law is available in any form, does that request suspend the time limits to appeal to the court? Is there a requirement of *exhaustion* of administrative review procedures prior to bringing the case to court?

- **Against the public authorities act on the request for access to information, the applicant and another interested person may lodge a complaint to the Agency for the Personal Data Protection and Free Access to Information, through the authorities that have dealt with the request in the first instance. If the request is denied because the information contains information marked with the degree of secrecy, no appeal can be made, but an administrative dispute can be initiated by lawsuit.**

**An appeal may be lodged against decisions within 15 days of its receipt, to the Agency. Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. It is necessary to exhaust the available variants of the administrative procedure before initiating an administrative dispute.**

**An appeal may be filed for violation of the rules of procedure, incorrectly and incompletely established factual situation and misapplication of substantive law.**

3. If appeal is made to an independent body mentioned above, how is the *independence and impartiality* of that body ensured?

- **Agency for the Personal Data Protection and Free Access to Information performs affairs of a supervisory authority prescribed in the Personal Data Protection Law. In performing affairs within its scope of work, the Agency is autonomous and independent. The Agency has a status of a legal entity.**

4. What *costs (fees, charges)* are connected to review before the court of law or other review bodies in these cases?

- **Expenses in these procedures are regulated by the Decree on the Compensation of expenses in the process of access to information.**

5. What is the average length of the case consideration?

**- Agency for Personal Data Protection and Free Access to Information shall, upon appeal to the act on request for access to information, issue a decision and submit it to the complainant within 15 days from the date of filing the appeal. The Management Authority - the Council of the Agency - shall decide on the appeal.**

6. Are decisions of courts and other review bodies in information cases binding and final? If the appeal is successful, how is the independent body's/court's *decision enforced*; by ordering the public authority to disclose the information; by disclosing the information directly; by suing the public authority if they persist in refusing to disclose the information or by any other means?

**- The public authority is obliged to execute a decision permitting access to information within 3 working days from the date of delivery of the decision to the applicant, or within 5 days from the date when the applicant has submitted proof of payment of the costs of the procedure if they are determined by a decision. The first instance body is obliged to carry out all actions on appeal, within five days from the filing of the appeal. An appeal against a decision permitting access to information does not delay execution of the decision. When it comes to the use of the right to judicial protection, this shall be done in accordance with the law on administrative dispute.**

7. Can disciplinary, administrative or criminal *sanctions be exercised* against the public officials if disclosure of environmental information is refused unlawfully? Would it be possible for the applicant or other members of the public to be a party to such proceedings?

**- The Law on Free Access to Information provides the penal provisions for possible violations for the authorities or the Agency.**

8. Do you have any experience of situations/cases where individuals or ENGOs asking for environmental information have been *penalized, persecuted or harassed* in any way for their involvement?

**- We do not have such an experience.**

9. Do you have any experience of *misuse or abuse* of the right to environmental information and the consequences thereof?

**- We had a situation in which environmental information, in particular on air quality, was wrongly analyzed by incompetent persons and that the media, by transmitting such information, mislead the public. Although there was no ill intention, the transmission of unverified information could lead to uncontrolled situations, leaving place for various abuses.**

10. In your view, what are the *main barriers* in your legal system concerning access to justice for the members of the public in cases on the right to environmental information?

**- Insufficient knowledge of the issues by the judicial authorities.**

11. Does your legal system provide with any *innovative approaches* concerning administrative and judicial review procedures in cases on the right to environmental information, for example concerning the requirement for the procedure to be expeditious, the use of alternative dispute resolutions (ADRs), costs, remedies, means for execution of review decisions on disclosure or use of e-justice initiatives?