

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

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

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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?

All Swedish citizens and aliens are entitled access to environmental information held by public authorities under the principle of public access to information, including the right to access to official documents, as regulated in one of the constitutional laws – *The Freedom of the Press Act*.

A request for official documents shall be met at once or as soon as possible. The document shall be provided unless it is subject to secrecy. In addition to the right to access to the official document itself the authority shall provide information from the document unless it is subject to secrecy.

The authority's decision to refuse access to information (documents or information from documents) must be in writing. Reasons must be stated.

The applicant is informed about the possibility to appeal in the decision.

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 is made to an administrative court of appeal (*kammarrätt*). The appeal must be made within three weeks from the date of notification of the decision. Administrative review by the authority is optional, but not mandatory unless the decision is clearly wrong.

The Environmental Licencing Authority has very limited experience on requests for environmental information (to my knowledge, no request has yet been refused).

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

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

No costs are connected to review.

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.

The court must make its decision as soon as possible, according to the principle of public access to information (see above).

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 courts' decisions are in writing and publicly available, according to the principle of public access to information. When a decision has entered into force, i.e. when it is no longer possible to appeal, the decision is binding and final regarding the request in question. Although access to the information has been finally refused, the applicant can still make a new request concerning the same information.

The court's decision is enforced by ordering the public authority to disclose the information.

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?

Disciplinary as well as criminal sanctions can be exercised. The applicant or other members of the public are not parties to such proceedings.

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?

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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?

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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.

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