

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 revised

QUESTIONNAIRE

Access to justice in cases on the right to environmental information

At its sixth session¹, 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 of 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.

A draft questionnaire was discussed at the eleventh meeting of the Task Force on Access to Justice in Geneva in Geneva on 27-28 February 2018² and thereafter revised by the secretariat in consultation with the Chair in the light of the discussion at the meeting and further comments received.

The present questionnaire is distributed to a selection of institutions specialized in 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@un.org** with the subject line "11TFAJ survey from [name of country, organization]" for processing **before 1 October 2018**. Kindly be informed that the completed questionnaires will be posted on the website of the twelfth meeting of the Task Force.

¹ 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

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

CONTACT INFORMATION

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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 right to access to information is regulated by a constitutional document, the Freedom of the Press Act (tryckfrihetsförordningen). According to the Act, every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information. Except as otherwise laid down in the Act or elsewhere in law, foreign nationals are equated with Swedish citizens.

An official document to which the public has access shall be made available on request forthwith, or as soon as possible, at the place where it is held, and free of charge, to any person wishing to examine it, in such form that it can be read, listened to, or otherwise comprehended. The Swedish Justitieombudsmän (The Parliamentary Ombudsmen) has ruled that a decision on a request for access to a public document should be taken within a couple of days although the response time can be extended due to the complexity of the request.

If an authority refuses to give a requester *unlimited* access to the information requested he or she has the right to a written decision in which the reasons for refusal must be stated. In the written decision the authority *shall* inform the requester of the right to appeal and how to appeal.

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?

An appeal against a decision to refuse access to information in an official document can be appealed against within three weeks from the day when the requester received the decision. However; there are no restrictions for making a new request for access to an official document.

When an authority receives a request for access to information in an official document it has to do an assessment on whether the information is covered by the provisions laid down in the Public Access to Information and Secrecy Act (Offentlighets- och sekretesslag) Generally speaking the law limits access to public documents by way of exception if the limitation protect the following interests:

- **The security of the realm or its relations with another state or international organisation**
- **The central fiscal, monetary or currency policy of the Realm**
- **The inspection, control or other supervisory activities of a public authority**
- **The interest of preventing or prosecuting crime**

- **The economic interests of the public institutions**
- **The protection of the personal or economic circumstances of private subjects**
- **The preservation of animal or plant species**

The appeals are usually based on the argument that there are no confidentiality provisions that cover the information in question.

With some minor exceptions only the authority that has the document in its hand and the requester has legal stand in the appeal process.

The appeal is made to the one of the Administrative Courts of Appeal. The decision of a Court of Appeal can be appealed against to the Supreme Administrative Court.

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

N/A

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

There are no costs connected to review before the courts in matters of public access to information.

5. What is the average time needed for the court of law or another independent and impartial body to decide an information case, i.e. from the introduction of the appeal to the notification of the decision? If the national rules of appeal require administrative reconsideration before the appeal is submitted to the court of law or another review body, that time should also be also separately specified.

According to Tryckfrihetsförordningen an appeal shall always be examined promptly by the courts. The time varies with the complexity of the case.

6. Are decisions of courts and other review bodies in information cases in writing, publicly available, 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 rulings of the courts are in writing and generally public (in some exceptional cases confidentiality can apply to a court decision). Once a court decision has entered into force it is binding. Thus the authority cannot withhold the information that he court hold as public. If the court changes the assessment done by the authority it *usually* refers the case back to the authority for a new assessment. If the court's decision enters into force it is binding for the authority.

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?

Normally, in cases where the courts do not agree with the assessment made by a public official who refused access to information based on the interpretation of the Swedish rules on access to information no sanctions are imposed. However the Justitiombudsmän (see above) can issue criticism against an officer that has acted in violation with the Swedish rules on access to public information.

According to the Swedish Penal Code (Brottsbalken) a person who discloses information which he is duty-bound by Law or other statutory instrument or by order or provision issued under a Law or statutory instrument to keep secret, or if he unlawfully makes use of such secret, he shall, if the act is not otherwise specially subject to punishment, be sentenced for breach

of professional confidentiality to a fine or imprisonment for at most one year. A person who through carelessness commits an act described in the first paragraph shall be sentenced to a fine. In petty cases, however, punishment shall not be imposed.

8. Do you have any experience of situations/cases where individuals or ENGOs asking for environmental information have been 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?

No

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

No

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?

In my opinion the Swedish system for access to information is open and the grounds for refusal are limited to a very few but important situation.

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?

See answers above.

12. Can you please provide us with a short description of particularly important or innovative information cases, as well as cases which illustrate the main barriers concerning access to justice in these matters.

N/A