

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?

Answer

There are no special rules regarding environmental information, official documents are to be made available “as soon as possible” according to the Swedish constitutional “Freedom of the Press Act”, chapter 2 article 12 and 13.

Article 12 [Availability of Official Documents]

(1) An official document to which the public has access are 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. A document may also be copied, reproduced, or used for sound transmission. If a document cannot be made available without disclosure of such part of it as constitutes classified material, the rest of the document are made available to the applicant in the form of a transcript or copy.

(2) A public authority is under no obligation to make a document available at the place where it is held, if this presents serious difficulty. Nor is there any such obligation in respect of a recording under Article 3, paragraph one, if the applicant can have access to the recording at a public authority in the vicinity, without serious inconvenience.

Article 13 [Transcript and Copy]

(1) A person who wishes to examine an official document is also entitled to obtain a transcript or copy of the document, or such part thereof as may be released, in return for a fixed fee. A public authority is however under no obligation to release material recorded for automatic data processing in any form other than a printout except insofar as follows from an act of law. Nor is a public authority under any obligation to provide copies of maps, drawings, pictures, or recordings under Article 3, paragraph one, other than in the manner indicated above, if this would present difficulty and the document can be made available at the place where it is held.

(2) Requests for transcripts or copies of official documents **must be dealt with promptly**.

If an official document can not be disclosed or can only be disclosed with reservation, the applicant shall be notified of this. The message may be oral or written. At the same time as the refusal, the applicant must be informed that he or she is entitled to a written decision and that such a decision is required to appeal (Chapter 6 , article 3 “Public Access to Information and Secrecy Act”)

Read more:

<https://www.regeringen.se/49bb7e/contentassets/2c767a1ae4e8469bfd0fc044998ab78/public-access-to-information-and-secrecy-act>

There are no obligations in those acts (“Freedom of the Press Act”, “Public Access to Information and Secrecy Act”) to make the information available in digital form. However there is guidance for the Swedish Public Sector Information law (from the PSI directive) which recommends Public Sector Information to be made available to the public as open as possible in digital form.

Read more (Swedish): <https://opnadata.se/juridik-och-rekommendationer/tillgangligorande-pa-natet-huvudalternativet/>

<https://opnadata.se/juridik-och-rekommendationer/utlamnande-i-elektronisk-form-pa-begaran-andrahandsalternativ/>

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?

Answer:

A person whose request to obtain a document has been rejected or whose request to an official document has been granted subject to reservations, is normally entitled under the Freedom of the Press Act to request that the matter be reviewed by a court. The Public Access to Information and Secrecy Act contains provisions concerning when reservations may be imposed and the court to which appeals should be addressed. The decision of an authority to provide an official document cannot be appealed against. (...)

If an authority has rejected a request to obtain a document or if it has supplied an official document subject to a reservation (see Part 2.3), the applicant is generally entitled to appeal against the decision. Appeals are usually presented to an administrative court of appeal. A decision of such a court may be appealed against to the Supreme Administrative Court. If the party whose application has been rejected is a central government authority, the appeal is presented to the Government instead of to an administrative court of appeal. (page 15 and 21)

<https://www.regeringen.se/49bb7e/contentassets/2c767a1ae4e8469bfd0fc044998ab78/public-access-to-information-and-secrecy-act>

Read more:

http://www.forvaltningsrattenistockholm.domstol.se/Publikationer/Informationsmaterial/Hovr%c3%a4tten_The%20Court%20of%20Appeal.pdf

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

Answer:

<http://www.domstol.se/Funktioner/English/The-Swedish-courts/>

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

Answer:

In case of appeal to administrative courts, administrative courts of appeal and the Supreme Administrative Court, you are only responsible for your own costs and do not have to pay the counterparty if you lose.

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.

Answer: -

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?

Answer: -

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?

Answer: -

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?

Answer:

No.

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

Answer:

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?

Answer:

We do not see that there are any barriers to legal review on issues relating to disclosure of public act / PSI data.

Some environmental NGO:s are not satisfied with the Swedish implementation of the Aarhus Convention regarding what they are allowed to appeal against, see for example

<https://www.regeringen.se/49cad6/contentassets/afa2655f28c94add8218a638270ee324/naturskyddsforeningen.pdf> (Swedish)

Read more:

<https://www.regeringen.se/remisser/2016/12/remiss-av-rapport-om-sveriges-genomforande-av-arhuskonventionen/> (Swedish)

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?

Answer:

Not that I am aware of.

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.

Answer: -