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**Task Force on Access to Justice**

**ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS:  
AVAILABLE REMEDIES, TIMELINESS AND COSTS**

**Eastern Europe, Caucasus and Central Asia**



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**Note**

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**Languages**

The present report was originally prepared in Russian and informally translated into English.

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**Eastern Europe, Caucasus and Central Asia**

**Dedicated to the cherished memory of  
Professor Svitlana Kravchenko**

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<sup>1</sup> The order of the countries in this report corresponds to the alphabetical order used in the original Russian text.

## SECTION I

### 1. ANALYTICAL SUMMARY

#### I. Purpose and methodology of the research

1. The purpose of this study is to identify the impediments faced by the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) and other EECCA countries in ensuring public access to justice in environmental matters, especially concerning costs and remedies (see Article 9, paragraph 4 of the Aarhus Convention), and to make recommendations to eliminate them.

The study is based on the provisions of the Aarhus Convention and is conducted within the framework of the Task Force on Access to Justice to assist in the implementation of its powers conferred on it by the third meeting of the Parties to the Aarhus Convention (ECE/MP.PP/2008/2/Add.5).

Objects of the study are the national legislation and law enforcement practice (as of February the 1st, 2011) in 12 countries: Armenia, Azerbaijan, Belarus, Kazakhstan, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine.

2. In order to gather the necessary information for the study, a questionnaire was developed and distributed to the national experts in Russian, as well as made available to fill out by any interested persons on the webpage of the Aarhus Convention<sup>2</sup>.

Information on the countries was provided by the national experts: Matanat Asgerova (Azerbaijan), Gore Movsisyan (Armenia), Natallia Gretskeya (Belarus), Vladimir Borisov (Kazakhstan), Malkhaz Dzneladze (Georgia), Oleg Pechenuk (Kyrgyzstan), Natalia Zamfir (Moldova), Yulia Yakel (Russia), Umidjon Ulugov (Tajikistan), Ashir Orazdurdyev (Turkmenistan), Timur Tillyaev (Uzbekistan), Yelizaveta Alekseyeva (Ukraine). Synthesis of the provided materials was carried out by consultants Elena Laevskaya (for Azerbaijan, Belarus, Georgia, Moldova, Russia, and Ukraine) and Dmytro Skrylnikov (for Armenia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) under supervision of the Secretariat of the Aarhus Convention and the Chairman of the Task Force on Access to Justice Jan Darpo. Preliminary outcomes of the study were discussed at the expert meeting and presented at the fourth meeting of the Task Force on Access to Justice, February 7-8, 2011 in Geneva, Switzerland.

In April 2011 a draft report on the results of the study prepared by the consultants of the project was sent for review and comments to the national experts, national focal points of the Aarhus Convention and other experts with a view of its revision and further submission to the fourth meeting of the Parties to the Aarhus Convention.

3. It should be noted that this study is primarily based on analysis of the existing legislation, its implementation, as well as examples provided by the national experts as part of the questionnaire. The study used the results of the similar studies on legislation and practice of EECCA countries, the legislation of the countries, decisions of the Compliance Committee, as well as existing case-law of the European Court of Human Rights in respect of the countries.

#### II. Key issues and trends

4. The experts have ascertained that in some countries there is practically no practice of court cases initiated by the public in environmental matters, or it is insufficient for the analysis of implementation of the existing legislation. In some cases, the national experts indicated that a legal norm exists, but due to lack of practice it is difficult to assert whether it is effective and whether its application (misapplication) creates obstacles in access to justice.

5. This study suggests that in most of the countries, lack of practice of court cases initiated by the public in environmental matters, and problems with access to justice on these matters are directly related to legal / institutional barriers to access to justice as well as to low awareness of the public, public authorities and courts on these matters. Some national experts also noted lack of systematic development of legislation,

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<sup>2</sup> For additional information, please visit <http://unece.org/env/pp/a.to.j.htm>

lack of support of active non-governmental organizations (NGOs) promoting environmental protection, and other socio-economic factors.

6. Analysis of the legislation allows to emphasize the problems of public access to justice in environmental matters which are common to all the countries:

- "Narrow" standing (especially in the context of the capacity of the public to ask for the judicial review of violations of environmental laws and to bring claims in the public interest);
- Delays in processing of cases, long-term review of cases;
- Significant financial litigation costs / expenses (court fees on material claims<sup>3</sup>, costs of expertise and expert services, costs of legal aid);
- Lack of access to qualified legal and expert assistance;
- Application of the "loser pays" principle in judicial procedures (including compensation of damages caused to a defendant relating to granted injunctive relief);
- Lack of awareness of judges in the field of legislation on environmental protection (especially international agreements) and the rights of citizens and NGOs in this field.

7. Imposition of injunctive relief on activities that violate legislation on environmental protection, both temporary and permanent, is provided by legislation of most of the countries, but its application in environmental cases in many countries is more an exception rather than a rule. Moreover, temporary bans as security for claims are often closely associated with a significant financial risk for a plaintiff (a citizen / NGO), if a plaintiff loses his/her case. *See also para 30-33*

8. In many countries jurisprudence on cases initiated by the public is shaping toward the claims (complaints) of a non-material nature (appeals against decisions, construction permits, decisions of state ecological expertiza, etc.

Based on the study, it can be noted that appeals against decisions, actions or omissions of public officials in both administrative and judicial review procedures, as well as other non-material claims are more accessible to the public. First of all, this is due to a simpler and clearly regulated procedure, shorter processing terms, less burdening process of proving, lower costs for filing and processing claims / complaints, and lower risk related to reimbursement of the costs by a loser.

Lawsuits for damage compensation caused by violation of environmental legislation to the nature, property or health are often associated with the burdening process of proving a causal relation, which, in turn, requires involvement of qualified experts, and remuneration of their expert services. In addition, in cases of compensation for material damage in all the countries there is a principle that a court fee constitutes a certain percentage of an amount claimed (from 0.5 to 15%), which is often an obstacle for plaintiffs who have suffered significant material damage. For these reasons, there are a very limited number of cases initiated by the public and related to compensation of damage caused to property or health (except the cases on compensation of a direct damage caused in a result of an accident).

9. Significant role in shaping practice of public access to justice in environmental matters in the region is played by NGOs and lawyers working in the field of environmental protection in the public interest and / or providing legal assistance to the public. In those countries where such organizations / lawyers operate, there are a considerable number of practical examples. In turn, this practice helps to identify issues related to access to justice in environmental matters, and contributes to improvement of national legislation.

10. Execution of court decisions constitutes a separate problem, but in this study the question of execution of court decisions has not been fully addressed.

### **III. Environmental legislation, system of regulatory and supervisory authorities, and judiciary**

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<sup>3</sup> In the studied countries all the claims brought to courts are usually divided into two big groups: material claims and non-material claims. In material claims a sum in dispute can be determined (the value of a property in dispute, the amount of damage claimed, e.g.). Court fees for filing such claims as a rule are determined as a percentage of the sum in dispute. When claims have no economic value and/or a sum in dispute cannot be determined (a claim to declare a normative act/decision illegal, a claim to stop environmentally hazardous activity, a claim for restoration of the rights etc.) such claims are considered to be non-material claims. For these claims the rates of court fees are fixed.

11. The system of environmental legislation exists in all the countries. Legislation relating to the environment is a complex integrated system of regulations at different levels (codes, laws, acts of government, ministries and agencies), which regulate relations in the field of natural resources use, environmental protection, waste and chemicals, genetically modified organisms, species protection, nature reserves etc. Norms of environmental legislation in the studied countries are also contained in legislation on urban planning and construction activities, legislation on sanitary and epidemiological well-being, legislation on local administration and local self-government, legislation in the field of nuclear energy, in civil, criminal, and administrative laws.

Adoption of the Environmental Code (Kazakhstan) and drafting of concepts of such codes (Ukraine, Russia, Belarus, and Tajikistan) is a recent trend in development of legislation relating to the environment.

International treaties relating to the environment, ratified / approved in accordance with the national legislation, including the Aarhus Convention, in the studied countries become a part of the national system of the legislation and as a rule are subject to direct application.

12. Systems of regulatory and supervising authorities in the field of environmental protection in the countries are based on the principles of political systems of these countries: federal state - Russia, unitary states - all the other studied countries. The systems consist of bodies of general competence (President, Government, local authorities / municipalities) and bodies of a special competence – relevant ministries (committees, agencies) on environmental protection and natural resources, which in most of the countries have their local departments.

For the time being systems of public authorities in general and in the field of environmental protection in some countries are in the process of reforming (Ukraine, Georgia, and Kyrgyzstan). In some countries within a system of environmental authorities, a special governmental body that conducts supervision in the field of environmental protection is created - State Environmental Inspectorate (Ukraine, Moldova), Inspection of Environmental Protection (Georgia), State Inspectorate for Nature Protection (Armenia), Committee on Environmental Regulation and Control (Kazakhstan). Environmental Police operates in Russia (a body within the Ministry of Internal Affairs) and Tajikistan (Ministry of Internal Affairs jointly with the Committee of Environmental Protection carries out state control over compliance with the regulations of pollutants' emissions into the atmosphere from vehicles), in Georgia an investigating department within the Ministry of Environment and Natural Resources works on combating crimes and violations in the field of environmental protection and natural resource use.

13. Prosecutor's Office, as an authority that oversees compliance with legislation, including in the field of environmental protection and natural resources use, is created and operates in all of the countries. Specialized Environmental Prosecutor's Offices operate in Ukraine, Russia, and Uzbekistan.

14. Judicial systems of the countries differ in some features. Most of the countries have constitutional courts (except for Moldova, Kazakhstan, Kyrgyzstan and Turkmenistan). In Kyrgyzstan, the Constitutional Court has recently been abolished as a separate institution of the judiciary, but Constitutional Chamber of the Supreme Court was created instead. Virtually all of the countries have courts of general jurisdiction/ general courts. In addition, in most of the countries a system of business / economic courts is in place (Ukraine, Belarus, Moldova, Tajikistan, and Uzbekistan), administrative-economic courts (Azerbaijan), arbitrary courts (Russia, Turkmenistan), to consider economic disputes and other disputes involving legal entities and individual entrepreneurs.

As a general rule citizens do not have the right to file complaints with the Constitutional Court (Ukraine, Belarus, Uzbekistan), but only apply to it regarding the necessity of the official interpretation of the Constitution or laws (Ukraine), or petition the authorities and persons empowered to address the Constitutional Court with a motion on the constitutionality of a normative act (Belarus). At the same time citizens of Azerbaijan have the right to appeal to the Constitutional Court any normative acts of legislative and executive authorities, municipal and judicial acts that violate their rights and freedoms with the purpose to restore infringed human rights and freedoms. In Armenia, individuals and legal entities can appeal to the Constitutional Court in a particular case, when there is a final court decision, all the judicial remedies are exhausted, and the constitutionality of the applied act is challenged. In Tajikistan, physical and legal persons have the right of a direct appeal to the Constitutional Court regarding the violations of constitutional rights and freedoms associated with the applied or applicable law, as well as regarding conformity with the Constitution of Tajikistan of laws and other legal acts applied by the court against them in a particular case.

In Ukraine and Armenia there are administrative courts, to which one can challenge any decision, action or omission of public authorities, including in matters relating to the environment. These courts consider cases relating to the protection of the right to access to environmental information and to participation in decision-making in environmental matters. Decisions in matters relating to the environment are challenged in these courts. In other countries, where there are no administrative courts, these types of disputes are considered by the general courts (Belarus).

In all of the countries general courts also consider criminal cases, including those relating to the environment. As a rule such cases are initiated by the Prosecutor's Office. In most of the countries the public can not initiate consideration of criminal cases in courts. Yet, the public can notify prosecutors or other authorities on certain facts, who, after an inspection, decide whether to initiate a criminal investigation or to take other measures in response. However, in some countries there is a possibility to initiate criminal prosecution of certain crimes as a private-public prosecution (a victim or another person files a claim directly to the court). For example, in Tajikistan and Turkmenistan claims related to a negligently caused serious and moderate injury can be filed by victims. However, the cases related to damage caused by an environmental offense initiated as a private-public prosecution are unknown.

In all of the countries, the higher courts review decisions of the lower courts on the grounds established by law. Review of decisions which have not become legally binding -and of final decisions is possible. National legislation allows establishment of specialized courts, but such courts in the matters relating to the environment in the countries, whose legislation and practices were studied, are not created.

15. Ombudsman or Commissioner for Human Rights functions in several countries on the basis of a special law (Ukraine, Moldova, Armenia, Azerbaijan, Georgia, Kyrgyzstan, Russia, Tajikistan, Uzbekistan) or Presidential Decree (Kazakhstan), and considers claims of human rights violations, including environmental. However, the Ombudsman is not vested with the function of protection or redress of infringed rights, and does not have an appropriate authority. In Russia, the Ombudsman, in particular, is authorized: to apply to the court to protect the rights and freedoms infringed by decisions or actions (omissions) of public authorities, local self-government or public officers, to apply to the court or prosecutor's office with a request to scrutinize decisions, verdicts, court rulings or orders or decisions of judges which have become effective; to appeal to the Constitutional Court with the complaint of a violation of constitutional rights and freedoms of citizens by law, applied or applicable in a particular case. Turkmenistan has created and operates the Turkmen National Institute for Democracy and Human Rights under the President of Turkmenistan. One of the main activities of the Institute is to organize the consideration of applications, complaints and appeals of citizens, their analysis and to submit proposals to the President of Turkmenistan periodically.

#### **IV. Decision-making procedures on specific activities relating to the environment**

16. Analysis of information on decision-making procedures on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paras 10, 11, and Annex I, paragraph 22, of the Aarhus Convention (hereinafter - the decisions) provided by the national experts, leads to several general conclusions:

- according to legislation of the countries the decision-making process on specific activities relating to the environment is divided into several stages (decision on planning, decision on allocation of land, permission for construction works, licenses, permits for emissions / discharges, permit for use of natural resources, conclusion of state ecological expertise, etc.);
- decision-making in different stages is vested in various government bodies - the President, Parliament / Supreme Council, Government, special governmental bodies in the field of environmental protection and natural resource use, ministries and agencies, local governments / municipalities. This circumstance affects the possibilities of using remedies. In particular, in case a decision is made by the President, Parliament / Supreme Council, the Government, as a general rule, it is drawn up as a normative act (law, decree)<sup>4</sup>. In this event, as a general rule, the public is deprived of an opportunity to appeal / challenge such an act both in administrative and judicial review procedures (the exception - one can challenge decisions of the Cabinet of Ministers of Ukraine (the Government) to an administrative court). In most of the

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<sup>4</sup> Including some decision on activities listed in Annex I of the Aarhus Convention. For instance, in Ukraine the decision on placement and construction of a nuclear facility shall be adopted by the Parliament in the form of a law.

countries, that have established constitutional courts, the public is denied the right to directly appeal to the Constitutional Court.

- given the complexity and multi-leveling of the decision-making process the legislation of the countries often does not allow the public to define with a sufficient accuracy a legally significant moment of decision-making (when final decision is made); moreover, the system of effective public notification of appropriate decision-making is either absent in the countries, or inefficient (information is communicated sporadically, on individual decisions, information is not complete);

## **V. Administrative review**

### *Appeals against decisions, actions / omissions of public authorities*

17. As a general rule the public (individuals and NGOs) can appeal against decisions, actions / omissions of public authorities in administrative way by filing complaints to higher authorities or a superior officers (administrative review). The legislation usually prohibits forwarding complaints addressed to a higher authority / official, to the body / person, whose decisions, actions / omissions are challenged (Belarus, Russia, Ukraine). In practice this still happens.

18. Legislation of the countries does not provide for establishment and operation of independent and impartial administrative bodies responsible for reviewing decisions of public authorities (In Georgia, legislation provides for such an administrative body, but these norms are not implemented yet). Authorities, considering complaints filed for administrative review, are established by law, but their impartiality is questionable due to the fact that they make decisions on complaints filed against their subordinate bodies or officials.

19. In most of the countries, administrative review of a decision does not automatically suspend execution of this decision. In Kazakhstan, filing of a claim for cancellation, modification or suspension of a legal act by persons concerned to a higher state body or to the court suspends the validity of the act until the appropriate decision is made. In Armenia, when a decision is subjected to administrative review the validity of the challenged administrative act (actions / omission) is suspended (except for the cases when a requirement for the immediate execution is established by law or when it is necessary for the public interest). *Also see figure 2*

20. In some countries the public has the right to file a complaint either for an administrative, or a judicial review (Ukraine, Azerbaijan, and Russia). In these countries application of an administrative review does not preclude from a subsequent judicial review. In Belarus, Georgia, and Turkmenistan it is mandatory to apply for administrative review of decisions / actions / omissions, and only after that for a judicial review. Also in some countries the legislation in certain cases requires an appellant to recourse directly to a decision-making body/official with a request to cancel its decision (Moldova), and only after that to the court. The court will not find a complaint admissible unless the pre-trial procedure was followed. In this case administrative review is considered ineffective and thus it constitutes an additional barrier in access to justice. Administrative review as an obligatory pre-trial procedure is conducted by authorities which are not fully independent and impartial administrative bodies; administrative review is lasting (up to 3 month) and it does not suspend execution of challenged decisions. As a result an irreparable harm can be caused to the environments even before the public can get a right to file a claim to the court. In some countries certain decisions cannot be subject to administrative review, only to a judicial review (e.g. conclusion of state ecological expertise in Russia).

### *Challenging violations of the legislation relating to the environment*

21. The public can challenge violations of the legislation relating to the environment by public authorities or private persons to competent authorities (prosecutors, environmental inspectorates, and other supervisory authorities).

22. Within administrative review procedure, supervisory authorities (in Ukraine, Belarus, Azerbaijan, Georgia, Moldova, Russia, Tajikistan, Kyrgyzstan, Armenia), local government (Belarus) receiving claims/complaints regarding violations of the legislation, have the right to suspend / terminate an activity that violates legislation relating to the environment. In some countries (e.g. Tajikistan, Ukraine) suspension of an activity can be imposed by supervisory authorities, but only court can cease an activity permanently. In Kazakhstan, only court can impose both suspension and termination of an activity. *See figure 2*

Different reasons (criteria) for restriction, suspension, and termination of activities exist in the countries:

- exceeding the limits of natural resources use, violations of environmental standards, or requirements of environmental safety (Ukraine);
- causing environmental harm, the risk of causing environmental harm in the future, violations of the requirements in the field of environmental protection or failure to comply with requirements of the public authority exercising state supervision in the field of environmental protection (Belarus);
- activity contradicts the legislation on the protection of the environment and causes irreparable damage to the environment notwithstanding whether business entities will suffer direct damages, or not (Moldova);
- violations of environmental requirements (Azerbaijan);
- activity of an enterprise is carried out illegally, or (and) as a result of this activity a serious and imminent threat to public safety, life or health of the person (and) or a threat to evidences is posed (Georgia);
- activity has an adverse impact on the environment (Russia);
- non-compliance with technical and metrological requirements for nature protection, emission of polluting substances and other impacts on nature (Turkmenistan);
- in case of environmental violations (Armenia);
- violation of environmental legislation, exceeding of the limits of emissions of polluting substances (Kyrgyzstan);
- in case of two or more violations of environmental requirements or conditions and if it is impossible to preclude these violations by other means (Tajikistan).

#### *Costs and terms of review*

23. In accordance with the legislation of the countries, appeals against decisions within administrative review, in most cases, do not require financial expenses. Deadline for handling appeals/complaints in administrative review in most of the countries is 1 month (30 days in Armenia). The deadline can be extended, for example:

- if the issue is complicated – up to 45 days (in Ukraine and Turkmenistan);
- for 1 month (in Belarus, Kyrgyzstan, Uzbekistan, and Tajikistan);
- for 1-2 months (in Georgia);
- for 10 -30 days, and in exceptional cases - up to 60 days (in Russia);
- twice for 10 days (in Armenia).

In practice the deadlines are not always respected.

#### *Information on the results of review*

24. Decisions of non-judicial/administrative bodies on the results of appeals against decisions relating to the environment are disclosed only to complainants. No system of public access to such decisions (e.g., registry accessible via the Internet) exists. In some countries it is problematic to obtain such documents upon a request.

## **VI. Judicial review**

### *Standing*

25. The right of individuals to address the court for the protection of their infringed rights, freedoms and legitimate interests / interests protected by law is provided by the legislation in all the countries (in Uzbekistan, only the rights and freedoms). According to the legislation of the EECCA countries, NGOs can also apply to the court in the case of infringement of the rights or legitimate interests of the organization and / or its members. *See figure 1*

26. The situation with the ability of going to court in the case of violation of law that does not directly affect the rights and legitimate interests of individuals or entities is ambiguous. In most of the countries, this right is not explicitly enshrined in the legislation. However, in some countries, such ability exists on the basis of law or existing national jurisprudence based on the Aarhus Convention (e.g. Ukraine). Unfortunately, these practices are inconsiderable in number and do not provide for a complete picture of implementation of this standard. *See figure 1*

While in some countries the possibility to challenge actions violating the laws relating to the environment is established in environmental legislation, appropriate provisions are still missing in procedural legislation. For example, in Belarus the Law On Environmental Protection provides for the right of civic

associations operating in the field of environmental protection, and citizens “to file claims to the court for complete or partial suspension or termination of economic and other activities adversely affecting the environment, if in a result of such activities the violations of the requirements in the field of environmental protection occur, damage is caused to the environment or a risk of causing damage to the environment in the future is created”. However, Civil Procedural Code establishes the rights of public associations (organizations) to appeal only for the protection of the rights and interests of members of an association and only if these rights conform to the statutory purposes of the association (Article 86 of the Civil Procedural Code).

27. The concept of going to court for the protection of the public interests or on behalf of an indefinite number of persons<sup>5</sup> exists in the legislation of most of the countries, but is mainly applicable to protection of consumers’ rights.

In some countries, provisions on the ability to apply on behalf of an indefinite number of persons have been enshrined in the legislation concerning the environment, but were not included in the procedural legislation (e.g. Azerbaijan). In some other countries, the procedural legislation contains the provisions establishing the right of individuals or legal entities to apply for the benefit of others or on behalf of an indefinite number of persons, if provided by law, but this provision is missing in the appropriate legislation relating to the environment.

For example, in Tajikistan, the Civil Procedural Code provides that in cases stipulated by the Code and other laws, a civil proceeding can be initiated upon a claim of a person acting on its own name in the defense of the violated or disputed rights, freedoms and legitimate interests of the other persons involved in the case, in the defense of the rights, freedoms and interests of an indefinite number of persons, or in the defense of interests of the Republic of Tajikistan. However, the environmental legislation does not contain a direct provision establishing the right to apply on behalf of an indefinite number of persons.

In some countries the right to go to court to protect the public interest or on behalf of an indefinite number of persons is granted only to NGOs.

According to the legislation of Russia, NGOs acting in the public interest in matters relating to the environment during consideration of a specific case before the court shall provide the court with a by-law of the NGO, according to which one of the activities of the NGO is the protection of the environment, and (or) judicial protection of the public interests (such a rule is contained in the legislation of the Republic of Moldova). In Kazakhstan, within the meaning of Article 14 of the Environmental Code and the provisions of the Aarhus Convention, environmental NGOs can apply to court to protect the interests of an indefinite number of persons. *See figure 1*

Figure 1

Standing	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Moldova	Russia	Tajikistan	Turkmenistan	Uzbekistan	Ukraine
<b>Judicial review</b>												
<b>NGOs</b>												
infringement of the rights of the organization and / or its members	+	+	+	+	+	+	+	+	+	+	+	+
infringement of the interests of the organization and / or its members	+	+	+	+	+	+	+	+	+	+	-	+
violation of the law	-	-	(+)	-	-	-	-	+	(+)	-	-	(+)
on behalf of an indefinite number of persons (actio popularis)	(+)	-	-	-	+	+	+	+	+	-	-	(+)
<b>Individuals</b>												
infringement of the rights	+	+	+	+	+	+	+	+	+	+	+	+
infringement of the interests	+	+	+	+	+	+	+	+	+	+	-	+
violation of the law	-	-	(+)	-	-	-	-	+	(+)	-	-	-
on behalf of an indefinite number of persons (actio popularis)	-	-	-	-	-	+	+	+	+	-	-	-

\* (+) - Not fully, or requires a further study

<sup>5</sup> The expression “a lawsuit on behalf of an indefinite number of persons” is used in the legislation of most of the countries and for the purpose of this study shall be considered an “actio popularis” (translator’s note).

### *Automatic suspension*

28. In some countries (Armenia, Kazakhstan, and Tajikistan), there is an automatic suspension of decisions in case they are subject to judicial review. In other countries a mere fact of an appeal of a decision does not suspend its validity. *See also para 19 and Figure 2*

### *Remedies (overall review)*

29. The legislation of the countries provides for the different judicial remedies available to the public, including restoration of the state that existed before the violation, preclusion of actions that violate or might violate the rights, declaring decisions of public authorities illegal, compensation of material and non-pecuniary damages, etc., as well as suspension or termination of an environmentally harmful activity violating environmental legislation by a court decision, suspension of an activity as a security for a claim (hereinafter – injunctive relief).

### *Injunctive relief*

30. The legislation of the countries provides for the following types of injunctions:

- permanent, by a court decision;
- temporary, until certain conditions \ regulations are fulfilled, by a court decision;
- temporary, for a period of a trial, as a security for a claim (preliminary injunction).

31. In most of the countries it is possible to terminate an activity in both administrative and judicial procedures. In many countries the law establishes the right of the public to apply for termination of environmentally harmful activities, the activity adversely affecting the environment and human health, or resulting in a breach of environmental legislation (Armenia, Azerbaijan, Belarus, Tajikistan, Ukraine, Kazakhstan, Russia, Uzbekistan and the Republic of Moldova). However, the cessation of activity (a permanent ban) is rarely used in practice. The main reasons for that are the underlying economic interests, as well as lack of clear criteria based on which the court determines the need to prohibit an activity. *See also para 22 and Figure 2*

For example, when considering a claim for termination of an environmentally harmful activity, the court may deny a claim, if termination of such activity "contradicts the national interests" (Azerbaijan), "contradicts the national and public interests" (Belarus). Such a standard, as enshrined in the Civil Code, allows, using judicial discretion, in the overwhelming majority of cases to give preference to such national interests as the economic interests.

Also, lack of qualified and independent experts shall be noted. According to the national experts, due to political, economic and social reasons judges or experts sometimes are reluctant to take responsibility to cease activities of operating enterprises. Also participation of experts in the proceedings often involves significant costs.

In many countries, it is possible to get a permanent ban both from the authorized bodies (in administrative review) and courts (in judicial review). In Azerbaijan, Georgia, Kazakhstan and Tajikistan, cessation of activity is only available under a court order.

32. In all the countries, courts also can temporarily restrict or suspend operations until they are brought into conformity with the standards or until certain requirements are fulfilled.

33. Temporary bans as security for claims exist in all countries. However, motions for preliminary injunction are often associated with a risk for plaintiffs, as in the case of their loss of a case, a defendant may claim damages related to the termination of activity. Provisions for damage compensation in the case of a negative outcome for a plaintiff exist in most of the countries. Procedural legislation in most of the countries enshrines provisions, according to which the court, granting a security of a claim, may require a plaintiff to provide a security of possible damages to a defendant. When the decision (by which a claim is denied) has become effective, a defendant has the right to claim compensation for damages from a plaintiff caused to him by measures securing a claim made at the request of a plaintiff. The national experts identified this as an effective threat discouraging the public from using temporary bans as security for claims.

Injunctive relief	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Moldova	Russia	Tajikistan	Turkmenistan	Uzbekistan	Ukraine
<b>Non-judicial (administrative) review</b>												
automatic suspension of decisions in the case of review	-	+	-	-	+	-	-	-	+	-	-	-
temporary	+	+	+	+	+	+	+	+	+	+	+	+
permanent	-	+	+	-	+	+	+	+	-	+	+	+
<b>Judicial review</b>												
automatic suspension of decisions in the case of review	-	+	-	-	+	-	-	-	+	-	-	-
temporary	+	+	+	+	+	+	+	+	+	+	+	+
permanent	+	+	+	+	+	+	+	+	+	+	+	+

### *Compensation of damages*

34. In all the countries the right to compensation for damage caused to property and health as a result of an adverse impact on the environment or as a result of the violation of legislation on environmental protection is enshrined in the constitutions and/or environmental legislation. Usually, compensation for damages is made to a person who or whose property was injured. In some countries there are provisions that indicate a possibility to initiate cases on compensation for damages caused to the environment or individual natural resources. For example, in Ukraine, according to the Water Code, citizens and their associations can apply to court with claims for damage compensation caused to the State and citizens as a result of pollution and depletion of waters. In Russia, citizens, civic and other nonprofit associations operating in the field of environmental protection, have the right to bring claims for compensation for damage caused to the environment, caused to health and (or) property. The appropriate jurisprudence exists.

In Turkmenistan, according to the Law on Nature Protection associations have the right to sue for compensation for damage caused to the nature. However, currently the examples of the practical implementation of this provision are unknown.

In many countries there is also a practice of compensation of a non-pecuniary damage in cases of infringement of non-material rights.

### *Other remedies*

35. Other remedies may also include cancellation of permits, licenses, and decisions of state ecological expertise, or a ban of the right to engage in certain activities, which also automatically results in suspension or termination of the activities. For example, the practice of challenging and cancellation of decisions of state ecological expertise is widely used in Ukraine and Russia.

### *Costs*

36. The main financial costs in the countries generally include court fees and other charges for proceedings before the court (e.g. fee for information and technical support - Ukraine, costs of publications and announcements on the case - Kazakhstan), cost of examinations, experts or witnesses, bonds and damage compensation in the case of suspension of activities as a measure of securing a claim.

Some national experts indicated that the court fees do not constitute a significant barrier to access to justice. A deeper analysis of legislation and practices shows that this assertion can be considered valid only to some extent. *See figure 3*

In most of the countries, the court fees in cases of appeals against decisions, actions or omissions of public officials, as well as court fees for other non-material claims are usually fixed and low. In most of the countries plaintiffs filing claims for compensation for damage caused to health are exempt from payment of the court fees. However, in cases of compensation for material damage in all the countries there is a principle

that the court fees constitute a certain percentage of a claim (from 0.5 to 15%), which is often an obstacle for plaintiffs who have suffered significant material damage. In addition, there is also a risk of losing a significant amount in case you lose the case. For example, in Turkmenistan, when a lawsuit amounts to or less than the minimum wage, the court fee is 5 percent, and when it is above the minimum wage - 15 percent. On the contrary, in Tajikistan, with an increase of a claimed amount the percentage (and thus the court fee) decreases: when the price of a claim is below 50 parameters for calculation (approximately U.S. \$ 450) - 3 percent, and when it is more than 500 (about U.S. \$ 4500) - 0.5 percent. In Armenia, the court fee for material claims is 2 percent of the amount claimed. The amount of the court fee may also depend on the type of proceedings (civil, commercial / economic) and on a plaintiff. For example, in Kazakhstan, for claims of material nature filed by individuals - 1 percent of the claimed amount, and for legal entities - 3 percent. In most of the countries the court fee is paid prior to filing a lawsuit. In Kyrgyzstan, the court fee and other court costs are charged at the end on the judicial review of claims. In Russia, Belarus, the costs are significant and constitute an obstacle to access to justice for citizens and NGOs that have non-profit status.

Thus, it can be argued that in claims for compensation for material damage the court fee is a significant obstacle. In this regard, it is observed in the countries that the jurisprudence is shaping toward claims (complaints) of a non-material nature.

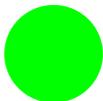
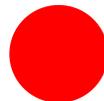
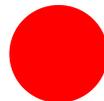
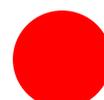
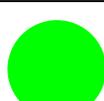
37. In most of the countries in the cases relating to the environment, free government legal assistance is not provided. In the countries where NGOs and lawyers working in the field of environmental protection in the public interest and carrying out legal assistance pro-bono (free of charge) operate, the public has an opportunity to take advantage of free legal aid. However, there are very few of these NGOs / lawyers and for the time being their resources are limited. The costs of lawyers working on a fee basis usually are determined by agreement, and in most cases it is also a financial barrier.

38. The costs of involvement of experts and expertise in some of the countries, are pre-paid by a party who requested it or by other party, which was charged by the court with this responsibility (e.g., Kazakhstan, Ukraine, Belarus), or are borne by the judicial authorities (Armenia). In both cases, as a rule, after a decision is rendered the costs are paid by a losing party. This type of costs can be a significant constraint in claims for compensation for material damage and damage caused to health (often due to the necessity to involve a few experts and prove a causal relationship). Also, involvement of experts may be necessary in cases of termination of environmentally harmful activity.

39. Bond and / or damage compensation in the case of suspension of activity as a measure of securing a claim can also be a significant obstacle. Most often, such injunctions might be necessary in the cases of termination of environmentally harmful activity, and sometimes in judicial appeals against decisions, actions or omissions of public officials. In most of the countries, after the entry into force of the decision by which a claim was denied, a defendant may bring an action for damage compensation caused to him by measures ensuring a claim, made at the request of a plaintiff. For example, in Russia, in arbitrary courts, a defendant may request a person filing a motion for a preliminary injunction, or invite him on his own initiative to provide security for compensation for any possible damages to a defendant (the counter-security) by making a cash deposit on an account of the court in the amount proposed by the court, or by providing a bank guarantee, a bail or other financial security of the same amount.

40. In all the countries the "loser pays" principle applies in court procedures, and thus constitute a significant constraint on cases relating to the environment.

Costs and other financial factors affecting the judicial practice (generic scheme)

Costs	Court fees	Experts / expert studies costs	Injunction  <i>security for a claim</i>	Legal aid		
				State	Non-state	
					Paid	Pro-bono
Appeals against decisions \ actions \ omissions						
Claims for termination of environmentally harmful activity						
Material / property claims (damage compensation)						
Claims for compensation for damage caused to health						
Claims for compensation for non-pecuniary damages						
a significant obstacle						
an obstacle						
not an obstacle						

*Information on the results of review*

41. Members of the public in all the countries have access to full texts of court decisions rendered in cases relating to the environment to which they were parties of the process. In some countries the legislation provides for operation of the Unified State Register of Court Decisions (Ukraine), which can be accessed twenty-four-hour via the Internet, although its search for specific decisions has defects; access to all judicial decisions on the sites of the courts (Republic of Moldova). In Azerbaijan all decisions of the courts of cassation and appellate courts, as well as all repealed or amended decisions of lower courts are subject to mandatory publication and dissemination through electronic media. At the same time, publicly accessible registry of decisions of courts of the first instance does not exist. Only individual court decisions are published in Georgia and Belarus. In Russia, the decisions rendered by the Supreme Court and High Arbitration Court are available through Internet sites of the courts, and through specialized publications of the courts, and open electronic legal systems. In Armenia, a system datalex ([www.datalex.am](http://www.datalex.am)), allows the public to get access to all court decisions in electronic form. In Kazakhstan, a unified publicly available database of electronic texts of judicial decisions exists and is regularly updated on the official website of the Supreme Court ([www.supcourt.kz](http://www.supcourt.kz)). Currently, the database of judicial acts of the Internet resource of the Supreme Court contains more than 466,000 documents. All the regional courts have their official sites. Work continues on installation in the courts of the electronic monitoring system, allowing participants to the process, without actually coming to the court, to get acquainted with the advancement of their documents in the court via the Internet. The Supreme Court also carries out a monitoring of judicial decisions on disputes relating to the environment, initiated by the public.

## VII. Legal aid

42. Virtually in none of the countries the organized national system of legal aid for the public in cases relating to the environment exists. Due to the problems associated with financial costs for filing material claims, and the trends shaping the jurisprudence in most cases by lawsuits (complaints) of a non-material nature, cases relating to the environment often are not of a particular interest to attorneys (lawyers) providing paid (commercial) services. Significant role in shaping the practice of public access to justice in environmental matters, is played by NGOs and lawyers working in the field of environmental protection in the public interest and / or carrying out legal assistance to the public pro-bono (free of charge). Such assistance is provided both for NGOs and individual. While individuals tend to apply for compensation of damage caused to their property and/or health, as well as challenge a neighboring illegal activity, NGOs often go for strategic litigation in public interest.

In most cases, NGOs and lawyers working in the field of environmental protection in the public interest exist and operate on grants and other types of donations. The greatest number of such lawyers / NGOs exists in Russia, Ukraine and Kazakhstan. Similar NGOs used to exist in the Republic of Moldova, Armenia and Uzbekistan, but at the present time, according to the national experts, they virtually do not operate.

In those countries where such organizations / lawyers operate, there are a greater number of practical examples (including the decisions of the European Court of Human Rights<sup>6</sup>, Compliance Committee<sup>7</sup>). In its turn, these examples help to identify problems related to access to justice in environmental matters, and contributes to improvement of national legislation.

However, it should be noted that in some countries, NGOs / lawyers specializing in providing legal assistance in matters relating to the environment, are practically absent (Belarus, Azerbaijan). In other countries, according to the national experts, there are very few of those (Kyrgyzstan, the Republic of Moldova).

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<sup>6</sup> Dubetska and others v. Ukraine, Application no. 30499/03 (2011.02.10) (ECHR) (Judgment) (Vilshyna coal pollution case, award of non-pecuniary damages), at <http://echr.coe.int/echr/en/hudoc>

<sup>7</sup> Findings and recommendations with regard to compliance by Kazakhstan with the obligations under the Aarhus Convention in the case construction of high-voltage power line (Communication ACCC/C/2004/02 by Green Salvation (Kazakhstan), adopted by the Aarhus Convention's Compliance Committee on 18 February 2005 [www.unece.org/env/documents/2005/pp/c.1/ece.mp.pp.c1.2005.2.Add.2.e.pdf](http://www.unece.org/env/documents/2005/pp/c.1/ece.mp.pp.c1.2005.2.Add.2.e.pdf)

## **2. ISSUES REQUIRING FURTHER CONSIDERATION AND RECOMMENDATIONS**

### ***Decision-making process***

Legislation of the countries divides the process of decision-making on specific activities relating to the environment into several stages. Different public authorities make decisions on different stages. The existing legislation of the countries often does not allow the public to identify a legally significant moment of the final decision-making, as well as the stage when public participation shall take place and public opinion be taken into account. See Analytical summary para 16 and Chapters on particular countries

There is a need to improve national legislation in the field of decision-making in matters relating to the environment, particularly in relation to Article 6, paragraph 1 (a) and (c), paras 10, 11, and Annex I, paragraph 22 of the Aarhus Convention to insure a clear identification of the moment when a decision is considered to be taken. This would allow to eliminate uncertainty in this matter that currently exists in legislation of some of the countries and enable the public to file complains for administrative / judicial review procedures not missing deadlines for appeals of such decisions.

### ***Administrative review***

As a general rule the public can appeal against decisions, actions / omissions of public authorities in administrative way by filing complaints to higher authorities or superior officers. The legislation of the countries does not provide for establishment and operation of independent administrative bodies responsible for reviewing decisions of public authorities. See Analytical summary paras 17 and 18.

It is recommended to take legislative and institutional measures to create a system of "independent and impartial" bodies in order to ensure adequate administrative review of complaints filed by the public.

For these purposes, it is recommended to reconsider practice of forwarding complaints to the authorities / officials, whose actions / omissions are challenged in the countries where such practices exist.

### ***Standing***

The right of individuals to address the court for the protection of their infringed rights, freedoms and legitimate interests / interests protected by law is provided in all of the countries. NGOs also can apply to the court in case of infringement of the rights or legitimate interests of an organization and / or its members. However, the situation with the ability of going to court in case of violation of law relating to the environment that does not directly affect the rights and legitimate interests of individuals or entities as well as on behalf of an indefinite number of persons is ambiguous. See Analytical summary paras 25-27.

While in some countries the possibility to challenge actions / omissions violating the laws relating to the environment is established in environmental legislation, appropriate provisions are still missing in procedural legislation. It is needed to improve the legislation in order to resolve these conflicts and insure possibility to challenge actions / omissions of private parties or public authorities violating the laws relating to the environment.

The concept of lawsuits on behalf of an indefinite number of persons exists in the legislation of most of the countries. However, it is mainly applicable to protection of the consumers' rights. It would be expedient to extend the application of this concept to the cases relating to the environment by improving and amending legislation and practices.

### ***Competence of courts to consider claims filed by NGOs***

The legislative approaches of some countries determining competence of courts of general jurisdiction should be specified: general and economic / arbitrary - to insure a clear indication in the law as to which court should an NGO address with a claim of termination / suspension of environmentally harmful activity and other similar lawsuits / claims.

### ***Automatic suspension of decisions in case of its judicial review***

In most of the countries a mere fact of an appeal against a decision in court does not automatically suspend its validity. See also Analytical summary para 28

It is recommended to improve the procedural legislation in order to provide for an automatic suspension of decisions challenged in courts.

### ***Injunctive relief***

Injunctive relief on activities that violate legislation relating to the environment, both temporary and permanent, is provided by legislation of most of the countries. However, its application in environmental cases in many countries is more an exception rather than a rule. The main reasons for that are the underlying economic interests in considered disputes, as well as lack of clear criteria based on which a public authority or a court can determine a need to suspend or terminate an activity. Legislation of the countries uses different approaches in determining reasons (criteria) for injunctive relief on activities. *See Analytical summary paras 22, 23, 30-32*

It is recommended to establish detailed and clear criteria for granting permanent and temporary injunctions for both administrative and judicial review procedures.

Temporary bans on activities as security for claims exist in all of the countries. Attention should be paid to the fact that motion for a preliminary injunction is associated with a significant risk for a plaintiff to compensate damages caused by the suspension of an activity in case he/she loses a case. This is an effective threat discouraging the public from using temporary bans as security for claims. *See Analytical summary paras 33*

### ***Costs***

Lawsuits on compensation for damage caused by violation of legislation relating to the environment, the nature, property or health is often associated with the complicated process of proving a causal relationship, which, in turn, requires involvement of qualified experts, and remuneration of their services. In addition, in cases of compensation for material damage in all of the countries there is a principle that a court fee constitutes a certain percentage of an amount claimed (from 0.5 to 15%), which is often an obstacle for plaintiffs who have suffered significant material damage. *See Analytical summary paras 36*

It is recommended to establish the national lists of qualified experts / institutions offering expertise in the environmental field, as well as to insure they work professionally and independently.

Often violations of environmental legislation and environmental pollution cause significant damage to property of citizens (for example, it can even lead to deterioration of housing or inability to use the land). In most cases, citizens are unable to pay the court fees required to file claims to the court for compensation for damages. Attention should be paid to the court fees for material claims, associated with compensation for damage caused by violation of environmental legislation. It is recommended to reconsider the principle of the percentage correlation of the court fee and a claimed amount in this category of cases.

It is deemed appropriate to reconsider the application of "a loser pays" principle for claims brought in the public interest or on behalf of an indefinite number of persons.

### ***Legal aid***

Significant role in shaping practice of public access to justice in environmental matters is played by NGOs and lawyers working in the field of environmental protection in the public interest and / or providing legal assistance to the public pro-bono (free of charge). In most cases, these organizations exist and operate through grants and other types of donations.

Support for lawyers / NGOs working in the public interest and providing legal assistance to the public contributes to improvement of legislation and judicial practice, and also provides opportunities for citizens to get qualified legal aid.

Development of a network of lawyers / NGOs, improvement of their skills and exchange experiences of different countries in this area, as well as development of mechanisms ensuring sustainability of these lawyers / NGOs are critical to development of justice in matters relating to the environment in EECCA region.

### ***Awareness raising and capacity building***

It is recommended to fully encourage and support development and constant replenishment of publicly accessible electronic registers of judgments in cases relating to the environment.

Awareness of judges, prosecutors, lawyers and NGOs in the field of legislation and case law relating to the environment, especially regarding application of international agreements, including the Aarhus Convention, should be raised. These issues should be reflected in the programs and courses for trainings of judges, prosecutors, judicial workers, in the lists of questions for the qualifying examinations, as well as in the teaching materials used for these purposes.

## SECTION II

### 3. INFORMATION ON THE EECCA COUNTRIES<sup>8</sup>

#### AZERBAIJAN

##### A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation

###### 1) Legislative system

The right to live in a healthy environment is enshrined in Article 39 of the Constitution of Azerbaijan, according to which everyone has the right to live in a healthy environment, everyone has the right to collect information on the true state of the environment and to receive compensation for damage caused to his\her health or property as a result of an environmental offense<sup>9</sup>. Article 6 of the Law on Environmental Protection provides for the right to live in the environment that is conducive to life and health.

Legislation relating to the environment is well developed and presents a considerable number of laws: the Law on Environmental Protection (1999)<sup>10</sup>, the Law on Sanitary-Epidemiological Wellbeing (1992), the Law on the Protection of Atmospheric Air (2001)<sup>11</sup>, the Law on Fisheries (1998)<sup>12</sup>, the Law on Plant Protection (1996), the Law on Industrial and Municipal Waste (1998)<sup>13</sup>, the Law on Radiation Protection (1997), the Law on Fauna (1999)<sup>14</sup>, the Law on Hydro-meteorological Activity (1998)<sup>15</sup>, the Law on Specially Protected Natural Territories and Objects (2000)<sup>16</sup>, the Law on Pesticides and Agrochemicals (1999), the Law on Subsoil (1998)<sup>17</sup>, the Law on Phytosanitary (2006), the Law on Information on the Environment (2002), the Law on the Mandatory Environmental Insurance (2002), the Law on Environmental Education and Awareness Raising of the Population (2002), the Law on Water Supply and Wastewater (1999)<sup>18</sup>, the Law on the State Land Cadastre, the Land Monitoring and Land Planning (1998)<sup>19</sup>, the Law on Land Fertility (1999)<sup>20</sup>, the Law on Environmental Safety (1999)<sup>21</sup>.

The following Codes are in force in the Republic: the Water Code (1997)<sup>22</sup>, the Land Code (1997)<sup>23</sup>, and the Forest Code (1997)<sup>24</sup>.

###### 2) Regulatory and control (supervisory) authorities

The Ministry of Ecology and Natural Resources of the Republic of Azerbaijan is a central executive body implementing the state policy on the use, restoration and protection of natural resources, environmental

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<sup>8</sup> The order of the countries in this report corresponds to the alphabetical order used in the original Russian text.

<sup>9</sup> The Constitution of the Republic of Azerbaijan, [www.legal.az](http://www.legal.az) / ... / option... / Itemid, 36 / (text in Azerbaijani); [www.constcourt.gov.az](http://www.constcourt.gov.az) (in Russian and English).

<sup>10</sup> [www.cawater-info.net/library/rus/az\\_ohr\\_okr\\_sr.pdf](http://www.cawater-info.net/library/rus/az_ohr_okr_sr.pdf) - text in Russian, - <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>11</sup> [www.cawater-info.net/library/rus/az\\_zash\\_vozd.pdf](http://www.cawater-info.net/library/rus/az_zash_vozd.pdf) - text in Russian, - <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>12</sup> <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>13</sup> <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>14</sup> [www.azspa.az/legistru.html](http://www.azspa.az/legistru.html) (text in Russian).

<sup>15</sup> [www.faolex.fao.org/docs/texts/aze47222.doc](http://www.faolex.fao.org/docs/texts/aze47222.doc) (text in Russian)  
<http://www.eco.gov.az/en/laws.php> (text in English)

<sup>16</sup> <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>17</sup> [www.vescc.az/ViewDoc.aspx?did=27700](http://www.vescc.az/ViewDoc.aspx?did=27700) (text in Russian), <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>18</sup> [www.cawater-info.net/library/rus/az\\_stoch\\_vod.pdf](http://www.cawater-info.net/library/rus/az_stoch_vod.pdf) (text in Russian), <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>19</sup> <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>20</sup> <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>21</sup> <http://www.eco.gov.az/en/laws.php> (text in English).

<sup>22</sup> [www.cawater-info.net/library/rus/water/water\\_azerbaijan.pdf](http://www.cawater-info.net/library/rus/water/water_azerbaijan.pdf) (text in Russian).

<sup>23</sup> [www.qanun.narod.ru/codes.html](http://www.qanun.narod.ru/codes.html) (text in Russian).

<sup>24</sup> [www.vescc.az/ViewDoc.aspx?did=67675](http://www.vescc.az/ViewDoc.aspx?did=67675) (text in Russian).

safety, protection of biological diversity, efficient use, conservation and enhancement of biological resources, inland waters and the Azerbaijan sector of Caspian Sea, geological survey and protection of mineral resources of the earth and careful use of raw mineral resources, etc.

Employees of the Ministry and its subordinate regional departments carry out control functions, including, oversee compliance with the rules and regulations in the field of environmental protection, carry out administrative investigations, consider cases of administrative offenses in the area of environmental protection, natural resources management and environmental safety, prepare and submit materials in order to bring responsible persons to administrative and criminal responsibility, are involved in assessing the amount of damage caused by violation of the law on environmental protection, file lawsuits to the courts, make decisions on prohibition of design, construction and reconstruction of facilities to insure compliance with the legislation on the protection of the environment, submit motions to limit or temporary suspend operation of enterprises and facilities in connection with violation of environmental requirements.

Municipalities at the local level implement local environmental programs and monitor the process of their implementation.

### **3) Role of the Prosecutor's Office**

Prosecutor's Office employees in accordance with the Law on Prosecutor's Office (1999)<sup>25</sup> consider applications, complaints and communications of citizens, with the exception of anonymous submission. In order to verify facts in the above mentioned applications, complaints and communications the prosecutor appoints a specialist from governmental authorities or audit organizations and makes a decision depending on whether the facts under investigation provide sufficient grounds for criminal prosecution. The Prosecutor can issue the following acts: a caution, a submission, a decision, a written statement, a lawsuit, a protest on a court decision. The prosecutor is entitled to file claims for the protection of the interests of the State in the courts, if there is an appropriate request of a legal entity founded by the State or by a state-owned enterprise (organization). The Prosecutor's Office cannot bring legal actions in cases related to the environment in the public interest.

### **4) The judicial system**

The judicial system consists of: district (city) courts, courts for serious criminal cases, courts for serious criminal cases of the Nakhichevan Autonomous Republic, military courts, administrative-economic courts, the Supreme Court of the Nakhichevan Autonomous Republic, the appellate courts and the Supreme Court of Azerbaijan Republic<sup>26</sup>.

The Constitutional Court is the supreme body of constitutional justice in matters prescribed by the Constitution of the Republic of Azerbaijan to be its jurisdiction. Everyone has the right to appeal to the Constitutional Court any normative act of the legislative and executive authorities, municipal and judicial acts that violate his\her rights and freedoms with the purpose to restore infringed human rights and freedoms.

The Constitutional Court considers complaints on the above mentioned matters in the following cases:

1. in case the court did not applied an applicable normative act;
2. in case the court applied a non- applicable normative act;
3. in case the court misinterpreted a normative act.

In these cases, the Constitutional Court shall consider complaints of citizens and NGOs on issues relating to the environment.

District (city) courts, administrative-economic courts as courts of first instance, appellate courts as courts of second instance, the Supreme Court as the court of cassation (third instance, second appeal) consider claims and complaints of citizens and NGOs on issues relating to the environment.

According to Article 5 of the Law on Courts and Judges (1997), all decisions of the courts of the second and third instances (appellate courts and the court of cassation) shall be published not later than one month after its adoption and are distributed through electronic media. Along with these decisions, the decisions of the lower courts which were overturned or modified should also be published. Decisions of the courts of first instance which have entered into force are made public by the means prescribed by law. The legislation does not specifically regulate this issue. Publicly accessible registries of decisions of the courts of first instance do not exist.

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<sup>25</sup> [www.azpenalreform.az/.../215-zakon-azerbajdzhanskojj-respubliki-o.html](http://www.azpenalreform.az/.../215-zakon-azerbajdzhanskojj-respubliki-o.html) (text in Russian).

<sup>26</sup> The Law of the Republic of Azerbaijan on Courts and Judges (1997)

[www.azpenalreform.az/.../lawacts/azerilaws/217-zakon-azerbajdzhanskojj-respubliki-o.html](http://www.azpenalreform.az/.../lawacts/azerilaws/217-zakon-azerbajdzhanskojj-respubliki-o.html) (text in Russian).

At the same time, according to Article 21 of the Code of Administrative Procedure in case of a necessity to pronounce a judicial act to more than 40 people, the court can issue an order to pronounce this act by its publication in the media. The court order specifies the media (a daily newspaper), which will contain a publication of the judicial act. In this event the preference should be given to the media (a daily newspapers), which are most common on the territories which will be covered by the act. A judicial act, intended to be pronounced by publication, shall be published in the media (a daily newspaper) which covers the respective territory and simultaneously posted on the information stand in the court. If a judicial act was published in a daily newspaper, it is sufficient to post on the notice board only the operative part of the judicial act and information on the procedure of its appeal. Instead of the full text of a judicial act a relevant information on where and how one can read the full text of a judicial act can be posted/published on the notice board or in a daily newspaper. Judicial acts and documents are considered provided at the end of 2 weeks from the date of their publication in a daily newspaper.

In addition, in accordance with Article 221 of the Code of Civil Procedure (1999)<sup>27</sup>, publication of a court decision invalidating a normative act shall be published in the same media, where the normative act was initially published or in the media, the publication in which the court deems appropriate.

Judges are aware of the legislation relating to the environment. They learn it by getting a legal education as well as by taking professional course (1time per year). At the moment there are no advisory opinions of the Supreme Court on matters relating to the environment.

## **5) The Ombudsman**

The Human Rights Commissioner (the Ombudsman) operated on the basis of the Constitutional Act of 2001 on the Commissioner for Human Rights (the Ombudsman) of the Republic of Azerbaijan<sup>28</sup>. The Ombudsman considers complaints of citizens, foreigners, stateless persons and legal entities alleging violations of human rights, including rights relating to the environment. The third parties, including NGOs can submit complaints to the Ombudsman on behalf of other people whose rights were violated upon their consent. In the absence of the consent of a person, whose rights have been violated (in case of death of a person or disability, etc.), third parties or NGOs can file the complaint without his/her consent.

Having identified the violations of human rights, the Ombudsman is entitled, in particular:

To require governmental authorities, bodies of local self-government and their officials who have violated human rights by their decisions or actions (omissions), to restore the respective rights. Authorities and officials have to submit a written notice on the actions taken within 10 days. If the notification is not submitted or the requirements of the Ombudsman are not satisfied, the Ombudsman can refer to a superior authority or other public authorities;

Having identified the elements of a crime - to refer a request on initiation of a criminal proceeding to the relevant authorities;

to submit proposals to the appropriate authorities on bringing the officials who violated human rights by their decisions, actions (omissions) to the disciplinary responsibility;

in case of lack of remedies to restore human rights available within the competence of the Ombudsman and if such a violation is of particular public concern - to refer to the President, or to report to the Parliament;

to apply to the court for restoration of the rights violated by a decision, action (or omission);

in the case of violation of the rights of persons by the effective normative acts - to refer a request to the Constitutional Court.

The Ombudsman does not take any decisions on the complaints, but appeals to the relevant bodies authorized to resolve the issues of restoration of the rights. According to the Law on the Ombudsman public authorities, which were addressed by the Ombudsman, shall inform him and give information on the decisions taken on the complaints.

## **B. Information on the procedures for making decisions in environmental matters and opportunities to challenge them**

### **1) System of the decision-making procedures**

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<sup>27</sup> [www.qanun.narod.ru / codes.html](http://www.qanun.narod.ru / codes.html) (text in Russian).

<sup>28</sup> [www.meclis.gov.az/?/ru/topcontent/82](http://www.meclis.gov.az/?/ru/topcontent/82) (text in Russian).

The Cabinet of Ministers implements state policy on the construction of the facilities of nation importance. Decisions on the construction of the facilities of nation importance are taken by the relevant ministries in accordance with general plans of economic development in the country, etc. The Ministry of Economic Development, the Ministry of Ecology and Natural Resources, the State Committee of Land and Cartography, the State Committee of Fuel and Energy, etc. participate in the decisions on construction of such facilities due to the exercised competence. Decisions on OVOS<sup>29</sup>, permits for the use of natural resources, waste disposal are taken/given by the Ministry of Ecology and Natural Resources. Local authorities make decisions on the construction of the facilities of local importance. Regional departments of the Ministry do not take these decisions, but when an appropriate application is submitted to the Ministry of Ecology and Natural Resources, they express their opinion on a particular facility. There is no special legislation providing for public participation in the procedures for decision-making on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention.

Information on the procedure for making decisions on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is indicated in the figure 4 (p. 23).

## **2) Challenging of decisions in non-judicial (administrative) procedure**

Citizens have the constitutional right to appeal to the governmental authorities / official, are entitled to send individual and collective written appeals, including complaints and applications. A complaint - is a request with a demand to restore the violated rights addressed to a government authority, an institution, an organization, or an enterprise.

In accordance with the Law on Administrative Proceedings a citizen who disagrees with a decision taken on his proposal, application, or complaint, has the right to appeal this decision 1) to the body or official, which took the decision. In addition, 2) concerned citizens and NGOs can refer an administrative complaint to a superior administrative authority with regard to a decision, an action / omission of an administrative body in order to protect their rights and interests provided by law.

At the same time the Cabinet of Ministers sets the general policy, but takes no decision. Decisions are taken by particular ministries. According to the classification of administrative authorities, approved by the Cabinet of Ministers on August 28, 2007 № 136, the Cabinet of Ministers is not an administrative authority, and its acts are not administrative acts. The Ministry of Ecology and Natural Resources and its relevant departments are administrative authorities, decisions of which can be challenged. At the same time, one should bear in mind that according to Article 119 of the Constitution of the Republic of Azerbaijan the Cabinet of Ministers is at the head of the ministries and other central bodies of the executive power, and is entitled to cancel their acts.

The law prohibits redirecting of citizens' complaints for consideration to the authorities or officials, illegal actions (omissions) of which are being challenged.

The subject-matter of an appeal is an administrative act - a decision, an order or any other authoritative measure taken/adopted by an administrative authority to regulate or resolve a specific (individual) matter in the public sphere and which gives rise to certain legal consequences for physical or legal person(s), to whom it is addressed.

Decisions of public authorities on specific activities relating to the environment (listed in Annex 1 of the Aarhus Convention) are considered to be administrative acts. The public is informed on the decisions taken on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10.11, 11 and Annex I, paragraph 22 of the Aarhus Convention as follows. According to the Law on Normative Legal Acts, resolutions of the Cabinet of Ministers of the Republic of Azerbaijan are published in the official publications - Digest of Laws of the Republic of Azerbaijan and the newspaper Respublika, and if considered necessary to ensure their immediate and broad dissemination, are published in other media.

Normative legal acts of central executive bodies of the Republic of Azerbaijan and normative acts of local authorities are published by the relevant executive authorities in the Bulletin of Normative Acts of the Republic of Azerbaijan.

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<sup>29</sup> OVOS is directly translated as environmental impact assessment. However, OVOS is different from EIA in Europe and the US, thus in order to avoid confusion the abbreviation OVOS is used in English text of the study (translator's note)

**Figure 4**

<b>Procedure (decision) on matters relating to the environment<sup>30</sup></b>	<b>Body authorized to carry out the procedure (to make the decision)</b>	<b>Period of validity of decisions, permits or other documents issued due to the procedure</b>	<b>The possibility for public participation</b>	<b>Body to which one can appeal the decision / action / omission</b>	<b>Legal act regulating the carrying out of the procedure (making the decision)</b>
1. A decision to construct a facility	the Cabinet of Ministers, together with: the Ministry of Economic Development, the Ministry of Emergency Situations, the Ministry of Industry and Energy, the Ministry of Ecology and Natural Resources, and the State Committee on Land and Cartography	not envisaged	no	In administrative procedure and in the court	The Constitution, the Regulations of the ministries
2. Decision on OVOS	the Ministry of Ecology and Natural Resources	no	yes	In administrative procedure and in the court	The Law on Environmental Protection, Regulations on the OVOS, the Regulation on the Ministry of Ecology and Natural Resources
3. Permit for the use of natural resources	the Ministry of Ecology and Natural Resources	5 years	no	In administrative procedure and in the court	the Presidential Decree on the Rules of the issuance of the special permits (licenses) for certain types of activities, the Law on Environmental Protection, the Regulation on the Ministry of Ecology and Natural Resources
4. Permit concerning waste management (Depending on the class of waste)	the Ministry of Ecology and Natural Resources the Ministry of Emergency Situations	5 years	no	In administrative procedure and in the court	the Presidential Decree on the Rules of the issuance of the special permits (licenses) for certain types of activities, the Law on Environmental Protection, the regulations on the Ministry of Ecology and Natural Resources and the Ministry of Emergency Situations

<sup>30</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention.

A complaint about an administrative act can be filed both in administrative or judicial procedures. Article 286.2 of the Code of Civil Procedure provides that the pre-trial appeal of the parties concerned to a superior authority is not required for filing a legal action to the court, its admission by the court and its resolution on the merit. This provision applies to an administrative lawsuit as well. According to Article 72 of the Law on Administrative proceedings, an appeal against an administrative act can be filed either in administrative, or in judicial procedures. If an administrative act is challenged simultaneously in both administrative and judicial procedures, the complaint is considered by the court.

A specially authorized independent and impartial body to review complaints in non-judicial (administrative) procedure is not established.

### **3) Judicial review. Standing (of individuals, NGOs) in matters relating to the environmental**

Citizens and NGOs have the right to file legal actions in matters relating to the environment. According to Article 4.1 of the Code of Civil Procedure, any natural or legal person can apply to the court for the protection and promotion of his rights, freedoms and legitimate interests. We are talking about the claims for compensation for damage caused to health and property of citizens and organizations as a result of breaches of legislation on environmental protection, as well as claims in administrative proceedings.

The following legal actions are considered within administrative proceedings: claims for cancellation or amendment of an administrative act taken by an administrative authority in respect of the rights and obligations of a person (claims for cancellation); claims to impose an obligation on an administrative authority associated with adoption of an administrative act, claims on the protection against an omission of an administrative authority (claims for obligation); claims for the performance of a certain action by an administrative authority not related to the adoption of an administrative act (claims on the performance of an obligation), claims for the protection from unlawful interference not associated with the adoption of an administrative act by an administrative authority what directly violates the rights and freedoms of individuals (claims for refraining from the committing of a certain action); claims for establishment of presence or absence of administrative legal relations, as well as for recognition of an administrative act null and void (claims for establishment or recognition); claims on verification of an administrative act to be in compliance with the law, except for the matters referred to the authority of the Constitutional Court of the Republic of Azerbaijan (claims for compliance with the law); property claims arising from administrative disputes, as well as claims for compensation for damages caused by unlawful decisions (administrative acts) or by actions (omissions) of administrative authorities; lawsuits of municipalities to administrative authorities or vice-versa.

In the cases stipulated by law, legal entities (NGOs) can, at the request of persons or for the protection of the interests of other persons, apply to the courts to protect the rights, freedoms and legitimate interests of others. According to Article 7 of the Law on Environmental Protection, non-governmental association in the field of environmental protection, in particular, have the right to bring lawsuits for compensation for damages caused to health and property of citizens as a result of violation of legislation on environmental protection. In this case, the wording of the law can be interpreted broadly to include a possibility of relevant NGOs to file claims for compensation for damage caused to health and property of citizens - the third parties as a result of violation of legislation on environmental protection.

However, Article 4.1 of the Code of Civil Procedure provides that any natural or legal person can apply to the court for the protection and promotion of his rights, freedoms and legitimate interests. Thus, civil procedural law does not provide for the right of NGOs to appeal to the courts in the public interest, including on matters relating to the environment.

Criminal proceedings can be initiated on the basis of a citizen's notification on a committed or prepared crime, a notification by a legal person, a public official, or the media or on the basis of a direct exposure of such information by an investigator or a prosecutor.

### **4) Other (non-judicial) methods of dispute resolution**

The legislation does not provide for the other (non-judicial) methods of dispute resolution on matters relating to the environment.

## **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

### **Administrative procedure**

**1) General overview of the remedies in administrative review procedure of decisions, actions, omissions**

According to the Law on Administrative proceedings, if a complaint against a decision, action, omission is submitted to the authority that took the decision or to a superior authority, the complainant can use the following remedies: require to recognize the administrative act to be invalid, to abolish the unlawful administrative act, to abolish a separate part of the administrative act, to amend the administrative act. In case of appeal to a superior authority the complainant can request to abolish a decision of a subordinate authority.

## **2) General overview of the remedies in appeals against ongoing activities**

If a complaint is submitted to a superior authority, the superior authority can apply to the relevant authority - the Ministry of Ecology and Natural Resources, or to the court for the limitation or temporary suspension of an ongoing activity.

In the case the appeal is submitted directly to the Ministry of Ecology and Natural Resources the Ministry has the right to take necessary measures with regard to organizations that violate the standards and regulations on environmental protection, to apply for limitation and temporary suspension of operation of organizations, objects and facilities due to their violation of environmental requirements, including for suspension of funding, prohibition on commissioning, limitation of economic and other activities. The Ministry or its regional departments, depending on the scale of an object can make a decision to limit or temporarily suspend its operations.

One can challenge omissions of supervisory authorities in administrative proceedings, if ones interests are directly affected.

## **3) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of validity of decisions, actions or activities in the case of its appeal is not provided by law.

## **4) The prohibition of an activity**

### **a) temporary**

In the case an appeal is directly submitted to the Ministry of Ecology and Natural Resources the Ministry has the right to take necessary measures with regard to organizations that violate the standards and regulations on environmental protection, to apply for limitation and temporary suspension of operation of organizations, objects and facilities because of their violation of environmental requirements, including for suspension of funding, prohibition on commissioning, limitation of economic and other activities.

The temporary ban on the activity violating the environmental legislation can only be made by the Ministry of Ecology and Natural Resources.

The criteria for the ban are: violations of the rights, damage, or a possibility of damage, including property damage, difficulties in managing the consequences of such activities, etc.

### **b) permanent**

The legislation does not authorize public authorities to issue decisions ceasing ongoing activities that violate environmental legislation in administrative procedure, but provides for a possibility for public authorities to cancel licenses/permits.

## **Judicial Procedure**

## **5) General overview of the remedies in judicial review procedure of ongoing activities that violate the legislation relating to the environment**

If the case is filed to the court, the court has an authority to terminate the illegal activity. According to Article 221 of the Code of Civil Procedure the court can issue a decision holding that a decision or an action (omission) of a public authority, a body of a local self-government, other body, an organization, or an official is illegal and oblige them to make a decision on suspension of activities, for example, make a decision to revoke a license.

## **6) Automatic suspension of decisions / actions / activities in the case of their appeal**

A mere fact of filing of an administrative lawsuit with the administrative court does not suspend execution of a decision or terminate an activity.

## **7) Injunctive relief**

### **a) temporary**

Under Article 157, 158 of the Code of Civil Procedure the court at the request of a person involved in the case can impose measures to secure a claim. Measures securing a claim are, in particular: prohibition to a defendant to perform certain actions; prohibition to other persons to perform other actions with regard to the subject-matter in dispute. The criteria for injunctive relief are: violations of the rights, damage, or a possibility of damage, including property damage, difficulties in managing the consequences of such activities, etc. The court's ruling awarding an interim relief takes effect immediately.

According to Article 40 of the Code of Administrative Procedure a party concerned can request the court to suspend the execution of an administrative act or to take other measures securing the claim. The court is entitled to take temporary protective measures such as to impose on a defendant an obligation to perform certain actions or refrain from certain actions or undergo certain actions. In case an appropriate court order on temporary protective measures is granted, the execution of an administrative act shall be suspended pending the outcome of the lawsuit on merits. If a third party (an NGO) has filed a lawsuit against an administrative act addressed to and favorable to another person, the court is entitled upon the request of a third party to grant a court order on temporary protective measures.

### **b) permanent**

The law provides for a possibility to prevent damage, if the damage is a consequence of operating of a facility, of construction or any other economic activity, which continues to cause damage or creates a possibility of future damage. In such a case the court is entitled to order a defendant, in addition to compensation for damage, to suspend or terminate the relevant activities. The court can only deny a claim for suspension or termination of such activities, if its suspension or termination contradicts the state interests. Denial to suspend or terminate such activity does not deprive a victim of the right to compensation for the damage caused by such activity (Article 1098 of the Civil Code).

According to Article 70 of the Code of Administrative procedure in case an administrative acts contradicts the law which results in a breach of a plaintiff's rights, the court makes a decision on cancellation of such administrative act (in case an administrative complaint is filed with an appropriate administrative authority, the authority acts just the same). This procedure applies to cases of violations of administrative procedure related to the adoption of an administrative act on the decision of an administrative body.

In case a plaintiff requires to amend an administrative act establishing the amount of money or providing for certain criteria for determination of the amount of money, the court is entitled to set a different amount of money or other criteria for payment of money.

If a plaintiff along with the cancellation of an administrative act is entitled to require a public authority to perform certain obligations, the court can make a decision obliging a defendant to perform the claimed obligation.

## **8) A claim for compensation for damages / injury (including caused to the environment), compensation for non-pecuniary damage**

An official or a governmental authority that made an illegal decision (action / omission) can be held liable for damage caused by their decision (action / omission). Reimbursable losses are - expenses that a person whose rights were violated, made or shall make to restore the violated rights, losses or damage to property (real damage), as well as income which that person would have received under normal conditions of civil turnover, if his rights have not been violated (lost profits). In accordance with Article 22, 1100 of the Civil Code, damages caused to a natural or legal person as a result of illegal actions (omissions) of state or local authorities, or their officials, including the adoption of a legal act (normative or individual) not in accordance with the laws or other normative acts is reimbursed by the Republic of Azerbaijan or the relevant municipality.

Citizens have the right to go to the court with claims for compensation for non-pecuniary damage. Non-pecuniary damage can be caused due to the loss of a close relative or the loss of employment, by the disclosure of personal, family or medical information, by the limitation of any other rights or deprivation of these rights, by causing health damage, etc.

Under the Law on Environmental Protection the public has the right to initiate actions for compensation for damages caused to health and property of citizens as a result of violation of legislation on environmental protection.

## **9) Legal action for the protection of the public interest - actio popularis**

Legal actions for the protection of the public interest are not stipulated by law.

## **10) Other remedies**

Other remedies are not provided by law.

## **11) Timeliness**

According to Article 38 of the Code of Administrative Procedure a lawsuit shall be filed within 30 days from the date of provision (publication) of an administrative act, and if a complaint was filed in administrative procedure - from the date of an administrative decision taken on the merit of the complaint. A claim for obligation shall be filed within 30 days from the moment when a plaintiff received the relevant administrative decision refusing to adopt an administrative act on his behalf or the relevant written information about it. According to Article 62 of the Law on Administrative Proceedings, an administrative authority is obliged to provide official information on the adoption of an administrative act to the persons concerned or their representatives. Official information is provided by the official announcement of the administrative act to the persons concerned, by the provision of a copy of it to them, or by its publication.

According to Article 24 of the Code of Administrative Procedure, if the deadline established by the Code was missed through no fault of the participant to the process, the court should restore the deadline on the basis of the request of the person.

According to the Law on Administrative proceedings, if an administrative act is challenged simultaneously in both administrative and judicial procedures, the complaint is considered by the court.

As a general rule a complaint in administrative procedure shall be considered within 1 month from the date of its submission.

According to Article 172 of the Code of Civil Procedure a case shall be considered and a decision or a court order resolving the matter shall be adopted no later than in 3 months from the date of submission of the case to the court. Cases regarding illegal decisions, actions (or omissions) of public authorities, associations, or their officials shall be considered and resolved within one month.

An application for appeal shall be filed within 30 days from the date when the court provided full text of its decision, and within 10 days after the announcement of the court order in administrative and economic disputes.

The court on administrative and economic disputes within five days from submission of the application for appeal shall refer the appeal together with the case materials associated with the dispute to the appropriate court of appeal. The appellate court considers the issue of the admissibility of the appeal. This includes the existence of the procedural grounds for consideration of the case in the appellate court. Persons involved in the case can submit their objections and explanations on the appeal within 20 days since they have officially received a copy of the appeal. The case shall be considered and an appropriate judicial act shall be rendered by the appellate court within 3 months from the date of the case submission to the court, unless the law provides for different time limits.

According to the Code of Administrative Procedure, an application for cassation (second appeal) shall be filed within one month from the date when the appellate court provided full text of its decision, and within 10 days after the announcement of the court order by the appropriate appellate court. The appellate court within five days from submission of the application for cassation shall refer the cassation together with the case materials associated with the dispute to the Supreme Court.

According to Article 414 of the Code of Civil Procedure an application for cassation received together with the case by the Judicial Board on Civil Cases or by the Judicial Board on Economic Disputes of the Supreme Court shall be considered within two months from the date of its submission, unless the law provides for different time limits. It should also be borne in mind that these terms can be suspended, if the court orders performance of an examination, until the appropriate expert opinion is given.

## **D. Costs**

### **1) Financial expenses associated with administrative procedure**

According to Article 39 of the Law on Administrative Proceedings all expenses related to administrative procedure are borne by the appropriate administrative authority. Expenses of the person concerned or his representative associated with the administrative proceedings, as well as the costs of representation are borne by the person concerned. In the case the measures securing an administrative complaint are taken the costs related to the proceedings are paid by the administrative authority.

### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

According to Article 107 of the Code of Civil Procedure, judicial expenses are composed of the court fee and the expenses associated with the proceedings.

No court fee is charged for filing of an administrative lawsuit to the administrative court.

With regard to legal actions for damage compensation, if the claimed amount is below 110 manat (approximately equals to 138 USD<sup>31</sup>), the court fee is 3.5- 4 USD, if the amount in dispute exceeds 110 manat - the court fee is 20 manat (approximately equals to 25 USD). For filing an application for appeal or cassation to the court, the court fee shall be paid in the amount of respectively 120 and 150 percent of the court fee paid to the court of first instance.

At the same time as of September 1, 2010 the minimum monthly wage is 85 manats (approximately equals to 106 USD). The minimum pension is 90 manats (approximately equals to 113 USD).

According to Article 115 of the Code of Civil Procedure the expenses associated with the proceedings include: the amounts payable to witnesses, experts, specialists, interpreters, the costs of on-site inspections, the costs associated with giving notices and subpoenas, the costs associated with attendance at the hearings, travel and accommodation expenses of the parties and third persons; the fees payable to representatives, the attorney's fees, the costs of tracing a defendant, the costs associated with enforcement of the court decision, other expenses deemed necessary by the court.

The amount of judicial expenses as a general rule does not depend on the legal status of the parties, on the categories of cases, on the types of proceedings. The law does not exclude plaintiffs on matters of the public interest, including on environmental matters, from payment of the court fees.

The court fee is paid prior going to the court. In order to file a lawsuit one shall attach the appropriate document confirming the payment of the court fee. The law does not provide for a possibility to postpone the payment of judicial expenses.

Certain categories of persons are exempt from the payment of the court fee under Article 9 of the Law on State Duty (2001).<sup>32</sup> In particular: plaintiffs - claiming for compensation for damage caused by injury, by other health impairment, as well as by the death of a breadwinner; citizens, administrative authorities and officials - in cases arising from administrative legal relations; government organizations, municipalities - in all cases filed to the court; public authorities - in cases that they file for the protection of the rights, freedoms and legitimate interests of other persons, or the State interests.

### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

When applying to the court it is not required for an individual or an NGO to use the services of an attorney or other legal expert. It is not an obligation established by law. However, in practice, the use of an attorney is preferable. The legislation does not specify the rates of attorney's fees, this is regulated in practice, and is determined by agreement.

### **4) Costs of examination, involvement of experts and witnesses**

According to Article 116 of the Code of Civil Procedure the expenses incurred by witnesses, experts, specialists and interpreters associated with the attendance at the court, travel and accommodation expenses, and per diem shall be reimbursed. Experts and specialists are being paid for assignments they perform on the request of the court, if such assignments fall beyond the scope of their official duties.

The amounts payable to witnesses, experts and specialists, and other necessary expenses on the case shall be made on a deposit account of the court by the party who submitted the appropriate motion. If the appropriate motion is filed by both parties, or if involvement of witnesses, experts, specialists and other paid activities are made on the initiative of the court, the amounts required shall be made on the deposit of the court by the parties equally. Parties exempt from payment of judicial expenses do not make these payments, and they are paid by the State.

If the ecological expertise was conducted in administrative procedure, in judicial procedure its costs are covered from the state budget. If an examination falls beyond the scope of the official duties of an expert, the payment shall be determined by agreement between the party and the expert.

### **5) Bond and compensation of damage in the event of suspension of activities as security for claims in environmental matters**

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<sup>31</sup> This report uses the operational rate of Azerbaijan Manat to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 0,7987 manat.

<sup>32</sup> [www.zewo.ru/laws/223-iiq.html](http://www.zewo.ru/laws/223-iiq.html) (text in Russian).

According to Article 164 of the Code of Civil Procedure, when a decision (by which a claim is denied) becomes effective, a defendant has the right to claim compensation for damages from a plaintiff caused to him by measures securing the claim made at the request of the plaintiff. For individuals and NGOs this is one of the major constraints in application for interim relief. These rules apply in administrative proceedings as well.

#### **6) Other issues of judicial expenses**

The "loser pays" principle applies in the court proceedings. The court is not entitled to exempt from payment of judicial expenses. According to article 119 of the Code of Civil Procedure, judicial expenses are distributed between the persons involved in the case, in proportion to their claims that were met. According to Article 124 of the Code of Civil Procedure, if the court dismisses a claim, the costs incurred by the court with regard to the case, are recovered from a plaintiff to the state budget. If a claim is granted in part and a defendant is exempt from payment of judicial expenses, the costs incurred by the court in connection with the proceedings, are recovered from a plaintiff, who is not exempt from the payment of judicial expenses, in proportion to that part of a claim, which was denied. Costs incurred by the court in connection with the proceedings and the court fee, if a plaintiff was exempt from the payment of those costs, are recovered from a defendant to the state budget in proportion to the satisfied claims.

#### **E. Legal aid (state, non-state)**

There are individual attorneys and lawyers specializing in environmental law that provide assistance in matters relating to the environment.

Free legal aid in matters relating to the environment, as a general rule, is not provided. This happens only when NGOs receive grants for these purposes. At the same time, in accordance with Article 20 of the Law on Attorneys and Legal Practice (1999)<sup>33</sup>, legal assistance is provided by an attorney to the accused low-income persons in need of legal assistance in criminal proceedings in courts, at the expense of the State without any restrictions.

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<sup>33</sup> [www.azpenalreform.az/.../lawacts/azerilaws/218-zakon-ar-ob-advokatakh-i-advokatskojj.html](http://www.azpenalreform.az/.../lawacts/azerilaws/218-zakon-ar-ob-advokatakh-i-advokatskojj.html) (text in Russian).

# ARMENIA

## **A. System of regulatory authorities and legislation relating to the environment**

### **1) Legislative system**

Legislative system of the Republic of Armenia (RA),<sup>34</sup> consists of:  
the Constitution of the Republic of Armenia  
environmental laws of the RA:

The Law on Specially Protected Natural Areas (2006), the Law on Expertiza of the Impact on the Environment (1995).

natural recourse laws of the RA:

The Land Code (2001), the Water Code (2002), the Code of Mineral Resources (2002), the Forest Code (2005), the Law on the Protection of Atmospheric Air (1994), the Law on Flora (1999), the Law on Fauna (2000), the Law on Lake Sevan (2001), the Law on the Allocation of Subsoil for Exploration and Exploitation of Minerals Resources (the Concession) (2003), the Law on Waste (2004), the Law on the Reclamation of Agricultural Lands (2005), the Law on the Fundamental Principles of National Water Policy (2005), the Law on Ozone Layer Depleting Substances (2006), the Law on the National Water Program (2006), the Law on Hunt and Hunting Grounds (2007).

### **2) Regulatory and control (supervisory) authorities**

The system of public authorities in the area of environmental protection includes:

The Government of the Republic of Armenia: the Ministry of Territorial Administration of the RA, the Ministry of Education and Science of the RA, the Ministry of Urban Development of the RA, the Ministry of Health Protection of the RA, the Ministry of Emergency Situations of the RA, the Ministry of Agriculture of the RA, the Ministry of Energy and Natural Resources of the RA, the Ministry of Nature Protection of the RA (the authorized regulatory body).

Authorities under the Government of the RA: the State Committee on Real Estate Cadaster, the State Committee on Regulation of Nuclear Safety, the Police of the Republic of Armenia, the National Security Service and other agencies.

Territorial authorities

The territory of Armenia is divided into ten provinces and the city of Yerevan (the capital), which is a community.

Territorial authorities: the Governors – the heads of provinces (Marzpets).

Local authorities: municipal councils, the heads of municipalities, offices of the heads of municipalities, the Head of the Municipality of Yerevan, the Municipal Council of the City of Yerevan, the heads of administrative districts of Yerevan).

The main functions on environmental protection and natural resources use are entrusted with the Ministry of Nature Protection, the Ministry of Agriculture, and the Ministry of Energy and Natural Resources.

The system of environmental control authorities

The system of authorities exercising control over observance of legislation in the field of environmental protection includes state inspectorates of relevant ministries, which mandates are divided on the basis of governmental decisions. In particular, the State Inspectorate on Nature Protection within the Ministry of Nature Protection, on the basis of the Law on Environmental Control and resolutions of the Government exercises control over the implementation of environmental legislation of the RA on the protection and use of all natural resources. The state environmental inspectorate system consists of structural and regional departments. Regional departments are bodies that exercise control over observance of the environmental legislation based on the principle of administrative-territorial division (Article 10).

The State Inspectorate on Plant Quarantine and Geological Activity, the State Inspectorate on Food Safety operate within the system of the Ministry of Agriculture.

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<sup>34</sup> The texts of all of the mentioned and other legal acts of the legislation of the RA can be found at [www.laws.am](http://www.laws.am) and [www.parliament.am](http://www.parliament.am). Please keep in mind that not all legal acts are translated into Russian and English.

The structure of the Ministry of Energy and Natural Resources includes the State Inspectorate on Energy and the State Inspectorate on Minerals.

The State Urban Development Inspectorate is a special department of the Ministry of Urban Development, which oversees compliance with the requirements of legislation and other legal acts regulating the issues of safety of the environment and people during construction and operation of facilities (the Resolution of the Government of the RA on the Establishment of the State Administrative Institution the 'Apparatus of the Ministry of Urban Development of the RA' and the Adoption of Structure and Statute of the Ministry of Urban Development of the RA).

Within the territories of urban and rural municipalities the head of a municipality controls the fulfillment of the requirements of the architectural and planning tasks given to developers, urban planning regulations, regulations on the use of urban lands and facilities, as well as prevents and precludes cases of unauthorized construction and in accordance with the law ensures elimination of its consequences. The Mayor-governor of Yerevan conducts supervision over urban development activities in the city of Yerevan. (Article 26 of the Law of the RA on Urban Planning).

### **3) Role of the Prosecutor's Office**

The legal status of the Public Prosecutor is enshrined in Article 103 of the Constitution of the RA and the Law of the RA on Prosecutor's Office.

The Prosecutor's Office of the Republic of Armenia represents a unified system, headed by the Attorney General. The Prosecutor's Office accordingly and in the cases prescribed by law: 1) initiates criminal proceedings, 2) supervises the lawfulness of preliminary investigations, 3) prosecutes cases in courts, 4) brings actions in courts for the protection of the state interest, 5) appeals the judgments, verdicts and rulings of the courts, and 6) oversees the legality of enforcement of penalties and other sanctions.

According to Article 27 of the Law on the Prosecutor's Office, 'bringing actions in courts for the protection of the state interest' includes: 1) bringing actions for the protection of the state property interests) in civil proceedings; 2) bringing actions for the protection of the state property and non-pecuniary interests in administrative proceedings; 3) bringing actions for compensation for property damage caused directly to the State as a result of a crime in criminal proceedings.

A claim for the protection of the property interests of the State is initiated by the prosecutor only accordingly and in the cases prescribed by the above mentioned Law. If the prosecutor considers that there are sufficient grounds to bring an action for the protection of the interest of the State, he is entitled prior bringing an action to offer a possibility of a voluntary compensation to the person who caused damage to the interests of the State.

### **4) The judicial system**

According to Article 92 of the Constitution of Armenia, trial courts of general jurisdiction, the Court of Appeal, the Court of Cassation, and in cases prescribed by law specialized courts operate in the Republic of Armenia.

The highest court of the Republic of Armenia, except for matters of constitutional justice, is the Court of Cassation, which shall ensure the uniform application of the law. The mandate of the Court of Cassation is established by the Constitution and the law.

The Judicial Code (2007) establishes the following structure of the judicial system:

- 1) The Constitutional Court of the RA,
- 2) The Court of Cassation of the RA,
- 3) courts of appeal:
  - 3.1) the Criminal Court of Appeal,
  - 3.1) the Civil Court of Appeal,
  - 3.1) the Administrative Court of Appeal,
- 4) courts of first instance:
  - 4.1) the courts of general jurisdiction,
  - 4.2) the Administrative Court.

The Administrative Court and the Administrative Court of Appeal of the RA are specialized courts. (Article 3). The process of establishment of the Administrative Court of Appeal of the RA is nearing completed.

### **5) The Ombudsman**

The legal status of the Commissioner for Human Rights in the RA is enshrined in Article 83.1 of the Constitution of the RA: the Defender of Human Rights is an independent official who exercises the

protection of human rights and freedoms violated by governmental authorities, bodies of local self-government and their officials. The Ombudsman is irremovable.

Governmental authorities, bodies of local self-government and their officials shall cooperate with the Human Rights Defender.

According to Article 8 of the Law of the RA on the Defender of Human Rights (2003) all natural and legal persons who believe that government authorities, bodies of local self-government or their officials violated their human rights and fundamental freedoms (including citizens' rights) enshrined in the Constitution and laws of the Republic of Armenia, international agreements of the Republic of Armenia, as well as in principles and norms of international law (including environmental human rights) have the right to appeal to the Defender.

A complaint shall be filed with the Defender within one year from the date when a complainant found out or should have found out about the violation of his rights and fundamental freedoms (Article 9).

Having considered the complaint, the Defender shall take one of the following decisions provided by law (Article 15):

1) to propose to a governmental authority, a body of local self-government or an official, in whose decisions or actions (omissions) he found violations of human rights and freedoms, to correct the violations, indicating the possible enforceable measures necessary for restoration of human rights and fundamental freedoms;

2) on absence of violations of the rights and freedoms, if as a result of consideration of the complaint no human rights and fundamental freedoms violations have been identified;

3) to terminate consideration of the complaint on the basis of law;

4) to file a lawsuit concerning the recognition of a normative act of a governmental authority or a body of local self-government or their official violating human rights and fundamental freedoms fully or partially invalid and contradicting the law and other legal acts, if a governmental authority or a body of local self-government or their official who committed the violation within the prescribed period does not voluntarily recognize its corresponding legal act to be fully or partially invalid;

5) to request the competent governmental authorities to execute disciplinary or administrative penalties or press criminal charges against an official whose decisions or actions (omissions) violated human rights and fundamental freedoms.

During last years the Human Rights Defender periodically publishes reports on human rights situation in the RA. Office of the Defender of Human Rights in collaboration with independent experts has also prepared a report on the implementation of environmental human rights in the RA. (The report has not been released yet for unknown reasons).

## **B. Information on the procedures for making decisions in environmental matters and opportunities to challenge them**

### **1) Decision-making system**

Information on the system of the procedures for making decisions on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is listed in figure 5 (pp. 33-34).

The conclusions of the state expertiza of environmental impact are not considered to be administrative acts. This situation may become a barrier for the protection of environmental rights in the RA (in particular of the right to participate in decision-making). Despite the fact that the content of the conclusions meets the criteria established by the legislation of the RA, its format does not meet the requirements on format of administrative acts. This issue also remains unresolved in practice.

The main sources of information on decisions taken are Internet pages of governmental authorities ([www.gov.am](http://www.gov.am), [www.mnp.am](http://www.mnp.am), [www.moj.am](http://www.moj.am), etc.); the normative acts are posted on the site [www.laws.am](http://www.laws.am). The main problem associated with informing of NGOs / citizens of the decisions taken, is lack of systematized process of information transfer, and therefore there is no guarantee that the public can be promptly informed of any decision taken.

Figure 5

Procedure (decision) in the matters relating to the environment <sup>35</sup>	Authority authorized to carry out the procedure (to make the decision)	Validity of decisions, permits or other documents issued due to the procedure	The possibility of public participation	Body to which one can appeal the decision / action / inaction to	Legal act regulating the carrying out of the procedure (making the decision)
1 Expertiza of the impact on the environment (conclusion of expertiza is issued at the end of the procedure).	the Ministry of Nature Protection	Period of validity of the conclusion of expertiza coincides with the term of the proposed activity. If within one year the planned activity is not initiated, the conclusion loses its validity, and it is required to get a new conclusion.	Public Participation in decision-making is only envisaged in the procedure of assessment of environmental impact (expertiza). Not all types of activities that can have an adverse impact on the environment are listed in the relevant law as a planned activity which shall be subjected to expertiza. For example, in the area of waste management the following activities are listed: - removal of hazardous and other wastes and their utilization: for these purposes - waste disposal facilities. These activities do not cover all activities in the area of wastes management that could cause significant environmental harm. There are also some discrepancies with Annex I to the Aarhus Convention. In general, the national law provides for a	Decision, action / omission of a public authority can be appealed to the authority that took the decision or to a superior authority.  A decision can be appealed both in administrative and judicial procedure. According to the Constitution of the RA in order to go to the court a plaintiff is not required to exhaust administrative remedies.	The procedure of expertiza of the impact on the environment is regulated by the Law On Expertiza of Environmental Impact, Decision of the Government of the RA On the Limits of Planned Activities which are Subjects to the Expertiza of Environmental Impact, and other regulations.
2) Licensing (including special licenses for hazardous activities), permits, agreements, contracts for the use of natural resources.  3) Other administrative acts, which also are the bases for the right to	Different bodies are authorized to issue licenses (and other listed acts) regarding different types of natural resources. Those mainly are the Ministry of the	The right to perform a specific activity can be granted to a person for the period from 3 to 60 years. For example, a license for subsoil use for mineral extraction in the RA can be granted for up to 12 years or from 12 to 25 years. Terms of permits for use of	for these purposes - waste disposal facilities. These activities do not cover all activities in the area of wastes management that could cause significant environmental harm. There are also some discrepancies with Annex I to the Aarhus Convention. In general, the national law provides for a		The provisions regulating the relations on decision-making are also set by environmental legislation of the RA and legislation of the RA on the use of natural resources.

<sup>35</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

<p>use natural resources (administrative contracts, acts of mining claim, decrees of the Government of the RA or other authorized bodies on land allocation)<sup>36</sup></p>	<p>Territorial Management, the Ministry of Agriculture, the Ministry of Energy and Natural Resources, the Ministry of Nature Protection.</p> <p>Bodies of local self-government can also issue permits for certain types of use of natural resources.</p>	<p>water resources can vary from 3 to 40 years. Term of a permit depends on whether a given territory has a basin water resources management plan.</p> <p>The right of use of forest resources in the RA is given on the basis of a lease for up to 60 years.</p> <p>For example: A license for export and import of radioactive waste in the RA is given for not more than one year.</p>	<p>fairly wide range of planned activities to be subject to expertiza of environmental impact.</p>		
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<sup>36</sup> Please keep in mind that under the national legislation of the RA for certain activities several legal facts are required. This introduces uncertainty into the decision making process. For example, the question of at what stage of a decision-making the expertiza of the environmental impact shall be conducted is not resolved for all types of activities at the legislative level (for example, the licensing process for the use of mineral resources).

## **2) Challenging of decisions in non-judicial (administrative) procedure**

For the protection of one's rights persons have the right to appeal against administrative acts, actions or omissions of administrative bodies (Article 69 of the Law of the RA on the Basics of Administration and Administrative Activity. An administrative act is a decision, a decree, an order or other individual legal act that has an external action, taken by an administrative authority in the field of public law in order to regulate a specific case and is aimed to establish, modify, terminate or recognize the rights of individuals and legal entities (Article 53).

Article 70 of the above mentioned law provides that administrative acts can be appealed in both administrative and judicial procedures. Within the administrative procedure a complaint may be filed both to the authority that took a decision, as well as to a superior authority.

Under Article 21 parties to the administrative process (including to the process of administrative appeal) are: 1) an addressee of an administrative act (a person who applied for the administrative act or a person as to whom an administrative body has issued the administrative act), 2) third parties whose rights and legitimate interests may be affected by the issued administrative act.

The appeal process in administrative procedure includes the following steps: filing the complaint; decision of an administrative body on the complaint; suspension of a validity of the appealed act; reconsideration of the administrative act and decision-making; execution of the administrative act (including by enforcement).

## **3) Judicial procedure**

### **a) The role of the courts, jurisdiction**

The Code of Administrative Procedure (Articles 64-67) provides for the following actions, which can be initiated by an individual or an NGO when applying to the court:

a claim for cancellation (a plaintiff may claim to amend or cancel an administrative act in whole or in part),

a claim for obligation (a plaintiff may request for an adoption of a favorable administrative act, adoption of which was rejected by an administrative authority or which was not adopted by the administrative authority),

a claim for action (a plaintiff may require an administrative body to perform specific actions or to refrain from actions that are not associated with the adoption of an administrative act),

a claim for recognition (a plaintiff may ask the court to recognize absence or existence of certain legal relationship or require to declare an administrative act null and void).

The court proceeding rules in administrative proceedings are the same for all of the above mentioned types of claims.

The Code of Civil Procedure provides for two types of proceedings - action proceeding and special proceeding. All claims relating to the protection of civil rights and legitimate interests of individuals, legal entities and the State in the field of environmental protection (for example, legal action for compensation for damages caused to the environment or legal action for compensation for damages caused to health of individuals as a result of pollution) are initiated as action proceedings.

Article 183 of the Code of Criminal Procedure provides for the list of crimes investigation and consideration of which may be initiated only on the basis of a victim's complaint. This list does not include crimes in the area of the environmental protection. Consequently, NGOs and individuals have no right to directly initiate criminal prosecution for crimes relating to the environment in the courts.

The legal status of the Constitutional Court of Armenia is enshrined in Articles 99 and 100 of the Constitution of the RA. According to Article 100 the Constitutional Court in the manner prescribed by law: 1) determines the constitutionality of laws, resolutions of the National Assembly, decrees of the President of the Republic, decisions of the Prime Minister and local authorities; 2) prior to ratification of an international treaty determines constitutionality of the obligations set forth therein; 3) resolves all disputes concerning the results of referenda, etc.

Individuals and legal entities can appeal to the Constitutional Court in a particular case, when there is a final court decision, all the judicial remedies are exhausted, and constitutionality of the applied act is challenged.

The practice of constitutional justice in this field has developed only in recent years, especially after the reform of the Constitution in 2005.

***Examples:***

The Constitutional Court considered an appeal claiming for recognition of the provisions of the Law on Payments for the Use of Natural Resources and Nature Conservation to be unconstitutional. In this case, the issues relating to the legal framework for accrual of the rights for the use of minerals were also discussed.

Article 3 of the Code of Administrative Procedure has also been subjected for constitutional review. The constitutionality of the phrase "his / her" in the definition of Article 3 was considered. (See below, Section B. 3 (b))

**b) Standing (of individuals, NGOs) in matters relating to the environmental**

Administrative standing of individuals, NGOs, and other legal entities is established in Article 3 of the Code of Administrative Procedure (CAP).

According to paragraph 1 of Article 3 every natural or legal person is entitled to appeal in accordance with the Code to the administrative court, if he/she considers that by an administrative act, an action or an omission of governmental authorities, bodies of local self-government or officials of these bodies

1) his/her rights and interests enshrined in the Constitution, international treaties of the RA, laws and other legal acts are violated or may be violated;

2) some kind of an obligation was wrongfully imposed on him / her;

3) he/she has been brought to the administrative responsibility in administrative procedure.

Administrative authorities can also appeal to the administrative court.

Article 2 of the Code of Civil Procedure of Armenia (CCP) provides that any interested party can in accordance to the Code apply to the court for the protection of his/her rights, freedoms and legitimate interests provided for in the Constitution, international treaties, laws or other regulations. In cases specified in the Code and other laws the eligible persons can also appeal to the court for the protection of the rights, freedoms and legitimate interests of other persons. Therefore, under the CCP, for the protection of the public interest the prosecutor is vested with such a right.

According to paragraph 1 of Article 15 of the Law of Armenia on Non-governmental Organizations, an organization for the implementation of its goals, has the right in the manner established by law to represent and protect the rights and legitimate interests of the organization and its members in front of other organizations, courts, governmental authorities and bodies of local self-government.

Summarizing the above, we can say that only those whose rights or legitimate interests are violated or those who believe that such a violation has occurred have the right to appeal to the court.

In practice, the constitutional status of the Court of Cassation of Armenia (as well as status of international treaties in the legal system (in this context, the Aarhus Convention) have led to some changes in matters of legal standing of NGOs in the field of environmental protection. The procedural legislation does not enshrine the notion of a claim/complaint of an individual/NGO for the protection of 'the public interest' – actio popularis. However, in practice, the Court of Cassation gave a broader interpretation of the CAP's rules to ensure broad public access to justice.

The main problem is the ambiguousness of the legislative criteria of the rights of NGOs to go to the court for the protection of the public interest (actio popularis).

Acting within the mandate implied by its constitutional status, the Court of Cassation has defined the special criteria for legal standing of NGOs. The Cassation Court, having considered a complaint, by its decision from October 30, 2009 had partially upheld the complaint. Referring to the statutes of non-governmental organizations "Transparency International Anti-Corruption Center" and "Ekodar" the Court found that the organization "Ekodar" meets the criteria of the national legislation, is registered under the Law of the RA on Non-governmental Organizations and, on the basis of the statutory goals and objectives works in the area of environmental protection. According to the position of the Court of Cassation, it follows from the above, that the organization "Ekodar" is a representative of the public concerned and has the right to challenge acts and actions of governmental and local authorities.

The relevant rules of the Code of Administrative Procedure have also been subjected for constitutional review. Non-governmental organizations questioned the conformity of Article 3 of the Code of Administrative Procedure with the Constitution of Armenian in the relation to the use words "his/her" in the above mentioned article which allegedly excludes the possibility to go to the court for the protection of the rights and freedoms of the public. The Constitutional Court of Armenia, having emphasized the importance of providing non-governmental organizations with the right to appeal to the court for the protection of the

public interest in this field, held that the words "his/her" in the Code of Administrative Procedure do not contradict the Constitution.

### **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

#### **Administrative procedure**

##### **1) General overview of the remedies in administrative review procedure of decisions, actions, omissions**

The public has a right to appeal in administrative procedure against any actions / omissions of governmental authorities which violate provisions of law relating to the environment, if these actions / omissions infringed their rights and interests (based on Article 21 of the Law of Armenia on the Basics of Administration and Administrative Activity. The practice of appeals in cases with no direct violation of rights or legitimate interests is absent.

The public can: 1) communicate to administrative authorities any information concerning violations by private actors. Public communication on violations may become the basis for initiation of the administrative procedure; 2) go to the court, if the requirements of environmental legislation had been violated. But even in this case, the legal framework for standing can be a barrier to access to justice.

##### **2) General overview of the remedies in appeals against ongoing activities**

Information is presented below in paragraph 4 below regarding the prohibition of an activity.

##### **3) Automatic suspension of decisions / actions / activities in the case of their appeal**

In the case of challenging a decision in administrative procedure, the Law of Armenia on the Basics of Administration and Administrative Activity establishes that appeal suspends the execution of the administrative act (action / omission). Exceptions are the cases when 1) the law establishes a requirement for the immediate execution of an administrative act, 2) the immediate execution of an administrative act is necessary for the public interest. (Article 74)

Public authority shall justify immediate execution of an administrative act in writing.

An administrative authority may decide not to suspend the validity of an administrative act, if a complaint is filed with the only aim to suspend the validity of the administrative act.

##### **4) The prohibition of an activity (temporary and/or permanent)**

Since 2005, the Law of Armenia on Environmental Control is in force. The Law regulates the social relations associated with the organization and implementation of environmental control (control over the implementation of the requirements of environmental legislation) in the Republic of Armenia. According to Article 12 of the Law a state environmental inspector is authorized to: a) in case of environmental offenses record the violations, give orders, in the manner prescribed by law suspend, terminate, prohibit any actions, b) in accordance with the law submit to the authorized body a motion to suspend the validity or declare any licenses, contracts, permits to be null and void.

#### ***Judicial Procedure***

##### **5) General overview of the remedies in judicial review of decisions, actions, omissions**

Article 18 of the Constitution of Armenian stipulates that everyone has the right to effective legal protection of his rights and freedoms before judicial as well as other public bodies. Everyone has the right to protect his rights and freedoms by all means not prohibited by law.

According to the Law of Armenia on the Basics of Administration and Administrative Activity, an administrative act, an action or an omission may be appealed in both administrative and judicial procedures (Article 70). Individuals and NGOs have equal opportunities in the use of remedies, since the relevant legislation does not provide for any special distinctions.

##### **6) General overview of the remedies in challenging of ongoing activities**

If an ongoing activity violates environmental rights of citizens and legal entities, enshrined in the legislation, the public has a right to go to court claiming to suspend / terminate the activity that violates environmental legislation.

##### **7) Automatic suspension of decisions / actions / activities in the case of their appeal**

The mere fact of challenging of a decision in court (as well as appeal of a decision to a higher court), does not suspend the implementation of activity, unless the measures for security of a claim are applied.

## **8) Injunctive relief**

### ***a) temporary***

The legislation of Armenia provides for a preliminary injunctive relief (for the period of a trial, as a security for a claim).

According to Article 97 of the Code of Civil Procedure the court on its own initiative or at the motion of the parties in the case takes steps to ensure a claim, if failure to take these measures can lead to failure to enforce or difficulties in enforcement of a judicial act. Measures for security of a claim are allowed at any stage of the proceedings. The motion for security of a claim is discussed and a decision is taken on the day of its submission.

According to Article 101 of the CCP, if by its decision the court rejects a claim, the measures securing the claim stay in force until the decision enters into force. If by its decision the court meets the claim, the measures securing the claim stay in force until the decision is fully executed.

Article 98 of the Code of Civil Procedure provides for the following measures of securing a claim: 1) arrest of a defendant's property or funds in the amount of a claim; 2) prohibition on certain actions by a defendant; 3) prohibition on certain actions with respect to the subject-matter in dispute by others parties; 4) prohibition to sale property (with regard to lawsuits aimed to release property from arrest); 5) prohibition on actions with regard to a plaintiff's property, which is being held by a defendant.

If necessary, the court has the right to take more than one measure. CCP provides that in case of application of the measures securing a claim in cases for money recovery a defendant is entitled to deposit the claimed by a plaintiff amount to a depository account of the Service of Judgments Enforcement. The amount of the deposit is determined by the amount of the claim for money recovery.

Preliminary injunctive relief can be granted with respect to individuals / private entities and / or public authorities/ organizations (Article 98 CCP).

### ***b) permanent***

If an ongoing activity violates environmental rights of citizens and legal entities, enshrined in the legislation, the public has a right to go to court claiming to suspend / terminate the activity that violates environmental legislation.

## **9) A claim for compensation for damage / injury (including caused to the environment), compensation for non-pecuniary damage**

Due to ambiguous and contradictory legislative regulation and legal practice NGOs cannot bring legal actions for damage compensation.

Individuals may only claim compensation for the damage cause to their health as a result of pollution or contamination of the environment. Individuals have no right to bring legal actions for compensation for damages caused to the environment on behalf of the public interest. The Civil Code of Armenia does not provide for a possibility to seek indemnity for non-pecuniary damage. This fact has led to a criticism from various segments of the society. The amendments to the Civil Code of 2010, introduced provisions on compensation for damage caused by insults and defamation to honor, dignity and business reputation of persons. However, provisions on compensation for non-pecuniary damage caused by decisions, actions, or omissions violating the legislation on the environment are missing in the law (Articles 19 and 1087.1 of the Civil Code).

## **10) Legal action for the protection of 'the public interest' – actio popularis**

The procedural legislation does not enshrine the notion of a claim/complaint of an individual / an NGO for the protection of the public interest (actio popularis). However, in practice, the Court of Cassation gave a broader interpretation of the CAP's rules to ensure broad public access to justice.

The main problem is ambiguousness of the legislative criteria of the rights of NGOs to go to court for the protection of the public interests (actio popularis).

Acting within the mandate implied by its constitutional status, the Court of Cassation has defined special criteria for the legal standing of NGOs. The Cassation Court, having considered a complaint, by its decision dated October 30, 2009 had partially upheld the complaint. Referring to the statutes of non-governmental organizations "Transparency International Anti-Corruption Center" and "Ekodar" the Court found that the organization "Ekodar" meets the criteria of the national legislation, is registered under the Law of the RA on Non-governmental Organizations and, on the basis of its statutory goals and objectives works

in the area of environmental protection. According to the position of the Court of Cassation, it follows from the above, that the organization "Ekodar" is a representative of the public concerned and has the right to challenge acts and actions of governmental and local authorities.

## **11) Timeliness**

### **Administrative procedure**

According to Article 71 of the Law on the Basics of Administration and Administrative Activity an administrative complaint can be filed:

- a) within six months – from the date of entry into force of an administrative act;
- b) within one month – from the date of an action of an administrative authority which is being challenged;
- c) within one month – from the date of an omission of an administrative authority which is being challenged;
- d) in the absence of information in a written administrative act on the terms of its appeal - within one year from the date of entry into force of a challenged administrative act.

The right to challenge an administrative act accrues from the date of entry into force of the administrative act. The right to challenge an actions / an omission of an administrative body accrues from the date of the action or failure to act (Article 71 of the Law of the RA on the Basics of Administration and Administrative Activity).

Inability to challenge an act in administrative procedure is a legal consequence of missing the deadline for appeal. The right to appeal can be restored, if the deadline was missed for valid reasons. If one year has passed after the deadline for appeal, a person loses his right to recover a missed deadline on the basis of valid reasons, except for the cases, if the deadline was missed due to force majeure.

The administrative procedure can last for up to 30 days. This period can be extended twice for 10 days. Consideration of an administrative complaint regarding an administrative act also lasts for a 30-days period, with the possibility to extend the period twice for 10 days. In general, the administrative process may take (including an administrative appeal) up to 80 days, excluding the period when the right to appeal began until the date of an actual appeal.

### **Judicial procedure**

The Code of Administrative Procedure establishes time frames for challenging decisions, actions, or omissions, depending on the type of a claim that can be brought. The deadlines for appeal vary from one to three months.

CCP provides for the following timeframes for consideration of cases: in the courts of first instance a case shall be resolved in a reasonable time; in the courts of appeal – in a reasonable time; in the Courts of Cassation – in a reasonable time.

CAP provides that cases heard before the administrative court shall be resolved within a reasonable time. At the same time there is a requirement to resolve cases as far as possible in one court hearing.

Time limits for consideration of cases do not differ depending on whether the participants are natural or legal persons.

Both codes provide for the possibility to hear cases in an expeditious manner (in this event, a case should be considered immediately after the decision on hearing a case in an expeditious manner is taken). If there are reasons to hear a case in an expeditious manner, in practice it can be resolved within 3-4 days. The decision to hear a case in an expeditious manner can be taken by the court at any stage of the proceedings.

In practice, court proceedings can take: in the courts of first instance – from 2 to 6 months (in the administrative courts – for more than 6 months (due to workload of these courts)); in the courts of appeal – from 2 to 3 months or less (due to the fact that in practice cases are heard in one court session), in the Court of Cassation – from 5 to 8-9 months. It should be borne in mind that the length of judicial consideration depends on individual cases and the above mentioned periods are general in nature.

## **D. Costs**

### **1) Financial expenses associated with administrative procedure**

Section 6 of the Law on the Basics of Administration and Administrative Activity regulates relations associated with the administrative costs. Under Article 90 of the Law, administrative costs are the state and local duties and other expenses stipulated by this law that persons must pay in accordance with the law for

consideration of cases in administrative procedure. By 'other expenses' the law means expenses on: delivery of administrative acts and other documents to the recipients; publication of administrative acts; provision of the copies of administrative acts and documents; enforcement proceedings; remuneration of interpreters, experts and so on.

The law establishes the following rules for distribution of administrative costs. The costs of obtaining copies of documents and administrative acts are imposed on the party, who requires copies of these documents and administrative acts. In such cases, the costs shall not exceed the amount of the actual expenses of a public authority.

The costs, associated with examinations and participation of interpreters, experts in cases considered in administrative procedure, are distributed as follows. If interpreters and experts were invited by an administrative authority, the costs of remuneration are borne by a governmental or local authority (award is given from the state or local budget). If interpretation or examination falls within official duties of a public servant, then interpreter or expert fee is not charged. Otherwise, the costs are borne by the party of administrative procedure, on whose initiative an expert or an interpreter was invited. In this case the amount of administrative costs is determined by agreement concluded between the party and the expert (interpreter).

The state duty is not charged for consideration of an appeal against an administrative act.

## **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

Judicial expenses consist of the court fee<sup>37</sup> and other costs associated with litigation. The court fee is charged for lawsuits, claims of third parties, for appeals of court decisions to the courts of appeal and the Court of Cassation. Procedural codes also establish the rules for distribution of judicial expenses.

The amount of the court fee is determined by the Law of Armenia on the State Duty. According to Article 9 of the Law the following rates of the court fee are established for filing lawsuits:

for claims of material nature the amount of the court fee is 2% of a claim, but not less than 150% of a basic fee (the basic fee is 1000 drams (about 2.7 USD<sup>38</sup>));

for claims of non-material nature the court fee amounts to four basic fees. Because the lawsuits in the environmental field are mainly non-material in nature (related to challenging of administrative acts), the amount of the court fee is 4,000 drams (about 11 USD). It should be noted that the established amount of the court fee is not an obstacle to access to justice in environmental matters.

The jurisprudence in this area also contains the safeguards to ensure access to justice. Taking into account the decision of the European Court of Human Rights in the case of Paykar Yev Haghtanak Ltd against the Republic of Armenia, as well as the decision of the Council of the Court Chairmen of Armenia, judges of all courts shall not be entitled to return lawsuits for lack of a receipt for the payment of the court fee because the question of costs in all cases shall be resolved in the final judicial act.

For appeals against court decisions in cases of a non-material nature to the courts of appeal, the amount of the court fee is equal to ten basic fees. The amount of the court fee for an appeal in a case of material nature is 3% of the amount of a claim. If a court decision contains both material and non-material claims and is appealed as a whole, the amount of the court fee is 3% of the claim;

for appeals against court decisions in non-material cases to the Court of Cassation, the amount of the court fee is equal to twenty basic fees. As to material cases - 3% of a disputed amount, but not more than one thousand basic fees.

According to Article 22 of the Law of Armenia on the State Duties certain categories of persons are exempt from paying the court fees. These persons include NGOs (including in cases when they seek to protect the public interest), but the cases provided by law do not directly relate to matters concerning environmental protection. For exemption from the court fee, there are two main criteria - the types of cases (cases on alimony or wages), the persons who apply to the courts (Commissioner for Human Rights, the administrator of insolvency proceedings, the prosecutors in cases for the protection of state interests, etc.) The rules exempting persons litigating in the public interest from paying the court fee are not provided in the law.

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<sup>37</sup> In all of the countries a certain fee is charged for consideration of cases in courts. The fee is called differently (e. g. the state duty, the court fee. For the integrity of the translation of the study this fee is referred to as the court fee in all country reports (translator's note).

<sup>38</sup> This report uses the operational rate of Armenian Dram to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 365 drams.

Plaintiffs who go to court to protect the legitimate rights and interests of others in cases stipulated by law are also exempt from payment of the court fee. NGOs fall under this definition. However, NGOs can only be exempt from payment of the court fees (NGOs are not exempt of paying other judicial expenses).

The court fee is paid before a lawsuit is filed, unless a plaintiff submits a motion to postpone the payment. Other judicial expenses are paid after a judicial act has entered into force.

### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

Natural or legal persons are not obliged to use the services of lawyers or other specialists in the legal sphere, as this is not an obligation prescribed by law. However, in practice, lawyers are involved in 90% of cases, especially in matters related to environmental protection.

The issues of an amount of an attorney's fees are not regulated at the legislative level. The amount of the fee is determined on the basis of agreement between a client and an attorney. For instance, the attorney's fee can be determined as a percentage of the amount won.

The attorney's fee does not depend on whether a plaintiff is a citizen or an NGO. Following factors are important: complexity of a case; professional level of an attorney; whether a plaintiff is a commercial or non-profit organization.

### **4) Costs of examination, involvement of experts and witnesses**

Experts and interpreters are rewarded for performance of court orders, if these actions (assignments) are not included in their official duties in governmental authorities and bodies of local self-government. Otherwise, they are not rewarded, but the salaries of experts and interpreters are maintained throughout the duration of their engagement in court proceedings.

Travel expenses, per diem and accommodation expenses of experts, interpreters and witnesses shall also be reimbursed. Judicial expenses associated with involvement of experts, interpreters and witnesses are paid by the Judicial Department of Armenia within one month from the date of performance of these obligations from the funds of the department, which are formed from the state budget.

The cost of examination, with the prior consent of an expert, is determined by the court in a result of consultations with the parties to the court case.

The differences in the amount of costs for different plaintiffs are not provided at the legislative level, but in practice these differences exist, especially if the costs are borne by commercial entities. No special regulations for NGOs in this area are provided in the legislation. The practice has not formed yet either.

The differences depending on a plaintiff status are not provided at the legislative level, but they exist in practice. For example, if a public authority initiates an examination, the costs may be lower compared to those situations when the initiator is an NGO or a commercial entity.

### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

Article 102 of the Code of Civil Procedure regulates the matters related to compensation for damages associated with application of measures securing a claim. The court, taking measures for security of a claim may upon the motion of a defendant require a plaintiff to provide within three days a security for compensation for a possible damage that may be caused to the defendant. If the plaintiff does not pay the bond, the court's decision on the application of measures securing the claim is considered null and void.

A defendant has the right to file a legal action against a plaintiff to the same court for compensation for damage caused due to application of one of the measures securing the claim.

This provision of the CCP also applies to administrative justice.

It must be emphasized that a defendant can bring the legal action for compensation for damages only after the initial trial is over, which is a moment when defendant's right to claim for compensation accrues.

Procedural law clearly provides for bases of security for a claim, therefore, judicial discretion in this area is excluded. The procedural legislation does not provide for any limitations or exceptions to the application of bond / damage compensation.

Practice of a few cases in environmental matters shows that the defendants are not interested in moving for bonds or claiming for damage compensation, because, as a rule, they are sure in the positive outcome of the case.

Summarizing the case law in the matters relating to the protection of the environment, we can conclude that lack of judicial practice in this area does not allow assessing of the above-mentioned factor. It

is possible that with the increase of number of cases defendants will be more likely to move for bonds or claim compensation for damages associated with the application of measures securing a claim.

#### **6) Other issues of judicial expenses**

A party, who lost a case, has a duty to refund the amount paid by the Judicial Department to experts, interpreters and witnesses, as well as the duty to compensate the costs borne by the winning party, if those expenses were necessary for the effective implementation of the right to judicial protection. The costs paid which did not serve the above mentioned objectives, are borne by the party, who made these expenses. (Article 58 and 59 of the CAP).

All matters regarding the distribution of costs are resolved by a decision of the court, which considers the dispute between the parties.

According to Article 73 of the Code of Civil Procedure, judicial expenses are distributed between the parties proportionally to the satisfied claims. If the parties reached an agreement on the distribution of the costs, then the court rules accordingly to the agreement of the parties.

#### **E. Legal aid (state, non-state)**

The system of state-provided legal aid is not available.

The practice of lawyers / legal public interest organizations operating in the environmental field and / or providing services on legal assistance to the public in matters relating to the environment existed in the country, but now these organizations in the RA do not operate. Several NGOs have experience in protection of public environmental rights, but currently the activity in this area is limited.

A scientific and educational center of environmental law operates within the Faculty of Law of Yerevan State University, but the status of the center does not allow to provide such assistance to the public. The center is primarily scientific, educational and expert in nature and aims to increase knowledge and awareness of students and various groups of the public (environmental NGOs, journalists, lawyers, civil servants, judges, etc.).

# **BELARUS**

## **A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation**

### **1) Legislative system<sup>39</sup>**

The Constitution enshrines the right of citizens to a healthy environment, and the right to receive information about the state of the environment (Article 34, 46)<sup>40</sup>.

The legislation on environmental protection and natural resources use is vast and presents a significant number of codes and laws: the Land Code (2008), the Law on Subsoil (2008), the Water Code (1998), the Forest Code (2000), the Law on the Protection of the Environment (2002), the Law on the State Ecological Expertise (2009), the Law on Specially Protected Areas (2000), the Law on the Protection of Atmospheric Air (2008), the Law on the Protection of the Ozone Layer (2001), the Law on Flora (2003), the Law on Fauna (2007), the Law on Waste Management (2007), etc.:

Provisions of environmental legislation are also contained in the legislation on urban planning and construction activities, the legislation on sanitary and epidemiological well-being, the legislation on local administration and local self-government, the legislation in the field of nuclear energy.

### **2) Regulatory and control (supervisory) authorities**

Environmental management and environmental protection are carried out by the bodies of the general competence (the President, the Council of Ministers, bodies of local authorities and local self-government), as well as by the special bodies (the Ministry of Natural Resources and Environmental Protection (hereinafter - the Ministry of the Environment), the Ministry of Forestry, the Ministry of Emergency Situations, the State Inspectorate for the Protection of Flora and Fauna under the President of the Republic and several others).

The Ministry of the Environment implements the state policy on environmental protection and rational use of natural resources; conducts public regulation in the areas of research, preservation, reproduction and rational use of natural resources, including mineral resources, waters, flora and fauna, environmental protection; exercises state control in the area of environmental protection. The subordinate to the Ministry of the Environment bodies of environmental management on the local level (regional and Minsk city committees, cities and districts inspectorates on natural resources and environmental protection) perform locally the same function as the Ministry. Also, they apply administrative measures to citizens and business entities, which committed offenses, and insure compensation for damage caused to the environment.

The Ministry of Forestry exercises control over the condition, use, reproduction and protection of forests; keeps the state forest records and conducts the state forest inventory. The State Inspection for the Protection of Flora and Fauna under the President of the Republic of Belarus exercises state control over the use of game species, stocks of fish and aquatic invertebrates; performs fishery conservation activity.

### **3) Role of the Prosecutor's Office**

In accordance with the Law on Prosecutor's Office (2007), the prosecutors are vested with the authority to supervise over the strict and uniform observance of the normative acts.

The prosecutors consider complaints of citizens and organizations that provide information on violations of the law. The prosecutor shall take measures to restore the infringed rights and legitimate interests of citizens, including entrepreneurs, and organizations and to hold offenders accountable according to the acts of the legislation.

The prosecutor is entitled to issues the following acts: submissions, protests, decisions, orders, official cautions.

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<sup>39</sup> Texts of mentioned and other legal acts of the Republic of Belarus can be found at [www.pravo.by](http://www.pravo.by). Please keep in mind that most of the instruments are not translated into English. In addition, the references to the texts of laws and other normative legal acts in Russian are available on the website of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus under the "law" section - [http://minpriroda.by/ru/legislation/deistv\\_zakon/g\\_8.html](http://minpriroda.by/ru/legislation/deistv_zakon/g_8.html).

<sup>40</sup> National Register of Legal Acts of the Republic of Belarus. 1999. № 1. 1/0.

In particular, in his submission the prosecutor can require to eliminate violations of the law, causes and conditions conducive to these violations; in his order - can demand to eliminate the violations of the law, which are evident and can cause substantial damage to the rights and legitimate interests of citizens, including entrepreneurs, and organizations, public and state interests, if not immediately rectified.

In civil proceedings (Article 81 of the Code of Civil Procedure) the prosecutor has the right to appeal to the court within his jurisdiction in order to initiate a civil case, if it is necessary for the protection of the rights and legitimate interests of the Republic of Belarus, its administrative and territorial units, as well as legal entities and citizens. The prosecutor has the right to intervene at any stage of the proceedings, if it is required by the State's interests, as well as for the protection of the rights and legitimate interests of citizens.

#### **4) The judicial system**

Judicial power is vested in the courts, established as prescribed by the Constitution and the Code of Judicial System and Status of Judges (2006). The judicial system consists of: the Constitutional Court, the courts of general jurisdiction (general courts), the economic courts.

The Constitutional Court examines the matters of constitutionality of legal acts in whole or its individual provisions. Organizations and citizens are not entitled to directly request the Constitutional Court to examine the constitutionality of a legal act. However, they can appeal to the bodies and persons which have the right to make referrals to the Constitutional Court as to the constitutionality of legal acts.

The general courts administer justice in civil, criminal and cases on administrative offenses. The economic courts deliver justice by considering the business (economic) disputes arising from civil, administrative and other legal relations.

Types of court proceedings that can be used by the citizens, on issues relating to the environment are: civil, economic, administrative proceedings.

Rules on the division of jurisdiction over cases between general and economic courts are provided for by the Code of Civil Procedure (CCP) and the Code of Economic Procedure (CEP).

If a citizen turns to the courts for the protection of his violated right, he is entitled to go to the general court. In accordance with the CCP the general courts have jurisdiction over cases on the disputes arising from legal relationship on the environment, if at least one of the parties to the dispute is a citizen.

If an organization turns for the court protection of its right, the lawsuit shall be submitted to the economic court, because in accordance to the CEP, the economic courts settle disputes and considers other matters related to business and other economic activity of legal entities and individual entrepreneurs. However, both the CCP and the CEP have reservations establishing that the legislation may provide for cases when the general court can consider other then above mentioned cases and the economic courts can consider cases with a citizen as a party.

At the same time, the Law of the Republic of Belarus on Environmental Protection (Article 103) gives only a reference provision establishing that disputes in the field of environmental protection are resolved by the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus, its territorial departments and (or) by the courts in accordance with the legislation of the Republic of Belarus. Thus, the jurisdiction of the courts is not divided by the said Law. This uncertainty of the law creates problems in deciding which court NGOs should apply to on the issues relating to the environment.

Citizens and organizations, including NGOs, have the right to initiate criminal prosecution for crimes relating to the environment, in accordance with the Code of Criminal Procedure (1999), by submitting an application to the body of criminal prosecution - the Prosecutor's Office.

#### **5) The Ombudsman**

The Ombudsman is not envisaged by law.

### **B. Information on the procedures for making decisions on environmental matters, and opportunities to challenge them**

#### **1) Decision-making system**

Information on the procedures for making decisions on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is provided in figure 6 (pp. 45-46).

**Figure 6**

<b>Procedure (decision) on matters relating to the environment<sup>41</sup></b>	<b>Body authorized to carry out the procedure (to make the decision)</b>	<b>Period of validity of decisions, permits or other documents issued due to the procedure</b>	<b>The possibility of public participation envisaged</b>	<b>Body to which one can appeal the decision / action / omission</b>	<b>Legal act regulating the carrying out of the procedure (making the decision)</b>
A decision on the allocation and construction of a nuclear facility and (or) storage	the President	-	Yes	-	The Law on the Use of Nuclear Energy
Environmental conditions for the planning	territorial departments of the Ministry of Natural Resources and Environmental Protection (including district's and city's inspectorates)	2 years	No	the superior state authority; Judicial review is carried out only after a decision has been challenged in administrative (non-judicial) procedure.	The Law on the Basis of Administrative Procedures
Conclusion of the state ecological expertiza	The Ministry of Natural Resources and Environmental Protection and its regional (Minsk city) committees	is limited by the duration of implementation of a project decision, plus one year, unless otherwise is stipulated by legislative acts.	No (in OVOS - Yes)	the superior state authority; Judicial review is carried out only after a decision has been challenged in administrative (non-judicial) procedure.	The Law on the Basis of Administrative Procedures The Law on the State Ecological Expertiza
Conclusion on the conformity of a commissioning facility to the approved project documentation	territorial departments of the Ministry of Natural Resources and Environmental Protection (including district's and city's inspectorates)	indefinitely	No	the superior state authority; Judicial review is carried out only after a decision has been challenged in administrative (non-judicial) procedure.	The Law of the Republic of Belarus on the Basis of Administrative Procedures

<sup>41</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

Permits for emissions of pollutants into the air, including any amendments and (or) the extensions of the said permits	territorial departments of the Ministry of Natural Resources and Environmental Protection (including district's and city's inspectorates)	for the period of commissioning, or before reaching the design capacity, but not more than for two years from the date of commissioning of a facility (during construction, reconstruction, expansion, modernization, upgrading, changing the profile of production)	No	the superior state authority; Judicial review is carried out only after a decision has been challenged in administrative (non-judicial) procedure.	The Law on the Protection of Atmospheric Air
Limits for wastewater discharges into the environment, for storage and disposal of the industrial wastes	territorial departments of the Ministry of Natural Resources and Environmental Protection (including district's and city's inspectorates)	1 years	No	the superior state authority; Judicial review is carried out only after a decision has been challenged in the administrative (non-judicial) procedure.	The Law on the Protection of the Environment

## **2) Challenging of decisions in non-judicial (administrative) procedure**

In accordance with the Law on the Basis of the Administrative Procedures (2008) the public (an individual, an NGO, other entity) has the right to appeal against decisions of public authorities, referring to a superior public authority or an official, and, in case he is not satisfied with the decision taken to appeal the decision to the court. The legislation provides for both the administrative (non-judicial) procedure and the judicial procedure of appeal against decisions made by public authorities.

The legislation of the Republic of Belarus does not provide for the establishment and operation of independent administrative bodies responsible for reviewing decisions of public authorities.

Public authorities exercising administrative procedures are established in accordance with the Constitution and laws, and act in accordance with the regulations on these bodies, which provide for their competence. Governmental hierarchy with established strict subordination of the subordinate bodies to the superiors is created in the Republic. The criteria "independent, impartial" would be difficult to apply to these bodies. Even if a superior body can be regarded as independent in relation to the subordinate one, the impartiality can be doubted, because the system is often governed by the principle "do not wash dirty linen in public".

In accordance with the Law on Environmental Protection citizens and non-governmental associations shall have the right to address public authorities and other organizations with complaints and applications in matters relating to the environment, harmful effects on the environment and to receive timely and informed responses.

Citizens and NGOs learn about administrative decision taken on specific activities (Article 6 of the Aarhus Convention, Annex 1 to the Aarhus Convention) as follows. If citizens / NGOs personally file appropriate requests to public authorities, in accordance with the law they are given a reasoned reply in writing; if a decision is taken by the authorized state body on any issue or question (non-normative legal act), citizens and NGOs will be able to know about it only during implementation (execution) of this decision, for example, at the beginning of construction; if a public authority adopts a normative act, it is published in special legal publications and electronic databases of legal information, the mass media (newspaper), specially designated by the legislation.

A decision of a public authority can be appealed to a superior authority, other organization (a superior body).

Having received an appeal (complaint, application), the superior authority verifies the information contained therein and, if there are grounds for a positive outcome to the issues addressed, considers the appeal on the merits or issues binding orders to the relevant organizations as to the proper resolution of these issues, and informs the authors of the appeal about it.

Having received these orders, the organization shall execute them within the time limits specified in the order, but not more than within one month, and inform the superior authority about its execution within three days, as well as notify the authors of the appeal.

Appeals of legal entities and individual entrepreneurs, as well as the appeals received from the media are regarded by the organizations in the manner prescribed by law for the consideration of citizens' appeals, unless the legislation establishes a different procedure for consideration of appeals of legal entities or individual entrepreneurs. Such different procedure is established for the appeals associated with administrative procedures carried out by public authorities, which are challenged in accordance with the Law on the Basics of Administrative Procedures.

## **3) Judicial procedure. Standing (of individuals, NGOs) in matters relating to the environmental**

Individuals, non-governmental associations, and other legal persons have the right to appeal to the courts in civil, economic and administrative proceedings either directly or through their representatives.

In administrative proceedings, a citizen / a non-governmental association has the right to appeal any action / omission of public authorities and their officials, if he considers that his rights and/or legitimate interests were infringed by unlawful actions (omissions) of public authorities, other legal entities and organizations that are not legal entities, or their officials.

The actions (omissions) of public authorities, other legal entities, organizations, and their officials, which are subject to judicial review, include the collective and one-man actions (omissions), as a result of which a citizen is illegally deprived of the possibility of fully or partially exercise the rights granted to him by the legislation, or a citizen is illegally charged with a certain obligation.

As a general rule, a lawsuit shall be filed in the court after appropriate actions of a body or an official were appealed to a superior public authority or official, who is obliged to consider it and inform a citizen on the outcome of its consideration within one month.

Environmental NGOs are entitled to bring claims to the court on compensation for damages caused to life, health, property as a result of adverse impact on the environment, and on the full or partial suspension or termination of economic and other activities of legal entities and individuals that adversely impact the environment, only in respect of its members (participants).

NGOs have the right to file lawsuits in matters relating to the environment and initiate economic proceedings in the courts.

In civil proceedings in matters relating to the environment, the public (an NGO, an individual) is entitled to file a lawsuit to the court for the protection of interests of citizens as their representative by proxy, as well as intervene as third parties claiming their independent claims on the subject-matter in dispute, or as third parties without independent claims on the subject-matter in dispute. It should be noted that the Law on Environmental Protection, as already noted, provides for the rights of citizens and non-governmental associations to file complaints and lawsuits on matters relating to the environment. However, other organizations, such as institutions and other nonprofit organizations that meet the criteria for the concept of "a non-governmental organization" do not have these rights, which is not fully in compliance with the Aarhus Convention.

The wording of the CCP and CEP does not give an explicit answer to the question of which court should non-governmental associations file lawsuits on termination of environmentally harmful activities and on other environmental matters: economic courts refuse to admit lawsuits because such disputes by its nature are not economic dispute with the participation of organizations, entrepreneurs, and the general courts - for the reason that, disputes in which a plaintiff and a defendant are organizations fall outside its jurisdiction.

Only persons involved in the case (parties, interested person, etc.) have the right to get acquainted with the decisions of the courts. In cases prescribed by law, court decisions are provided to them. There is no open access to the full register of court decisions including on cases in matters relating to the environment. Some court decisions are published in journals and legal databases.

The courts (judges) are aware of the legislation in the area of the protection of the environment, as each judge in his workplace has a computer database of legal information, including all applicable acts of environmental legislation. In order to generalize the court practice on cases concerning the responsibility for offenses against the environmental safety and the environment and in order to ensure correct and uniform application of environmental legislation the Plenum of the Supreme Court of the Republic of Belarus adopted a Resolution on application by courts of legislation on responsibility for offenses against the environmental security and the environment (2003).

#### **4) Other (non-judicial) methods of dispute resolution**

According to the CEP (as revised in 2011) the resolution of disputes by mediation serves to assist the parties in establishing the facts on the conflict that has arisen between them; to reach understanding on legal realism and reasonableness of their positions in the conflict, their claims and objections; to clarify, comprise and converge their views on the ways to resolve the dispute, to find and recommend them the ways to resolve the conflict that would satisfy both parties. The mediator is appointed by the economic court on the request of a party or on its own initiative, with the consent of the parties.

Examples of dealing with disputes relating to the environment with the assistance of the mediator are absent.

### **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

#### **Administrative procedure**

##### **1) Challenging of decisions, actions, omissions**

Challenging of decisions, actions, or omissions by submitting a statement/complaint to a superior official or to a superior public authority is a remedy in administrative procedure. Appeal directly to the authority / official which made a decision to some extent can also be considered as a remedy.

##### **2) Challenging of ongoing activities**

In accordance with the Law on Environmental Protection citizens and non-governmental associations shall have the right to address public authorities with complaints, statements and proposals in matters

relating to the environment, adverse impact on the environment and to receive timely and informed responses.

In accordance with Article 100 of the Law on Environmental Protection, as well as the Decree of the President № 510 on the Control Activities in the Republic of Belarus, a controlling authority can suspend the activities which violate the requirements of the legislation in the field of environmental protection in full or in part.

### **3) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions, actions or activities in the case of their appeal is not envisaged by law.

### **4) The prohibition on activity (temporary and/or permanent)**

According to Article 100 of the Law on the Protection of the Environment, in case damage is being caused to the environment, or there is a risk of causing environmental damage in the future, in case of violation of the requirements of environmental regulations or failure to comply with orders of controlling authority in the field of environmental protection, economic and other activities of legal entities and citizens adversely affecting the environment, can be fully or partially suspended until the identified violations are eliminated by a decision of local executive and administrative body, a resolution of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus or its territorial departments and their officials, other public authorities (organizations) which, in accordance with this law and other legislative acts of the Republic of Belarus have the right to adopt such resolutions.

In order to execute the resolutions (decisions) of the authorized state bodies on full or partial suspension of economic and other activities until the identified violations of legal entities or individuals that adversely affect the environment are eliminated (hereinafter - the resolution (decision) on the suspension of economic and other activities), the authorized authorities can, in accordance with the legislation, apply measures ensuring the implementation of this resolution (decision), aimed at preventing the use of equipment, vehicles and other objects use of which in the process of economic and other activities should be suspended, including to place these objects under the seals.

## **Judicial Procedure**

### **5) Challenging of decisions, actions, omissions**

Civil Code (Article 11) provides for the remedies, which, in particular, can be used to challenge decisions in matters relating to the environment: recognition of rights, restoration of the state that existed before the violation of law, restriction of actions that infringe or may infringe the rights, cancellation of an act of a public authority or a body of a local self-government; compensation for damages; recovery of a contractual sanction; compensation for non-pecuniary damages; non-application by the court of an act of a public authority or a body of a local administration or local self-government that contradicts the legislation; other remedies provided by law.

In particular, prevention of damages (Article 934 of the Civil Code) shall be considered as one of the 'other remedies provided by law'. If the damage is a consequence of operation of a facility, of construction or other economic activities, which continues to cause damage or may cause future damage, the court can order a defendant, in addition to compensation for damage, to suspend or terminate the relevant activities. The court can deny a claim for suspension or termination of the relevant activities only if its suspension or termination contradicts the public and the State's interests. Denial of a claim to suspend or terminate such activities does not deprive the victims of the right to compensation for damage caused by this activity.

Individuals / non-governmental associations have equal opportunities in use of legal remedies.

### **6) Challenging of ongoing activities**

According to Article 100 of the Law on the Protection of the Environment, citizens and non-governmental associations operating in the field of environmental protection have the right to file claims to the courts for complete or partial suspension or termination of economic and other activities adversely affecting the environment, if as a result of such activities the violations of the requirements in the field of environmental protection occur, damage is caused to the environment or a risk of causing damage to the environment in the future is created.

An authorized state body is entitled to file a lawsuit to the court on the termination of the economic and other activities that adversely affect the environment, if a legal person or a citizen, engaged in such activities, causes environmental damage, poses a risk of causing environmental damage in the future, violates

the requirements in the field of the protection of the environment or fails to comply with the order of this body to eliminate identified violations or with the resolution (decision) on the suspension of economic and other activities.

#### **7) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions, actions or activities in the case of their appeal is not envisaged by law.

#### **8) Injunctive relief**

##### **a) temporary**

In civil proceedings the court on the request of the persons interested in the outcome of the case or on its own initiative, takes measures to secure the claim (Article 254 CCP). Measures securing the claim are applied only by the court of first instance and are allowed at any stage of the proceedings, if failure to take these measures can make it difficult or impossible to execute the court decision. In particular, as a measure to ensure the claim the court can prohibit a defendant to perform certain actions.

The court, applying measures securing the claim, can require a plaintiff to provide security for possible damage of a defendant (Article 258 CCP). When the decision (by which the claim is denied) has become effective, the defendant has the right to claim compensation for damages from the plaintiff caused to him by measures securing the claim made at the request of the plaintiff.

In civil proceedings the measures to secure a claim can be taken with regard to a complaint on actions (omissions) of public authorities and other legal entities and organizations that are not legal entities and their officials that infringe the rights of citizens, and, in the cases stipulated by the legislation, the rights of legal entities. Measures securing complaints include: a prohibition to a public authority, an organization or an official to exercise certain actions, the mandatory suspension of the appealed action/decision in the cases stipulated by law. The court is entitled to suspend execution of a contested action on its own initiative or at the request of a party at any stage of the proceedings also in other cases than mentioned above (Article 340 CCP).

In economic proceedings the measures securing a claim can be taken at any stage of the proceedings, if failure to take these measures can make it difficult or impossible to execute a court decision (Article 113 CEP). In particular, as a measure to ensure the claim the court can prohibit a defendant to perform certain actions. The economic court can deny the motion on measures securing a claim if: the court finds the reasons justifying the motion for the measures securing a claim to be insufficient; implementation of the measures securing a claim can significantly violate the rights of other persons associated with the subject-matter of the securing measures. A person against whom the economic court has issued the order on measures securing a claim, has the right after the entry into force of the judicial decision denying the claim or terminating the proceedings, or dismissing the claim without consideration to claim for damages caused to him by the measures securing the claim from the person who filed the motion on the measures securing the claim (Article 120 CEP).

##### **b) permanent**

In civil proceeding having considered a complaint of a citizen (or a non-governmental association) against an action (or omission) that violates their rights, and having admitted that the challenged action (omissions) is illegal, and that it violates the rights of a citizen, the court renders a decision holding that the complain is valid and obliges the defendant to eliminate the violations. For elimination of these violations the court decision on the complaint is referred to the head of a public authority, a legal entity, an organization, or an official whose actions were challenged, or to a superior public authority, a legal entity, an organization, an official.

Citizens and non-governmental associations operating in the field of environmental protection have the right to file claims to the court for complete or partial suspension or termination of economic and other activities adversely affecting the environment, if as a result of such activities the violations of the requirements in the field of environmental protection occur, damage is caused to the environment or a risk of causing damage to the environment in the future is created (Article 100 of the Law on the Protection of the Environment).

#### **9) Claim for compensation for damage / injury (including caused to the environment), compensation of non-pecuniary damage**

Claims for compensation for damage caused to the environment can be filed by a public authority exercising state control in the field of environmental protection or by a prosecutor (Article 101-4 of the Law on Environmental Protection).

The possibility to get compensation for non-pecuniary damage is provided by the Civil Code (Articles 11, 152). If a citizen has suffered non-pecuniary damage (physical or mental sufferings), in the result of actions violating his non-property rights, or otherwise infringing non-material values of him, as well as in other cases stipulated by law, a citizen can claim for monetary compensation for this damage from the offender. Non-property rights, non-material values include - life and health, personal dignity, personal integrity, honor and good name, reputation, privacy, personal and family secrets, the right to freedom of movement, to choice of place of residence, the right to a name, the right to authorship, and other.

The Law on Environmental Protection (Article 14) provides for a possibility to claim compensation for non-pecuniary damage in case of violation of the right to a healthy environment.

#### **10) Legal action for the protection of "the public interest» - actio popularis**

The notion of "the public interest" is used in some legislation, but has no legal definition. Prosecutors, public authorities, bodies of local administrations and local self-government, other authorities are vested with the right to refer to the economic courts for the protection of the public interest, in the cases stipulated by the legislation (Article 7 of CEP). In particular, according to Article 66 of the CEP, for the protection of the state and public interests, the prosecutor can: submit lawsuits challenging non-normative legal acts of public authorities, bodies of local administration and local self-government, other bodies or officials that affect the rights and legitimate interests of legal entities and individuals in the area of business and other economic activities; submit lawsuits to invalidate transactions made by public authorities, bodies of local administration and self-government, state owned enterprises, government institutions, as well as by legal entities, if the State owns its shares. Thus, this list makes no mention of lawsuits in the protection of public environmental interests.

In civil proceedings non-governmental associations (organizations) have the right to appeal only for the protection of the rights and interests of the members of the association and only if these rights conform with the statutory purposes of the association (Article 86 of CCP).

Only the associations of consumers have the right to appeal to the courts for the protection of the rights of consumers, to represent and defend in courts the rights and legitimate interests of consumers (an indefinite number of consumers) (Article 47 of the Law on the Protection of Consumers' Rights).

#### **11) Timeliness**

Time limits for appeals in administrative / non-judicial procedure are established by the Law on the Bases of Administrative Procedures and the Law on Citizens' Appeals.

Citizens shall submit complaints to public authorities not later than 3 years from the date of the violation of their rights, freedoms and (or) legitimate interests or from the date when they became aware of these violations. If the above mentioned time limits were missed for valid reasons (serious illness, disability, long business trip, and other reasons), the right to appeal can be restored by a decision of the head of a public authority or by an authorized official and the complaints are considered.

In accordance with the Law on the Bases of Administrative Procedures, the right to appeal accrues from the date when the contested decision is made. An administrative complaint can be filed to the body authorized to consider the complaint within one year from the date when the contested administrative decision was made. The body considering the complaint is entitled to restore the right for administrative appeal in case the deadline was missed for a valid reason (serious illness, long-term business trip, etc.).

The time limit for consideration of the complaints in administrative procedure is 1 month. When there is a need to carry out a special investigation, or to submit a request for information, the head of a public authority or other organization considering the complaint can extend this period, but not more than for one month. A complainant shall be notified on such extension.

As a general rule, the time limit for appeals to the courts is three years. In exceptional cases when the court finds the reasons for missing the deadline for appeal based on the circumstances related to the personality of a plaintiff (serious illness, helpless condition, illiteracy, etc) to be valid, the violated right of a citizen shall be protected by the court. The reasons/circumstances for missing the deadline for appeal (if it is more than six months) can be found to be valid, if they occurred in the last six months of the period for appeal. In case the time limit for appeal in cases prescribed by law is six months or less than - at any time during the period for appeal.

In civil proceedings, a complaint can be filed to the court within one month from the date when a citizen received a denial on his complaint from a superior public authority, a legal entity, an organization or

an official or from the end of one month after filing the complaint, if a complainant has not received any response, and, if there is no requirement to exhaust administrative remedies, from the day when a citizen became aware of a violation of his rights. In civil proceedings as a general rule the court of first instance shall consider cases within two months from the date when a lawsuit/a complaint was filed to the court. Cases on compensation for damage caused to life or health shall be considered by the court of first instance not later than in one month from the date when the claim was filed (Article 158 CCP). A statement for cassation or a cassation protest shall be filed to the court, which made a decision within ten days from the date when the decision was awarded or from the date when a party received the full text of the court decision upon its request. The court of cassation shall consider a submitted statement of cassation or a cassation protest on the day set by the court of first instance. In a particularly difficult case, and if it is necessary to take actions to collect evidence, the chairman of the cassation court or his deputies are entitled to set another date for consideration of the case within two months from the date when the decision to reset the date of the proceedings was made (Article 424 CCP). An appeal on a judicial decision to the court of third instance shall be considered not later than within one month from the date of its submission, and if case materials are requested from a lower court - not later than within one month from the date of the receipt of the case materials (Article 442 CCP).

In economic proceedings the preparation of a case for a trial shall be completed by having a preparatory hearing within fifteen days from the date when a lawsuit came to the economic court (Article 169 CEP). As a general rule, a case shall be considered by the economic court of first instance within a period not exceeding two months from the date when the economic court made a court order admitting the case for trial. In exceptional cases, taking into account the complexity of a case, the chairman of the economic court or his deputies can extend the period for consideration of a case up to four months (Article 175 CEP). The certain types of case are considered not longer than within one month from the date of the receipt of a legal action (a complaint) by the economic court, including the time for preparation of a case for trial and consideration of a case. A statement for appeal (an appeal protest) shall be filed within fifteen days from the day when the economic court of first instance rendered a contested judicial decision. A statement of appeal (an appeal protest) on the decision of the economic court of first instance shall be considered in the period not exceeding fifteen days from the date when it came to the economic court, including the time for taking a decision on the results of its review. In exceptional cases, taking into account the complexity of a case, time period for consideration of a statement for appeal (protest) can be extended for up to fifteen days by the chairman of the economic court or by his deputies (Article 278 of the CEP). A statement for cassation (a cassation protest) shall be filed within one month from the date of entry into force of the appealed court decision (Article 285 of the CEP). A statement for cassation (a cassation protest) on a judicial decision of the economic court of first or appellate instances shall be considered in the period not exceeding one month from the date when it came to the economic court of third instance, including the time for taking a decision on the results of its review (Article 295 of the CEP). A complaint on a court decision in a supervisory procedure can be filed to the persons entitled to bring protests, within the period not exceeding one year from the date of entry into force of such court decision (Article 300 of the CEP). A complaint in a supervisory procedure is considered by public officials entitled to bring supervisory protests, within the period not exceeding two months from the date it came to the Supreme Economic Court, or to the Prosecutor General (Article 308 of the CEP). The protests are considered by the Presidium of the Supreme Economic Court of the Republic of Belarus within the period not exceeding two months, and by the Plenum of the Supreme Economic Court of the Republic of Belarus - within the period not exceeding three months from the date of its receipt by the appropriate economic court of supervisory instance (Article 312 of the CEP).

Thus, in civil proceedings complaints and claims can be considered for 5 or more months and in economic proceedings - for more than a year. In addition, the time limits established in the law often are not followed.

#### **D. Costs**

##### **1) Financial expenses associated with administrative procedure**

No fee is charged for consideration of a complaint in administrative procedure. Representation by an attorney is not required.

##### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

In accordance with the Tax Code, the court fee for filing a complaint to the general court is one basis amount (35 000 rubles, which is about 11.5 U.S. dollar<sup>42</sup>), for material claims - 5% of the claimed amount, for non-material claims - 3 basis amounts, for cassation and supervisory complaints as a general rule - 50% of the court fee paid for the initial complaint or claim.

The minimum rate of the court fee for material claims filed with the economic court, if the amount of the claim is up to 100 basic amounts (or about 1153 USD) is 15 basic amounts (525 000 Belarusian rubles, or about 173 USD), if the amount of the claim is from 100 to 1000 basis amounts (approximately from 1 153 to 11 532 USD) - the court fee is 5 % of the claim, but not less than 15 basic amounts (or about 173 USD), etc. When filing non-material claims, claims for cancellation in whole or in part of acts of governmental or other bodies (that are not normative acts) organizations are required to pay 20 basis amounts (or around 231 USD) for each claim (act), if filing to the Supreme Economic Court, and 10 basic amounts (or around 58 USD) - to other economic court; citizens - 5 basis amounts for each claim (act). When submitting appeals - 40% of the court fee paid for filing of an initial claim, when filing cassation, supervisory complaints - 80% of the court fee paid for filing of an initial claim.

At the same time, the minimum wage is 400 000 Belarusian rubles (or approximately 132 USD).

When submitting a lawsuit that contains both material and non-material claims, it is required to pay both the court fee established for material claims and the court fee established for non-property claims.

The following categories are exempt from payment of the court fee. Plaintiffs filing claims to the courts for compensation for damage caused to life or health; the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus and its territorial departments - for claims for compensation for damage caused to the environment, for appeals, cassation and supervisory complaints on judicial decisions, other complaints and claims related to the protection of the environment; the State Inspectorate on Flora and Fauna under the President of the Republic of Belarus - for claims for compensation for damage caused to the environment, or appeals, cassation and supervisory complaints on judicial decisions, other complaints and claims related to the protection of flora and fauna (Article 257 of the Tax Code, Special Part).

Local councils or on their behalf executive and administrative authorities are entitled to fully or partially exempt individuals from payment of the court fees payable to the local budget, based on their financial situation in court cases not related to economic activities. The court (judge) is entitled to fully or partially exempt individuals from payment of the court fees based on their financial situation in court cases not related to economic activities. The prosecutor, who has the right to bring supervisory protest, based on the financial situation of an individual has the right to fully or partly exempt him from payment of the court fee for filing of a supervisory complaint.

The court fee is paid before applying to the court. Delay in payment of the court fee is not provided by the law. It is envisaged that the losing party shall pay the costs of the court fee.

### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

It is not required to use the services of a lawyer or other specialist in the legal field. However, one cannot succeed in court without the appropriate knowledge of law and the rules of procedure, which is why a lawyer is needed.

Attorney's fees is determined by agreement based on the complexity of the issue, the amount of working hours and other factors that are agreed between the parties when concluding the contract for legal services. The law on Advocacy (Article 26) establishes that attorneys are paid from the funds received from individuals and legal entities for legal assistance provided to them. The fee is determined by agreement between the parties.

As a rule, the part of a fee (50%) is paid upon signing the contract before the case is considered as an advance, and the second part - at the beginning of a trial, or at least before the court decision is rendered on the case. At the request of the winning party the court obliges the losing party to pay the costs for legal services, if the payment is properly confirmed by documents. The practice shows that tariffs for legal services for legal entities are higher, then for individuals.

### **4) Costs of examination, involvement of experts and witnesses**

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<sup>42</sup> This report uses the operational rate of Belarusian Ruble to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 3035 Belarusian Rubles. It should also be noted that the Belarusian ruble has subsequently undergone considerable devaluation, which amounted to more than 50%.

The costs of examination, participation of experts, specialists, and witnesses in court cases are borne by the party interested in undertaking of such actions. Subsequently, the court (judge) is entitled to assign costs equally on both parties or impose the costs on the defendant.

The costs associated with the consideration of the case include the amounts of payments to experts, specialists (Articles 125, 126, 133, CEP, Chapter 15 of the CCP). The court awards all incurred judicial expenses of the party in whose favor the decision was rendered to be covered by the losing party. If the claim is granted in part, judicial expenses are reimbursed in proportion to the amount of the satisfied claims.

An institution performing examination calculates and submits an invoice for payment. In accordance with the Resolution of the Council of Ministers, 2006 № 1775 on the Rules of payments and the amounts payable to victims, civil plaintiffs and their representatives, witnesses, experts, specialists, interpreters, the costs of examinations, as well as of the studies commissioned in criminal, civil, and administrative cases, as well as in entrepreneurial and other economic activity, are determined by agreement between an organization and a customer. Its amount is limited by its first cost plus up to 25 percent of the first cost as profit.

In accordance with Article 129 of the CCP the prosecutors, public authorities, legal entities and citizens, applying to the court for the protection of the rights and legitimate interests of other persons in the cases stipulated by law are exempt from payment of the costs associated with the proceedings.

#### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

According to Article 258 of the CCP, the court, taking measures securing the claim, can require a plaintiff to provide security for possible damage caused to a defendant.

When the decision (by which the claim is denied) has become effective, the defendant has the right to claim compensation for damages from the plaintiff caused to him by measures securing the claim made at the request of the plaintiff.

If a citizen or a group of citizens is the plaintiff, and the defendant is a company whose activity is harmful to the environment, it is obvious that citizens will not be able to provide compensation for possible damages to the company.

In economic proceedings the court taking measures securing the claim is not entitled to require the plaintiff to provide security for possible damage caused to the defendant. At the same time, a person against whom the economic court has issued the order on measures securing the claim, has the right after the entry into force of a judicial decision denying the claim or terminating the proceedings, or dismissing the claim without consideration to claim for damages caused to him by the measures securing the claim from the person who filed the motion on the measures securing the claim (Article 120 CEP). In addition, the economic court can deny the motion for security of the claim, particularly if the measures securing the claim can significantly violate the rights of other persons associated with the subject-matter of security (Article 115 of the CEP). This particular provision makes it almost impossible in economic proceedings to take such a measure securing the claim as the suspension of environmentally harmful activities, because in such cases a conflict of ecological and economic rights will always be present, and obviously resolved in favor of the latter.

#### **6) Other issues of judicial expenses**

The "loser pays" principle applies to the disputes in matters relating to the environment considered by the courts.

In civil proceedings all judicial expenses incurred by the party in whose favor the decision was made shall be reimbursement by the other party in the case, even if the winning party was exempt from payment of these expenses. If a claim was granted in part, the mentioned expenses are borne by a plaintiff in proportion to the part of the claim which was denied, and by a defendant – in proportion to the part of the claim which was satisfied by the court. The same rules also apply to the court fees paid by the parties for filing cassation and supervisory complaints (Article 135 of the CCP).

In economic proceedings judicial expenses are allocated between a plaintiff and a defendant in proportion to the satisfied claims. The costs incurred by the economic court in connection with the proceedings, and the court fee from the payment of which a plaintiff was exempt, are recovered from the plaintiff, if the court does not satisfy the claim. Judicial expenses incurred by the parties in connection with consideration of complaints on judicial decisions (appeal, cassation, supervision) are distributed between a plaintiff and a defendant in accordance with the above mentioned rules (Article 133 CEP).

### **E. Legal aid (state, non-state)**

The system of legal aid for citizens and legal persons by means of attorneys and organization / individual entrepreneurs providing legal services on legal issues of economic activities of business entities operates in the Republic (the Law on Advocacy (1993). In accordance with the Presidential Decree 2010 № 450 on Licensing of Certain Types of Activities such activities as advocacy and activity on provision of legal services are subject to licensing. The licenses are granted by the Ministry of Justice of the Republic of Belarus.

The Law on Advocacy in Article 6 establishes the possibility of providing of free legal aid by lawyers, but this issue is regulated in detail by the Resolution of the Ministry of Justice № 86 dated December 11, 2007. In particular, the following citizens can get free legal advice on matters unrelated to business activity, which do not require studying of the case materials: disabled persons (groups I and II), when provision of legal advice does not require studying of the case; participants of the Great Patriotic War<sup>43</sup>. However, the provision of free legal aid to the public on the category of cases related to environmental is not provided by the legislation.

There are just a few lawyers specializing in providing legal services in matters relating to environmental protection in the country. Non-governmental organizations / NGOs do not provide such assistance. Only a few examples of such projects performed on the basis of grants are known. At the same time, it should be noted that the need of both citizens and Non-governmental organizations in such services is high and increases every year.

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<sup>43</sup> the Second World War (translator's note)

# GEORGIA

## A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation

### 1) Legislative system

The Constitution of Georgia establishes as a basic human right - the right to live in a healthy environment and to enjoy the natural environment. According to Article 37 of the Constitution of Georgia (1995)<sup>44</sup>, everyone has the right to live in a healthy environment and to enjoy natural and cultural environment. Everyone is obliged to protect the natural and cultural environment. In order to create a safe environment to human health, according to the ecological and economic interests of the society, present and future generations the State shall protect the environment and promote sustainable use of natural resources. A person has the right to receive complete, objective and timely information on the state of its natural environment and working conditions.

The main legislative acts related to the environment are: the Law on the Protection of Soil (1994)<sup>45</sup>, the Law on Transit and Import of Waste on the Territory of Georgia (1995)<sup>46</sup>, the Law on the System of Protected Areas (1996)<sup>47</sup>, the Law on Mineral Resources (1996)<sup>48</sup>, the Law on Environmental Protection (1996)<sup>49</sup>, the Law on Fauna (1996)<sup>50</sup>, the Law on Water (1997)<sup>51</sup>, the Law on Nuclear and Radiation Safety (1998)<sup>52</sup>, the Law on Pesticides and Agrochemicals (1998)<sup>53</sup>, the Law on the Protection of Air (1999)<sup>54</sup>, the Forest Code (1999)<sup>55</sup>, the Law on Compensation for Damage Caused by Hazardous Substances (1999)<sup>56</sup>, the Law on Soil Conservation, Restoration and Improvement of its Fertility (2003)<sup>57</sup>, the Law on the Red List and the Red Book of Georgia (2003)<sup>58</sup>, the Law on the Permission to Impact the Environment (2008)<sup>59</sup>, the Law on Ecological Expertiza (2007)<sup>60</sup>.

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<sup>44</sup> The Constitution of Georgia, August 24, 1995 (Bulletin of the Georgian Parliament \ *Sakartvelos parlamentis utskebebi*\, 1995, № № 31-33, Art. 668) // as amended on 15/12/2010.

<sup>45</sup> The Law of Georgia on the Protection of Soil, May 12, 1994 (Bulletin of the Georgian Parliament \ *Sakartvelos parlamentis utskebebi*\, 1994, № № 18, p. 368) // as amended on 17/12/2010.

<sup>46</sup> The Law on Transit and Import of Waste on the Territory of Georgia, February 08, 1995 (Bulletin of the Georgian Parliament \ *Sakartvelos parlamentis utskebebi*\, 1994-1995, № № 23-26, p. 504) // as amended on 12/11/2010.

<sup>47</sup> The Law of Georgia Law on the System of Protected Areas, March 7, 1996, № 136-IIc (Bulletin of the Georgian Parliament \ *Parlamentis utskebani*\, № 003, 03.27.1996) // as amended on 18/12/2007.

<sup>48</sup> The Law of Georgia on Mineral Resources, May 17, 1996, № 242-IIc (Bulletin of the Georgian Parliament \ *Parlamentis utskebani*\, № 16, 26.06.1996) // as amended on 07/12/2010.

<sup>49</sup> The Law of Georgia on Environmental Protection, December 10, 1996, № 519-Ic (Bulletin of the Georgian Parliament \ *Parlamentis utskebani*\, № 1-2(33-34/7), 22.01.1997) // as amended on 04/05/2010.

<sup>50</sup> The Law of Georgia on Fauna, December 26, 1996, № 540-pc (Bulletin of the Georgian Parliament \ *Parlamentis utskebani*\, № 1-2(33-34/7), 22.01.1997) // as amended on 06/07/2010.

<sup>51</sup> The Law of Georgia on Water, October 16, 1997, № 936-Ic (Bulletin of the Georgian Parliament \ *Parlamentis utskebani*\, № 44, 11.11.1997) // as amended on 23/03/2010.

<sup>52</sup> Law of Georgia on Nuclear and Radiation Safety, October 30, 1998 № 1674-Ic (Legislative Bulletin of Georgia \ *Sakartvelos sakanonmdeblo Matsne* \ I, № 5, 1998, p. 40) // as amended on 05/05/2010.

<sup>53</sup> Law of Georgia on Pesticides and Agrochemicals, November 25, 1998, № 1696-Ic (Legislative Bulletin of Georgia \ *Sakartvelos sakanonmdeblo Matsne* \ I, № 6, 1998, p. 45) // as amended on 29/12/2006.

<sup>54</sup> Law of Georgia on the Protection of Air, June 22, 1999, № 2116-IIc (Legislative Bulletin of Georgia \ *Sakartvelos sakanonmdeblo Matsne* \ I, № 30(37), 1999, p. 158) // as amended on 12/11/2010.

<sup>55</sup> The Forest Code of Georgia, June 22, 1999 № 2124-IIc (Legislative Bulletin of Georgia \ *Sakartvelos sakanonmdeblo Matsne* \ I, № 28(35), 1999, p. 148) // as amended on 06/07/2010.

<sup>56</sup> The Law of Georgia on Compensation for Damage Caused by Hazardous Substances, July 23, 1999 № 2350-pc (Legislative Bulletin of Georgia \ *Sakartvelos sakanonmdeblo Matsne* \ I, № 40(47), 1999, p. 200) // as amended on 06/06/2003.

<sup>57</sup> Law of Georgia on Soil Conservation, Restoration and Improvement of its Fertility, May 08, 2003 № 2260-IIc (Legislative Bulletin of Georgia \ *Sakartvelos sakanonmdeblo Matsne* \ I, № 14, 03.06.2003, p. 92) // as amended on 17/12/2010.

<sup>58</sup> Law of Georgia on the Red List the Red Book of Georgia, June 06, 2003 № 2356-IIc (Legislative Bulletin of Georgia \ *Sakartvelos sakanonmdeblo Matsne* \ I, № 19, 01.07.2003, p. 126) // as amended on 06/07/2010.

## 2) Regulatory and control (supervisory) authorities

The existing regulatory system in the field of environmental protection in Georgia is focused on environmental protection and public administration of the use of natural resources.

The Ministry of Environmental Protection implements the state policy in the field of environmental protection and rational, sustainable and integrated management of natural resources; exercises state control over observance of legislation in the field of environmental protection; organizes the system of nuclear and radiation safety; organizes the weather service; organizes the environmental monitoring and etc.

The Ministry of Health within its competence in the field of environmental protection implements state policy to ensure compliance with health standards and sanitary regulations, and conducts other functions established by the Laws on Public Health, the Law on the Protection of Health, and the legislation of Georgia.

Individual responsibilities in the area of environmental protection are vested with the administrative-territorial units - municipalities and cities, and autonomous regions in accordance with the Constitution of Georgia, the Organic Law on Local Self-Government (2006), the Law on the Capital of Georgia - Tbilisi (1998), the Constitutional Law on the Status of Adjara Autonomous Republic (2004) and other legislative acts. Under Article 16 of the Organic Law on Local Self-government, the self-governing units exercise the following exclusive authorities in the field of environmental protection and related fields: land use planning, division of the territory of self-governing units into the zones (landscaping, recreational, industrial, commercial and other special zones), establishment and alteration of its boundaries, management of forest and water resources of local importance, implementation of works on water supply, drainage and sewage, collection and recycling of household waste or municipal procurement for these purposes; spatial-territorial organization of self-governing units. The Constitutional Law on Status of Autonomous Republic of Ajara establishes (Article 7) the right to the exclusive jurisdiction of the Autonomous Republic of Adjara over the following matters: urban development of local importance, sanitation, hunting and forest management. The Law on Environmental Protection declares the basic principles of environmental protection: risk reduction, sustainability, prioritizing, payment for use of natural resources, the "polluter pays" principle, principle of conservation of biological diversity, the principle of waste minimization, assessment of environmental impacts, public participation in decision-making process, the principle of accessibility of information on the state of the environment, etc.

At the same time, the national expert notes a number of recent trends of the regulatory system in the field of environmental protection in Georgia:

- abandonment of the 'polluter pays' principle and abolishment since 2005 to charge fees for dumping \ emission of harmful substances within the established limits into water and the atmosphere;

- abolishment in 2005 of the mechanisms for obtaining permits and licenses, and charging fees for the use of certain types of natural resources;

- gradual abolishment (2005-2007) of the licensing mechanism (limits) for dumping \ emission of harmful substances into water and the atmosphere for existing businesses. Since 2008, the general (standard) technical rules for calculation of limits of discharges \ emissions to water and air are used as single management tool in the area of environmental pollution control. Calculation is carried out by the enterprises themselves, and the results are referred to the environmental authorities for information purposes only. The information provided, as well as calculated by the environmental authorities limits of discharges \ emissions, can be used to calculate the damage - in the case of exceeding the limits of discharges \ emissions;

- abolishment in 2007 of the mechanism of licensing for water use for industrial purposes and drinking water supply purposes from water bodies;

- adoption in 2007 of the limited national list of the types of activities that require performance of procedures referred to in paragraph 1a of Article 6 of the Aarhus Convention for decisions on whether to permit proposed activities listed in Annex 1 of the Convention;

- lack of regulatory mechanisms and controls to prevent the generation of municipal and industrial waste.

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<sup>59</sup> The Law of Georgia on the Permission to Impact the Environment, December 14, 2007 № 5602-pc (Legislative Bulletin of Georgia \ *Sakartvelos sakanomdeblo Matsne* \ I, № 47, 26.12.2007, p. 404) / / as amended on 28/10/2010.

<sup>60</sup> Law of Georgia on Ecological Expertiza, December 14, 2007, № 5603-pc (Legislative Bulletin of Georgia \ *Sakartvelos sakanomdeblo Matsne* \ I, № 47, 12/26/2007.

### **3) Role of the Prosecutor's Office**

The role and powers of the Prosecutor's Office is established by the Law on the Prosecutor's Office (2008), the Law on Operational Investigations, and by the Code of Criminal Procedure. Under the Law on Prosecutor's office, the prosecutor's office of Georgia is a state institution under the jurisdiction of the Ministry of Justice.

The Prosecutor's Office carries out the prosecution, in order to ensure the prosecution conducts the procedural guidance on the investigation stage, conducts the investigations, exercises supervision over the strict and uniform enforcement of the law during operational investigations; in criminal cases heard in the courts acts as a party and conducts the public prosecution, in cases specified by law on behalf of the State as a plaintiff participates in cases to be heard in civil proceedings.

The prosecutor exercising its powers issues the following acts: request, order, protest, decision, consent, instruction, complaint, information. Order, protest, decision and instruction of the prosecutor are binding.

Citizens, NGOs have no right to initiate criminal prosecution for crimes relating to the environment. They are entitled to apply with applications to the prosecutor's office or to the law enforcement authorities, which have the right to initiate criminal prosecution.

### **4) The judicial system**

The judicial system of Georgia consists of the Constitutional Court (the Organic Law of Georgia on the Constitutional Court of Georgia (1996) and the general courts (the Organic Law of Georgia on the General Courts (2009)).

The Constitutional Court is the judicial body of constitutional control, ensuring supremacy of the Constitution, rule of law and protection of the constitutional rights and freedoms. The Constitutional Court considers the matters of conformity of the normative acts, including legislative acts, with the Constitution of Georgia.

The system of the general courts of Georgia has three levels: district (city) courts, the appellate courts, the Supreme Court (Court of Cassation). The Supreme Court consists of: a) the Chamber on Civil Cases, b) the Chamber on Administrative Cases, c) the Chamber on Criminal Cases, d) the Grand Chamber, e) the Plenum, and e) the Disciplinary Chamber. There are two appellate courts. The appellate courts consist of: a) the Chamber on Civil Cases, b) the Chamber on Administrative Cases, c) the Chamber on Criminal Cases, d) the Inquiry Board. The court of appeal in accordance with the procedural law collectively considers appeals against decisions of district (city) courts.

A district (city) court is the court of first instance considering cases within its jurisdiction. In district (city) courts consisting of more than two judges and having heavy workload of cases, the specialized judicial boards can be established.

In matters relating to the environment, individual and (or) NGOs shall apply to the court of first instance - to a district (city) court.

Public access to court decisions in matters relating to the environment is formally possible, but technically difficult, because the decisions of courts of first and second instances are not being published. Only some decisions of the Supreme Court as of the court of cassation are published.

Judges are aware of the legislation concerning the environment, including international agreements in this field.

There are no advisory and/or other opinions of the Supreme Court in matters relating to the environment.

### **5) The Ombudsman**

The Commissioner for Human Rights Service (Ombudsman) exists and is empowered to address issues of human rights violations, including those relating to the environment, in accordance with the Organic Law of Georgia on the Ombudsman (1996). The Ombudsman is entitled to conduct independent verification of the facts stated in a complaint. Public authorities / officials and other parties shall provide information and other assistance to the Ombudsman in performance of his duties.

## **B. Information on the procedures for making decisions in environmental matters, and opportunities to challenge them**

### **1) Decision-making system**

Decisions on construction of facilities, implementation of other activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention, are made by the Ministry of Economy and Sustainable Development or by the bodies of local self-government, depending on the scale and nature of the construction. Permits for the use of natural resources (within the activities listed in Annex I to the Aarhus Convention), including their renewal, a review of their conditions are issued by the Ministry of Economy and Sustainable Development. The legislation does not provide for public participation in adoption/issuance of such decisions and permits. At the same time, as noted by the national expert, requirements for public participation are provided for in the process of OVOS preparation, and expertizas (environmental, urban, complex, etc.).

Information on the procedures for making decision on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is indicated in Figure 7 (pp. 60-61).

## **2) Challenging of decisions in non-judicial (administrative) procedure**

The public (individuals, NGOs) have the right to challenge substantive and procedural legality of any decision concerning the environment on specific activities in administrative proceedings by referring either to the authority that took a decision, or to a superior authority. This right is enshrined in the General Administrative Code and in the Code of Administrative Procedure. General Administrative Code provides for establishment of a non-judicial independent body that meets the criteria for "independence and impartiality," but in practice, such body is not created.

The public has the right to challenge in administrative procedure only action / omissions of public authorities, "which violate the provisions of law relating to the environment" to the competent administrative authority and later to the court of first instance.

Actions / omissions by private persons can be appealed in the administrative procedure, only if such private person is a party to an administrative contract. According to Article 2 of the General Administrative Code an administrative contract is a civil contract concluded by an administrative body and a natural or a legal person, as well as other administrative body with the purpose to implement its public authority.

Administrative appeal procedure includes a) referral of an administrative complaint to the competent administrative authority, and b) in case of dissatisfaction with the results of the review of the complaint - filing a lawsuit to the court. The court does not admit complaints against administrative authorities, if plaintiffs in the manner prescribed by the General Administrative Code, did not exhaust the opportunity to file complaints within administrative procedure (Article 1 of the Code of Administrative Procedure of Georgia).

Appeal procedures in administrative procedure are the same for individuals and NGOs. The right to appeal in administrative procedure accrues from the moment of acquaintance with the appropriate individual administrative legal act or decision.

As a general rule, the legislation sets one month time limit to appeal in administrative procedure. The missed time limit can be restored, if the interested party missed the established by law or by an administrative body time limit due to force majeure, illness, through administrative body's fault or other valid reasons.

At the same time the legislation does not establish a duty to inform the public about its decisions as well as the results of administrative review procedures, except for sending information to the applicants. In practice, the public is informed on the decisions taken through the Web-portal of the Aarhus Center of Georgia. However, the posted information is not comprehensive.

**Figure 7**

<b>Procedure (decision) on matters relating to the environment<sup>61</sup></b>	<b>Body authorized to carry out the procedure (to make the decision)</b>	<b>Period of validity of decisions, permits or other documents issued due to the procedure</b>	<b>The possibility of participation envisaged</b>	<b>Body to which one can appeal the decision / action / omission</b>	<b>Legal act regulating the carrying out of the procedure (making the decision)</b>
Decision on construction of a facility, on implementation of an activity;	a) the Ministry of Economy and Sustainable Development or b) bodies of local self-government  (Depending on the scale and nature of construction)	expiration date of a final decision on the construction depends on the scale and nature of construction  (Average from 1 to 2 years)	not provided	<u>Step 1:</u> administrative complaint is referred to the competent administrative authority  <u>Step 2:</u> filing a lawsuit to court of first instance	1. The Law on the Licenses and Permits  2. General Administrative Code <sup>62</sup>
Decision on the EIA, conclusion of expertize (ecological, urban, complex, etc.);	the Ministry of Environmental Protection	expiration date of a decision (in this case of a permit to impact the environment) is not established	provided	<u>Step 1:</u> administrative complaint is referred to the competent administrative authority  <u>Step 2:</u> filing a lawsuit to court of first Instance	1. The Law on the Licenses and Permits 2. General Administrative Code 3. The Law on Permit for impact on the environment 4. The Law on Ecological Expertise
Permits for the use of natural resources (within the activities listed in Annex I to the Aarhus Convention), including its renewal, a review of its conditions;	the Ministry of Economy and Sustainable Development	permits (licenses) for the use of natural resources can be granted for up to 50 years	not provided	<u>Step 1:</u> administrative complaint is referred to the competent administrative authority  <u>Step 2:</u> filing a lawsuit to court of first Instance	1. The Law on the Licenses and Permits 2. General Administrative Code

<sup>61</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

<sup>62</sup> General Administrative Code of Georgia, June 25, 1999 № 2181-IIc (Legislative Bulletin of Georgia \ *Sakartvelos sakanonmdeblo Matsne* \ I, № 32(39), 1999, p. 166) // as amended on 21/07/2010.

Permits for emissions / discharges of pollutants, including its renewal, a review of its conditions;  (Note: permit for emissions / discharges is not required by law as an independent type of authorization)	–	–	–	–	–
Permits related to waste management;  (Landfills)	the Ministry of Environmental Protection	expiration date of a decision (in this case of a permit to impact the environment) is not established	provided	<u>Step 1:</u> administrative complaint is referred to the competent administrative authority <u>Step 2:</u> filing a lawsuit to court of first Instance	1. The Law on the Licenses and Permits 2. General Administrative Code 3. The Law on Permit for impact on the environment 4. The Law on Ecological Expertise
other, if there are, within the activities listed in Annex I to the Aarhus Convention.	–	–	–	–	–

### **3) Judicial procedure. Standing (of individuals, NGOs) in matters relating to the environmental**

In matters relating to the environment, an individual and (or) an NGO can appeal to the court of first instance - a district (city) court - with a complaint on an action / omission, violating the rights or legitimate interests of the complainant (in administrative proceeding) or with a lawsuit (in civil proceedings). It is necessary to exhaust pretrial (administrative) procedures before applying to court.

Administrative and civil procedural law establishes the right to appeal to the court only of those persons (individuals, NGOs, and other legal entities), whose rights or legitimate interests were violated. The right to file 'an abstract claim' that is a lawsuit to protect the rights and interests of the 3-rd persons or of indefinite number of persons is not envisaged by the procedural law.

The public (individuals, NGOs) can apply to the court and appeal decisions relating to the environment, taken in violation with environmental legislation, only if the rights and legitimate interests of the complainant / plaintiff were violated by the contested decision.

## **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

### **Administrative procedure**

#### **1) Challenging of decisions, actions, omissions**

The public (individuals, NGOs) has the right to challenge in administrative procedure any action / omission of supervisory authorities, violating their rights and legitimate interests. A complainant is entitled to request for suspension of activities / decisions in the case of their appeal in administrative procedure.

An administrative body is entitled to issue a decision requiring a supervisory authority to take actions to suspend/terminate the activity which contradicts the law relating to the environment.

#### **2) Automatic suspension of decisions / actions / activities in the case of their appeal**

Mandatory provisions establishing an unconditional obligation of a party to suspend its activity / decision which is being challenged in administrative procedure are not envisaged in the law.

#### **3) The prohibition on activity**

##### **a) temporary**

Bodies of the Ministry of Environmental Protection are entitled to temporarily suspend activities of the controlled facilities (companies), to seal facilities, installations, equipment, if the activity of the facility (company) is illegal, or (and) if due to this activity a serious and immediate threat to public safety, life or health of the person (s) or evidence is posed, as well as to immediately refer the appropriate motion to suspend activities of the facility (company) to the court.

##### **b) permanent**

Termination of illegal activities of enterprises and other organizations in case if due to this activity a serious and immediate threat to public safety, human life or health is posed is only possible by a court decision.

### **Judicial Procedure**

#### **4) Challenging of decisions, actions, omissions**

Citizens and NGOs have equal opportunities in using remedies (injunction, redress, restoration of the violated rights, etc.).

These remedies are listed in the Civil Code, the Criminal Code, and the procedural codes.

The public (individuals, NGOs) also has the right to challenge omissions of supervisory authorities in the court.

#### **5) Automatic suspension of decisions / actions / activities in the case of their appeal**

Mandatory provisions establishing an unconditional obligation of a defendant to suspend its activity / decision which is being challenged in the judicial procedure are not envisaged in the law.

#### **6) Injunctive relief**

##### **a) temporary**

The legislation provides for the possibility of the court to suspend ongoing activities / decisions as a security for the claim for the period of the proceedings, only if failure to impose a preliminary injunctive relief on such activities / decisions will affect the execution of a court decision.

#### **b) permanent**

Termination of illegal activities of enterprises and other organizations, in case if due to this activity a serious and immediate threat to public safety, human life or health is posed, is only possible by a court decision.

#### **7) Claim for compensation of damage / injury (including caused to the environment), compensation of non-pecuniary damage**

The right of the public (of individuals, NGOs) to bring legal actions for compensation for damage caused to the environment is not established by law. The legislation establishes a possibility for individuals/NGOs to file claims for compensation for injury, damage to property of a citizen, or for compensation for damage of property of NGOs.

A natural person has the right to claim for compensation for non-pecuniary damage caused by the violation of his non-material rights.

#### **8) Legal action for the protection of "the public interest» - actio popularis**

Claims for the public interest are not stipulated by law.

#### **9) Time limits**

Time limits for consideration of complaints in administrative procedure are 1-2 months.

A lawsuit shall be filed to the court within one month<sup>63</sup> from the date a plaintiff got acquainted with an appropriate individual administrative legal act or with a decision related to his administrative complaint, as well as from the deadline for a decision on his administrative complaint; and within 3-month period after the occurrence of a direct damage in the case of appeal of a normative act (Article 22 of the Administrative Procedural Code of Georgia). Consideration of cases in courts take on the average up to 6 months in one (first) instance, and 1.5 years or more, if one go thought the whole procedure.

### **D. Costs**

#### **1) Financial expenses associated with administrative procedure**

Appeals in administrative procedures are free of charge according to the provisions of the General Administrative Code. Participation of a lawyer (attorney) in the process of appeal in administrative procedure is not mandatory.

#### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

For filing lawsuits to the court the court fee is charged. As a general rule, it is determined as a percentage of the claim (3 to 5%). Thus, when filing a case to the court of first instance the court fee for individuals shall not to exceed 3 000 Georgian laris (around 1 678 U.S. dollars<sup>64</sup>), for legal entities – 5 000 laris (around 2 796 USD); to the court of appeal for individuals – 5 000 laris (around 2796 USD), for legal entities – 7 000 laris (around 3 915 USD); to the court of cassation (third instance) for individuals – 6 000 laris (around 3 356 USD), for legal entities – 8 000 laris (around 4 474 USD).

At the same time, the official subsistence minimum per month for one person as of January 1, 2011 was 109-123 USD.

The rules under which certain categories of plaintiffs are (can be) exempt from payment of judicial expenses under the law or a court order are established in the legislation, but NGOs are not included in these categories.

#### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

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<sup>63</sup> Before 2009 six months' time limit was established.

<sup>64</sup> This report uses the operational rate of Georgian Lari to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 1.788 Lari.

When addressing the court of first instance it is not mandatory to use services of an attorney. Attorney's fee in the studied category of cases is determined by agreement and depends on who is the plaintiff - an individual or an organization.

#### **4) Costs of examination, involvement of experts and witnesses**

The costs associated with involvement of an expert or a witness by an interested party shall be compensated by the interested party. The procedure for determination of the costs of experts is not formally established, it all depends on the complexity of examinations and studies.

#### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

The legislation establishes an obligation of a plaintiff (an individual/ an NGO) in environmental matters to compensate for damage caused to a defendant by the motion for an injunctive relief as a security for a claim.

#### **E. Legal aid (state, non-state)**

The official system of provision of free legal assistance to individuals is in place. However, as of today it does not cover administrative and civil cases (the Law on Legal Aid (2007)). Lawyers/public interest law organizations operating in the environmental field and/or providing legal aid to public, including NGOs, on environmental matters operate in the country. Citizens and NGOs have the opportunity to get free legal assistance in matters relating to the environment from NGOs, lawyers, or law firms, but everything is decided by agreement.

# KAZAKHSTAN

## A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation

### 1) Legislative system<sup>65</sup>

Legislation of the Republic of Kazakhstan on environmental protection is based on the Constitution of the Republic of Kazakhstan (1995)<sup>66</sup> and consists of the norms of the Civil Code of the Republic of Kazakhstan (1999) (Special Part)<sup>67</sup>, the Code of Civil Procedure of the Republic of Kazakhstan (1999)<sup>68</sup>, the Land Code of the Republic of Kazakhstan (2003)<sup>69</sup>, the Forest Code of the Republic of Kazakhstan (2003)<sup>70</sup>, the Water Code of the Republic of Kazakhstan (2003)<sup>71</sup>, the Environmental Code of the Republic of Kazakhstan (2007)<sup>72</sup>, the Code of the Republic of Kazakhstan on People's health and the health care system (2009)<sup>73</sup>, as well as the Laws of the Republic of Kazakhstan on Specially Protected Natural Territories (2006)<sup>74</sup>, on the Protection, Reproduction and Use of Animals (2004)<sup>75</sup>, on Subsoil and Subsoil Use (2010)<sup>76</sup>, on State Regulation of Production and Turnover of Certain Types of Petroleum Products (2003)<sup>77</sup>, on Architecture, Urban Planning and Construction Activities in the Republic of Kazakhstan (2001)<sup>78</sup>, on Radiation Safety of the Population (1998)<sup>79</sup>, on the Natural and Technogeneous Emergency Situations (1996)<sup>80</sup> and other normative acts.

### 2) Regulatory and control (supervisory) authorities

Public authorities exercising the functions of environmental protection include the central executive body in the field of environmental protection and authorities of special competence.

The central executive body of Kazakhstan, conducting supervision and inter-sectoral coordination on issues of state policy in the field of environmental protection, use of natural resources and environmentally sustainable development of the society is the Ministry of Environmental Protection of the Republic of Kazakhstan, which has in its structure a department - the Committee on Environmental Regulation and Control and regional bodies<sup>81</sup>.

Bodies exercising governmental control in the field of environmental protection, protection, reproduction and use of natural resources are:

1) the authorized body in the field of environmental protection - the Committee for Environmental Regulation and Control, within the Ministry of Environmental Protection of the Republic of Kazakhstan, carries out functions of regulation and state ecological control in the field of the protection of the environmental and natural resources.

2) the authorized governmental body in the field of use and protection of water resources - the Ministry of Agriculture of the Republic of Kazakhstan (the Water Resources Committee) implements state policy and carries out state control in the field of use and protection of water resources;

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<sup>65</sup> The electronic database of the legislation of Kazakhstan in Russian - <http://online.prg.kz>

<sup>66</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 1996, № 4, p. 217.

<sup>67</sup> Published: Bulletin of the Parliament of RK, 1999, № 16-17, p. 642; № 23, p. 929; 2000, № 3-4, p. 66; № 10, p. 244; № 22, p. 408.

<sup>68</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 1999, № 18, p. 644.

<sup>69</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 2003, № 13, p. 99.

<sup>70</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 2003, № 16, p. 140.

<sup>71</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 2003, № 17, p. 141.

<sup>72</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, January 2007, № 1 (2482), p. 1.

<sup>73</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, September 2009, № 20-21 (2548-2549), p. 89.

<sup>74</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, July 2006, № 16 (2473), p. 96.

<sup>75</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 2004, № 18 (2427), p. 107.

<sup>76</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, June 2010, № 12 (2565), p. 60.

<sup>77</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 2003, № 6, p. 33; CPGA of the Republic of Kazakhstan, 2009, № 57, p. 486.

<sup>78</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 2001, № 17-18) p. 243.

<sup>79</sup> Published: Bulletin of the Parliament of RK № 5-6 (2271) dated 4/28/98.

<sup>80</sup> Published: Bulletin of the Parliament of the Republic of Kazakhstan, 1996, № 11-12, p. 263.

<sup>81</sup> Regulation on the Ministry of Environmental Protection of the Republic of Kazakhstan, approved by the Government of the Republic of Kazakhstan on December 8, 2007 № 1201.

3) the central authorized body for the land management – the Land Administration Agency of the Republic of Kazakhstan exercises supervision in the field of land management, land-surveying and mapping activities, and to the extent provided by law, carries out inter-sectoral coordination and other special executive and licensing functions;

4) the authorized governmental body in the field of forestry; the protection, reproduction and use of wildlife; as well as in the field of protected areas - the Forest and Hunting Committee within the Ministry of Agriculture of the Republic of Kazakhstan implements state policy and carries out state control in the field of forestry, protection, reproductive and use of wildlife (except for fish and other aquatic animals), and protected areas;

5) the authorized state body in the field of prospecting and exploitation of mineral resources - the Ministry of Industry and New Technologies of the Republic of Kazakhstan, exercises supervision in the field of industry, industrial innovation, research and technological development of the country, carries out technical regulation and ensures measurement accuracy; electric-power industry; mineral resources, except for hydrocarbon raw materials; state geological survey, the reproduction of mineral resources, sustainable and integrated use of mineral resources, public administration in use of mineral resources in terms of solid minerals, ground water and mud; coal industry; the use of nuclear energy; support of use of renewable energy sources, energy efficiency; as well as conducts an inter-sectoral coordination of state bodies in activities relating to its competence;

6) the authorized state body in the field of industrial safety - The Committee for State Control of Emergencies and Industrial Safety within the Ministry of Emergency Situations of the Republic of Kazakhstan, implements state policy and carries out state control in the field of industrial safety;

7) the authorized government body in the field of sanitary and epidemiological wellbeing of population - the Ministry of Health Protection of the Republic of Kazakhstan (the Committee on State Sanitary and Epidemiological Control), exercises supervision in the field of health protection, medical and pharmaceutical science, medical and pharmaceutical education, sanitary and epidemiological safety of the population, handling of medicines, medical devices and medical equipment, quality control of medical services.

### **3) Role of the Prosecutor's Office**

The Prosecutor's Office in Kazakhstan is vested with considerable powers and plays a significant role in the field of environmental protection.

Thus, in accordance with Article 83 of the Constitution the Republic of Kazakhstan the Prosecutor's Office on behalf of the State shall exercise the supreme supervision over exact and uniform application of laws, decrees of the President of the Republic of Kazakhstan and other normative legal acts on the territory of the Republic, over legality of operatively-search activity, inquiry or investigation, administrative and executive procedures; take measures to identify and eliminate any violations of the law, as well as challenge the laws and other legal acts contradicting the Constitution and laws of the Republic. The Prosecutor's Office represents the interests of the State in court, as well as conducts prosecution in the cases and within the procedure and limits prescribed by law.

The Prosecutor's Office is a centralized system with subordination of subordinate procurators to the superiors and to the Procurator General of the Republic. It exercises its powers independently from other government authorities, officials and is accountable only to the President of the Republic.

The competence, organization and procedures of the Prosecutor's Office are established by the Law of the Republic of Kazakhstan on the Prosecutor's Office, 21 December 1995 № 2009.

### **4) The judicial system**

Courts of the Republic include the Supreme Court of the Republic, local and other courts of the Republic established by law. The judicial system of the Republic is established by the Constitution and the Constitutional Law of the Republic of Kazakhstan on the Judicial System and Status of Judges of the Republic of Kazakhstan (2000).

The Supreme Court of the Republic of Kazakhstan is the highest judicial body on civil, criminal and other cases within the jurisdiction of local and others courts. In established by law procedural forms it carries out supervision over activity of local courts and gives advisory opinions on the issues of judicial practice.

The local courts include:

1) regional and equated courts (the city court of the capital, city courts of the cities of republican importance);

2) district and equated courts (city courts, inter-district courts).

Other courts, including the specialized courts, can be established in the Republic of Kazakhstan.

## **5) The Ombudsman**

The Regulation on the Commissioner for Human Rights was approved according to the Decree of the President of the Republic of Kazakhstan dated September 19, 2002 № 947 on the Establishment of the Commissioner for Human Rights.

According to the Regulation the Commissioner for Human Rights - is a public official responsible for monitoring of observance of human and citizens' rights and freedoms. The Ombudsman is entitled within its jurisdiction to take measures to restore the violated human and citizens' rights and freedoms.

The Commissioner by its activity complements the existing remedies for the protection of human and citizens' rights and freedoms. Activity of the Ombudsman does not limit the jurisdiction of other public authorities engaged in the protection of human rights in accordance with the Constitution and laws of the Republic of Kazakhstan.

The Commissioner in implementing its activities is independent.

In carrying out its activities the Commissioner is considering the complaints of citizens of the Republic of Kazakhstan, foreign citizens, stateless persons, against actions and decisions of officials and organizations that violate their rights and freedoms guaranteed by the Constitution, laws and treaties of the Republic of Kazakhstan. There are no restrictions in the jurisdiction of the Commissioner to consider issues relating to the environment.

### **B. Information on the procedures for making decisions in environmental matters, and opportunities to challenge them**

#### **1) Decision-making system**

Information on the procedure for making decisions on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is indicated in Figure 8 (pp. 68-75).

Article 13 and 14 of the Environmental Code of the Republic of Kazakhstan establish the rights of individuals and associations in the field of environmental protection, including the right to participate in decision-making of public authorities in matters relating to the environment, the right to submit letters, complaints, applications and proposals in environmental matters and require its consideration, the right to environmental information, the right to initiate and organize public ecological expertise and public hearings (by non-governmental associations).

#### **2) Challenging of decision in non-judicial (administrative) procedure**

Any natural or legal person, including an NGO, has the right to challenge the material and procedural legality of a decision of a public authority or its official.

Appeal of decisions in administrative procedure is conventionally understood as appeal of decisions of authorized bodies and officials to a superior authority or a superior official. There is no separate, special non-judicial body for the review of complaints against decisions in the field of environmental protection.

Procedures for decision-making and its implementation by the governmental bodies and officials within their state functions and official duties, as well as procedures for handling citizens' appeals on enjoyment of their rights and procedures for administrative protection of the rights and legitimate interests of citizens are regulated by the Law of the Republic of Kazakhstan on Administrative Procedures (2000).

Also procedures for appeals, requests and complaints to the public authorities are regulated by the Law of the Republic of Kazakhstan on the Procedure of Consideration of Appeals of Natural and Juridical Persons (2007). According to the law a complaint is a request of a person to restore or protect the violated rights and freedoms or legitimate interests of him or other persons, to eliminate unlawful actions or omissions of public authorities, local authorities, legal entities fully owned by the State or providing goods (works, services) in accordance with the terms of the state contract, and (or) public procurement, the subjects of big business or their officials, as well as to cancel their illegal decisions.

There are no special provisions defining or limiting the moment when the right to challenge accrues. The public has the right to challenge actions, omissions of any public official to the authorities entitled to consider complaints and take decisions.

**Figure 8**

<b>Procedure (decision) on matters relating to the environment<sup>82</sup></b>	<b>Body authorized to carry out the procedure (to make the decision)</b>	<b>Period of validity of decisions, permits or other documents issued due to the procedure</b>	<b>The possibility of public participation</b>	<b>Body to which one can appeal a decision / action / omission</b>	<b>Legal act regulating the carrying out of the procedure (making the decision)</b>
<p>Decision to construct a facility, to implement an activity;</p>	<p>Issuance (reasoned refusal to issue) of a permit for construction and installation works (hereinafter - CIW) (beginning of construction) is made by:</p> <p>1) the authorized state body in the field of architecture, urban planning and construction, which carries out the state architectural and construction control over the quality of construction of facilities of national importance;</p> <p>2) a local executive body of a region (or city of republican importance, or the capital), which carries out the state architectural and construction control over the quality of construction of facilities of local importance.</p> <p>In cases stipulated by the Rules, permits for construction and installation works for the reconstruction (reshaping, re-equipment) of individual premises or parts of residential buildings (houses, dormitories) are issued by the local executive bodies of regions (or city of republican importance, or the capital) carrying out the state architectural and construction control over the quality of construction on the territory within its</p>	<p>Documents submitted by an applicant for a permit for CIW works (beginning of construction), are considered within no more than 7 working days from the date of application.</p> <p>Permit for CIW (beginning of construction) is valid for the whole period of the normative duration of construction, approved as part of the project documentation. If the construction has not been completed within this period, an applicant (a developer) in order to continue construction shall obtain a new permit.</p> <p>In case of change of the original applicant (the developer) or the leading construction contractor (a general contractor), previously issued permit shall be re-registered, upon the application to be submitted to the authority which issued the permit no later than in 20 calendar days from the date of the change. Otherwise, the previously issued permit shall</p>	<p>Yes. Participation of natural persons and legal entities in the deliberations in making urban development, architectural and construction decisions may take the form of:</p> <p>1) direct participation;</p> <p>2) representation;</p> <p>3) other form, not prohibited by law.</p>	<p>If architectural, urban, and (or) construction activities in the area affect the interests of citizens, non-governmental associations and legal entities, they have the right to:</p> <p>1) seek for cancellation of a decision on the allocation, design, construction (reconstruction), or commissioning of facilities in administrative or judicial procedure;</p> <p>2) seek imposition of limitation, suspension or termination of activities performed in violation of laws or government regulations in administrative or judicial procedures;</p> <p>3) appeal to the court against actions of local executive bodies, as well as appeal the conclusion of expertiza of projects;</p>	<p>The Law of the Republic of Kazakhstan dated July 16, 2001 on Architecture, Urban planning and Construction Activities in the Republic of Kazakhstan, Rules of permitting procedures for construction of new and modification of existing facilities, as approved by the Resolution of the Government of the Republic of Kazakhstan dated May 6, 2008 № 425. Environmental Code of the RK.</p>

<sup>82</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

	<p>jurisdiction. The permit is issued based on the application and accompanying documents, the list of which is set by the authorized state body.</p>	<p>become invalid after the expiration of the deadline for application for re-registration. Performance of on-site CIW without a permit, or under the permit that has lost its validity, as well as the performance of the types of works not specified in the permit is considered to be illegal construction.</p>		<p>4) submit claims to the court for compensation for damage caused to health of citizens and (or) their property in connection with violations of laws or governmental regulations by private and public parties. 5) notify appropriate public authorities on other violations of laws and governmental regulations in the field of architecture, urban planning and construction activities. Thus, decisions, actions / omissions can be appealed both to the appropriate public authorities as well as directly to the courts.</p>	
<p>Decision on OVOS, conclusions of expertiza (ecological, urban planning, integrated etc.)</p>	<p>1. The Ministry of Environmental Protection, among other powers: 1) establishes time limits and procedure for providing access to environmental information relevant to the assessment procedure on the impact on the environment and decision-making on proposed economic and other activities; 2) approves the instructional and guidance documents for assessing the impact on the environment and the state ecological expertiza, including the regulations on the state ecological expertiza; The state ecological expertiza is conducted by the authorized body in the field of environmental protection (the Committee on Environmental Regulation and Control within the Ministry of Environmental Protection, and its territorial departments)</p>	<p>1. Positive conclusions of the integrated urban development expertiza of project documentation are valid for five years from the date of their issuance.</p>	<p>1. Yes. During development of the environmental impact assessment (OVOS) of the pre-planning, planning, design and project documentation of the economic and other activities public opinion is taken into account. Due account of public opinion is insured by public participation in preparation and discussion of OVOS, and is carried out by a developer of the planned economic and other activities.</p>	<p>1. Environmental disputes are resolved by the courts in accordance with the laws of the Republic of Kazakhstan. Environmental disputes between the parties of ecological relationships can be resolved through negotiations, including with participation of experts, or in accordance with previously agreed by the parties dispute settlement procedures.</p>	<p>1. Environmental Code of the RK. Issues of the Ministry of Environment of the Republic of Kazakhstan approved by the Resolution of the Government of the Republic of Kazakhstan dated December 8, 2007 № 1201, Instruction on the assessment of the proposed economic and other activities on the environment in developing of pre-planning, planning, design and project</p>

	<p>and by local executive bodies within their competence.</p> <p>The State ecological expertiza of category I facilities is carried out by the authorized body in the field of environmental protection, and for II, III and IV categories - by local executive bodies of regions (cities of republican importance, or the capital). Distribution of the Category I facilities subject to state ecological expertiza, between the authorized body in the field of environmental protection and its territorial offices is established by the authorized body in the field of environmental protection in accordance with the criteria approved by the Government of the Republic of Kazakhstan.</p>		<p>The main organizational forms of public participation are public hearing. An applicant (a developer) of design and project documentation organizes a public hearing by holding a meeting of the representatives of the public. For this purpose, the applicant (the developer) submits early notification to the mass media (hereinafter - the media) about the public hearings planned, the procedure for public access to the project OVOS, the date, time and venue of the public hearings.</p> <p>Public hearings are attended by representatives of the public concerned, the applicant and the developer, local authorities, regional environmental authorities;</p> <p>Collection of written proposals and comments from the public is carried out by the applicant (the developer), who informs the public through the media about the procedure of public access to materials of the</p>		<p>documentation, approved by the Order of the Minister of Environment Protection of the Republic of Kazakhstan dated June 28, 2007 № 204-p.</p>
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			<p>project OVOS and the submission of proposals and comments.</p> <p>The applicant (the developer) sets a receiving center for collection and registration of comments and suggestions, collection of written proposals and comments by a survey based on a questionnaire of the people in the vicinity of the proposed activity. In this event, the developer (the designer) informs the public in the media about the results of OVOS and procedure of public access to the materials of the project OVOS, the terms and conditions of the questionnaire survey.</p>		
	<p>2. Integrated urban development expertiza - state expertiza of urban planning and development projects of various levels is carried out by expert commissions formed by the authorized body in the field of architecture, urban planning and construction as to the projects approved by the Government of the Republic of Kazakhstan and by expert working groups formed by the relevant local authorities, for projects approved by the maslikhats.</p> <p>Urban development projects of various levels are subject to the integrated urban development expertiza in the manner prescribed by this Law, as well as</p>	<p>2. Republic of Kazakhstan Agency for Construction and Housing organizes and conducts integrated urban development expertiza of master plans of the cities of republican importance, and the capital, cities of regional importance, with an estimated population of over one hundred thousand inhabitants, as well as other city-planning documentation approved by the Government of the Republic of Kazakhstan.</p> <p>The competence of akimats of regions in the field of architecture,</p>	<p>2. Participation of natural persons and legal entities in the deliberations in making urban development, architectural and construction decisions may take the form of:</p> <ol style="list-style-type: none"> <li>1) direct participation;</li> <li>2) representation;</li> <li>3) other form, not prohibited by law.</li> </ol>	<p>2. If architectural, urban, and (or) construction activities in the area affect the interests of citizens, non-governmental associations and legal entities, they have the right to:</p> <ol style="list-style-type: none"> <li>1) seek for cancellation of a decision on the allocation, design, construction (reconstruction), or commissioning of facilities issued in violation of legislation or governmental regulations in administrative</li> </ol>	<p>2. The Law of the Republic of Kazakhstan on Architecture, Urban planning and Construction Activities in the Republic of Kazakhstan dated July 16, 2001 № 242-II</p>

	<p>government regulations in the field of architecture, urban planning and construction. A positive conclusion of the integrated urban development expertiza is the basis for approval of a development project of the appropriate level and for its further implementation.</p>	<p>urban planning and construction activities within the territory of its jurisdiction, include:  organization and carrying out of integrated state expertiza of urban development projects, master plans for cities of regional importance, with an estimated population of up to one hundred thousand inhabitants.</p>		<p>or judicial procedure;  2) seek imposition of limitation, suspension or termination of activities performed in violation of laws or governmental regulations in administrative or judicial procedures;  3) appeal to the court against actions of local executive bodies of regions (cities of republican importance, the capital), and districts (cities of regional importance), as well as appeal conclusions of expertiza of projects;  4) submit claims to the court for compensation for damage caused to health of citizens and (or) their property in connection with violations of laws or governmental regulations by private and public parties.  5) within the established by law procedure notify appropriate public authorities on other violations of laws and governmental regulations in the field of architecture, urban planning and construction activities.</p>	
<p>Permits for the use of natural resources (for the activities</p>	<p>Public administration in the field of management of natural resources includes, among other measures, issuance of licenses, permits; conclusion of agreements (contracts) for the use of natural resources; setting limits and distribution of quotas for</p>	<p>Validity of various permits for the use of natural resources is established by various regulations.</p>	<p>Public participation in the issue of permits for the use of natural resources is carried out accordingly to the rules of Articles 13 and 14 of</p>	<p>Decision, action / omission can be appealed to a superior public authority or to the court.</p>	<p>Environmental, Land, Water, Forest codes of the RK, the Law on Specially Protected Natural Areas,</p>

<p>listed in Appendix 1 to the Convention), including their renewal, renegotiation of its terms</p>	<p>the use of natural resources. The right of a special use of natural resources accrues on the basis of: - licenses and (or) permits for the use and removal of natural resources and implementation of certain types of activities, - decisions of the Government or the local executive bodies on provision of natural resources for use, - contracts for the use of natural resources. The right of a special use of natural resources can accrues by virtue of one, two or all of the above mentioned acts. Accordingly, decision on whether to grant a permit for the use of natural resources falls within the responsibility of the appropriate body (authorized to issue licenses, etc.), and is made in accordance with legal acts of the Republic of Kazakhstan.</p>		<p>the Environmental Code of RK <i>(See also para. B (1))</i></p>		<p>the Law on the Protection, Reproduction and Use of Fauna, the Law on Subsoil and Subsoil Use and other regulations</p>
<p>Permits for the use of natural resources (within the activity listed in Annex I to the Aarhus Convention), including their renewal, a review of its conditions; mineral resources</p>	<p>The Ministry of Oil and Gas, the Committee of Geology, local executive bodies of the cities of republican importance, of the capital</p>	<p>Contract for exploration - up to 6 years, contract for exploitation - the period as defined by the project</p>	<p>Public participation in the issuance of permits for the use of natural resources is carried out accordingly to the rules of Articles 13 and 14 of the Environmental Code of RK <i>(See also para. B (1))</i></p>	<p>Yes.</p>	<p>Law of the Republic of Kazakhstan on Subsoil and Subsoil Use</p>
<p>Permits for the use of natural</p>	<p>the Committee on Water Resources within the Ministry of Agriculture and its regional departments.</p>	<p>Short-term water use - up to five years, long-term water use - from five to forty-nine years</p>	<p>Within the framework of the state ecological expertiza</p>	<p>the judiciary</p>	<p>Water Code of the RK and regulations</p>

resources (within the activity listed in Annex I to the Aarhus Convention), including their renewal, a review of its conditions; water resources					
Permits for emissions / discharges of pollutants, including their renewal, a review of its conditions	the authorized body in the field of environmental protection, namely the Committee on Environmental Regulation and Control within the Ministry of Environmental Protection and its territorial departments, local executive bodies of regions (of the capital, of the cities of national importance)	Article 76 of the Environmental Code provides for validity periods of permits for emissions into the environment. They are valid until any changes in the technologies and environmental conditions specified in the license occur, but not more than: 1) three years for natural resources of the category I; 2) five years for natural resources for the categories II, III and IV .	Public participation in the issuance of permits for the use of natural resources is carried out accordingly to the rules of Articles 13 and 14 of the Environmental Code of RK <i>(See also para. B (1))</i>	A decision, action / omission can be appealed to a superior public authority or to the court.	Environmental Code of the RK, Rules for limitation, suspension or reduction of of GHG emissions as approved by the Resolution of the Government of the Republic of Kazakhstan dated February 11, 2008 № 128. The Law on Radiation Safety, the Law on Natural and Technogenic Emergency Situations and other regulations
Permits concerning waste management	The Committee on Environmental Regulation and Control within the Ministry of Environmental Protection and its territorial departments, local executive bodies of regions (of the capital, of the cities of national importance) Bodies of local self-government of regions	The Committee on Environmental Regulation and Control within the Ministry of Environmental Protection and its territorial departments, local executive bodies of regions (of the capital, of the cities of national importance)	Within the framework of state environmental expertiza Public participation in the issuance of permits for the use of natural resources is carried out	Decision, action / omission can be appealed to a superior public authority or to the court.	Environmental Code of the RK, the List of the best available techniques, approved by the Government of the Republic of

	<p>(of the capital, of the cities of national importance) in the field of environmental protection</p> <p>2) approve within its competence waste management programs.</p> <p>Integrated environmental permits are issued by the authorized body in the field of environmental protection.</p>	<p>Integrated environmental permit is issued instead of a permit for emissions to the environment, if an applicant is planning to gradually introduce the best available technologies aimed at reducing emissions into the environment and efficient use of natural resources.</p> <p>Integrated environmental permit is valid until changes of the technologies and environmental conditions specified in this permit occur.</p> <p>During the period of validity of the integrated environmental permits the applicant shall timely submit to the authorized bodies in the field of environmental protection the appropriate conclusions of the state ecological expertiza in the event of the expiration of the previously submitted.</p>	<p>accordingly to the rules of Articles 13 and 14 of the Environmental Code of RK</p> <p><i>(See also para. B (1))</i></p>		<p>Kazakhstan dated March 12, 2008 № 245,</p> <p>Rules of issuance of integrated environmental permits and the list of types of industrial facilities, for which it is possible to obtain an integrated environmental permit instead of a permit for emissions into the environment, approved by the Government of the Republic of Kazakhstan dated February 4, 2008 № 95</p>
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Article 12 of the Law of the Republic of Kazakhstan on the Procedure for Consideration of Appeals of Natural and Legal Persons, provides a mechanism to appeal decisions made as a result of consideration of appeals of natural and legal persons.

Procedures for administrative appeal of decisions, actions / omissions do not have significant difference for individuals and legal entities, including NGOs.

### **3) Judicial review**

#### **a) The role of courts, their jurisdiction**

According to the Constitution (Articles 75 - 82) justice in the Republic of Kazakhstan is executed only by the courts. Justice in the Republic of Kazakhstan is executed in forms of civil, criminal and administrative proceedings. In the cases stipulated by law, criminal proceedings are held with the participation of jurors.

#### **b) Standing (of individuals, NGOs) in matters relating to the environmental**

By virtue of Article 8 of the Code of Civil Procedure (hereinafter - CCP) of the RK, everyone is entitled in the prescribed manner appeal to the court for the protection of the violated or disputed constitutional rights, freedoms or legitimate interests. Public authorities, legal persons or citizens are entitled to apply to the court for the protection of the rights and legitimate interests of others or of an indefinite number of persons in the cases stipulated by law.

According to Article 19 of the Law of the Republic of Kazakhstan on Non-governmental Associations, non-governmental associations for implementation of their statutory purposes, in the prescribed by the legislation of the Republic of Kazakhstan manner, shall have the right to represent and protect the rights and legitimate interests of their members in courts and other public bodies, other non-governmental associations.

Within the meaning of Article 14 of the Environmental Code and the provisions of the Aarhus Convention, environmental non-governmental associations, including environmental NGOs, can apply to courts to protect the interests of an indefinite number of persons.

In this case it is important that the environmental issues were the objective of activity of a non-governmental association and were envisaged in its statutes. The head of a non-governmental association for the participation in court hearings does not need a letter of authority, if the right to participate in the trial on behalf of a legal entity is granted to him by the statute of the organization.

Crimes in the field of environmental protection are considered to be matters of public prosecution. Prosecution of these cases is carried out independently of complaints of victims.

Individuals / NGOs have the right to initiate criminal prosecution for crimes relating to the environment by filing applications to the law enforcement authorities.

### **4) Other (non-judicial) methods of dispute resolution**

In January 2011, the Law of the Republic of Kazakhstan on Mediation was adopted. This Law shall come into force in August 2011. Under the Law mediation can be applied to resolve disputes (conflicts) that arise out of civil, labor, family and other relationships with participation of individuals and (or) legal entities, as well as cases of minor and moderate crimes heard in criminal proceedings, if not provided otherwise by the laws of the Republic of Kazakhstan. Mediation procedure does not apply to disputes (conflicts) that arise from the relationship noted above, if such disputes (conflicts) affect or may affect the interests of third parties not involved in the mediation procedure, and those found incompetent (incapacitated) by the court.

Mediation procedure also does not apply to disputes (conflicts) that arise out of civil, labor, family and other relationships with individuals and (or) legal entities, when one of the party is a public authority.

## **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

### **Administrative procedure**

#### **1) General overview of the remedies in administrative review procedure of decisions, actions, omissions**

The public has the right to challenge actions, omissions of any public official to the authorities entitled to consider complaints and take decisions. Considering administrative appeals (complaints) of individuals and entities officials within their jurisdiction:

1) conduct an objective, comprehensive and timely review of appeals of individuals and entities, if necessary - with their participation;

- 2) take measures aimed at restoring the violated rights and freedoms of natural persons and legal entities;
- 3) inform applicants of the outcomes of their appeals and the actions taken;
- 4) notify applicants on referring of their appeals to the other authorities or officials in accordance with their competence.

## **2) Automatic suspension of decisions / actions / activities in the case of their appeal**

According to Article 8 of the Law of the Republic of Kazakhstan on Administrative Procedures dated November 27, 2000 № 107-II an appeal of an interested person on termination, modification or suspension of a legal act to a superior public authority or to the court suspends the validity of the appropriate decision.

## **3) The prohibition on the activity (temporary and/or permanent)**

Suspension or termination of activity or certain types of activity of individual entrepreneurs or legal entities is made only by the courts on the request of a body (official), authorized to consider cases on administrative violations.

## **Judicial Procedure**

By virtue of Article 8 of the Code of Civil Procedure of the RK, everyone is entitled in the prescribed manner appeal to the court for the protection of the violated or disputed constitutional rights, freedoms or legitimate interests. Public authorities, legal persons or citizens are entitled to apply to the court for the protection of the rights and legitimate interests of others or of an indefinite number of persons in the cases stipulated by law.

In accordance with Article 9 of the Civil Code, the protection of civil rights is exercised by the courts, the economic courts or arbitration courts by means of: recognition of rights, restoration of the situation that existed before the violation of law, restriction of actions that infringe or may infringe the right in the future, specific performance of a duty; recovery of damages, penalties, declaration of a transaction null and void; compensation of non-pecuniary damage, termination or modification of legal relations; cancellation of an act of state or local representative or executive body that contradicts the legislation, collection of fines from public authorities or officials for obstructing citizens or legal entities in their enjoyment of the right, as well as by other means provided for by the legislative acts.

Appeal for the protection of the violated right to a public authority does not preclude a possibility to appeal to the court to protect the rights, if the legislation does not provide otherwise.

In the cases specifically provided for by legislative acts, the civil rights can be protected directly by actual or legal actions of a person whose rights have been violated (self-defense).

A person whose right has been violated can demand full compensation of losses, if the legislation or a contract does not provide otherwise.

Losses caused to a citizen or a legal person due to publication of an act of a public authority which contradicts the law or due to actions (or omissions) of officials of public authorities should be compensated accordingly, by the Republic of Kazakhstan or an administrative-territorial unit.

## **4) General overview of the remedies in judicial review of decisions, actions, omissions**

CCP of the RK contains a Chapter 27 Proceeding on cases related to appeals against decisions and actions (or omissions) of public or local authorities, and their officials and public servants. In accordance with Article 278, every citizen and legal person can appeal a decision, action (or omission) of a public authority, a body of a local self-government or an official directly to the court. Pre-trial (administrative) appeal to the superior bodies, organizations, or official is not a prerequisite for submission of an appeal to the court and its consideration and resolution by the court on the merits.

Decisions, actions (or omissions) of public authorities, bodies of the local self-government, their officials and public servants that can be challenged in court include the collective and individual decisions and actions (or omissions), which resulted in:

- 1) violation of the rights, freedoms and legitimate interests of citizens and legal entities;
- 2) creation of obstacles in the implementation of citizen's rights and freedoms, as well as legal entities' rights and interests protected by law;
- 3) unlawful imposition of a certain duty on a citizen or a legal entity, or they were illegally brought to responsibility.

The following decisions and actions of public authorities, public associations and officials can not be challenged in the court under this chapter:

1) normative acts, which verification is attributed to the exclusive competence of the Constitutional Council of the Republic of Kazakhstan;

2) individual and normative legal acts in respect of which the law provides for a special procedure for judicial review.

The right to appeal certain decisions, actions / omissions in some cases is additionally stipulated in special laws.

### **5) Automatic suspension of decisions / actions / activities in the case of their appeal**

According to Article 8 of the Law of the Republic of Kazakhstan on Administrative Procedures dated November 27, 2000 № 107-II an appeal of an interested person on termination, modification or suspension of a legal act to a superior public authority or to the court suspends the validity of the appropriate decision.

### **6) Injunctive relief**

#### **a) temporary**

Along with the measure implied by Article 8 of the Law on Administrative Procedures (the suspension of the contested act), the plaintiff is entitled to file a motion to the court to take measures ensuring the claim referred to in Articles 158-159 of the CCP, including to prohibit a defendant to perform certain actions, to prohibit other persons to transfer property or to perform other obligations in respect of a defendant; to suspend the contested act of a public authority, organization or official.

Where necessary, the court is entitled to take other measures ensuring the claim that meets the objectives specified in the CCP. The court can take several measures to ensure the claim. For violation of certain prohibitions wrongdoers bear administrative responsibility. In addition, a plaintiff is entitled to file a lawsuit against those persons claiming for compensation for damages caused by failure to comply with court order on measures securing the claim.

The court is entitled to take measures to secure the claim at the request of the persons participating in the trial. Measures securing the claim are allowed at any stage of the proceedings, if failure to take these measures can make it difficult or impossible to execute a court decision (Article 158 CCP). However, the measures securing the claim shall be proportionate to the plaintiff's claims. (Article 159 CCP).

At the same time, plaintiffs should bear in mind that the court, applying the measures securing the claim, may require a plaintiff to provide securities of possible damages to a defendant. After the entry into force of the decision by which the claim was denied, a defendant may bring a legal action for damage compensation caused to his by measures ensuring the claim, made at the request of the plaintiff.

In case a claim was dismissed the measures taken to ensure the claim remain valid until a court decision enters into force. However, the court can at the same time when it makes a decision or following its decision issue an order abolishing the measures securing the claim. If the claim was met, the measures taken to ensure the claim remain in effect until the execution of the court decision.

In addition, the law established such measures as suspension of operations, as well as termination of the activity by the court order as penalties for failure to comply with certain conditions (orders) of public authorities. Such measures are considered to be the measures of administrative responsibility, imposed by a court of law. (*See below Section C. 6 (b)*)

#### **b) permanent**

The current legislation provides for both temporary and permanent suspension of operations.

Article 14 of the Environmental Code provides for the rights of non-governmental associations in the field of environmental protection, in particular, to claim for the cancellation in administrative or judicial procedure of decisions on the allocation, construction, reconstruction and commissioning of enterprises, constructions and other environmentally hazardous sites, as well as for the limitation, suspension and termination of business and other activities of individuals and entities that have a negative impact on the environment and human health.

It should be noted that the prohibition on operation is envisaged by the laws of administrative offenses. Hence, Article 45 of the Code of Administrative Offenses (CAO) provides that among other the following administrative penalties can be imposed on individuals for commitment of administrative offenses:

- revocation of license, special permit, certificate of qualification (certificate) or suspension of its validity for a particular activity or performance of certain actions (including exclusion from a register);
- suspension or termination of operation of an individual entrepreneur.

Among other administrative penalties suspension or termination of activity or certain operations of a legal entity can be imposed on legal entities for commitment of administrative offenses.

Suspension or termination of activity or certain types of activity of individual entrepreneurs or legal entities is made only by the courts on the request of a body (official), authorized to consider cases on administrative violations (Article 53 of the CAO).

Suspension or termination of activity or certain types of activity of individual entrepreneurs or legal entities without a court order is allowed in exceptional cases for a period not exceeding three days, with the immediate submission of the appropriate claim to the court within this period. In this case, the act on suspension or termination of activity or certain types of activity remains valid until a court decision is rendered (paragraph 4 of Article 53 of CAO).

The claim (in the form of a lawsuit) for suspension or termination of activity or certain types of activity of individual entrepreneurs or legal entities shall be filed to the court in the manner and on grounds established by the legislation of the Republic of Kazakhstan. The claim is considered by the court within ten days.

The measure of administrative penalty in the form of suspension of operation or certain activities of an individual entrepreneur or a legal person is used in cases when the violation can be eliminated by taking appropriate actions (measures) within the period prescribed by the court for its elimination.

Court order on imposition of such administrative penalty shall be executed immediately upon entry into force of the order by the founder of a legal entity or by an individual entrepreneur.

In case of failure to voluntarily comply the order imposed by the judge on administrative penalty in the form of suspension or termination by the founder (a governing body, an official) of a legal entity or an individual entrepreneur, the order is enforced in executory procedure by an authorized body.

As for the types of administrative penalties as revocation of license, special permit, certificate of qualification (certificate) or suspension of its validity for a particular activity or performance of certain actions (including exclusion from a register), suspension or termination of operation or certain activities of an individual entrepreneur or a legal person, the only basis of their imposition by the court would be a commitment by a physical or juridical person of an administrative offense, which is a wrongful, culpable (intentional or negligent) act or an omission of a natural person or wrongful act or omission of a legal entity for which the Code of Administrative Offenses provides for administrative responsibility.

The legislation provides for a possibility to impose injunctions on individuals/organizations as well as on public authorities/organizations.

#### **7) Claim for compensation for damage / injury (including caused to the environment), compensation of a non-pecuniary damage**

One of the basic principles of environmental legislation of the Republic of Kazakhstan is a duty to compensate for damages caused to the environment (Article 5 of the Environmental Code). Article 321 of the Environmental Code provides for indispensable compensation for damages caused by the violations of environmental legislation of the Republic of Kazakhstan.

Article 13 of the Environmental Code provides for the right of individuals to appeal to the public authorities with letters, complaints, appeals and proposals on environmental issues and claim for its consideration, as well as the right to bring court actions for damages caused to their health and property due to violations of environmental legislation of the Republic of Kazakhstan.

Article 14 of the Environmental Code provides for the rights of non-governmental associations in the field of environmental protection. Accordingly, associations in carrying out their activities in the field of environmental protection have the right to protect the rights and interests of citizens, to carry out public environmental control, to raise questions about the prosecution of individuals and (or) legal entities, file claims to the court for compensation for damage caused to health and (or) property of the citizens due to the violations of environmental legislation of the Republic of Kazakhstan.

As is evident from the mentioned provisions the legislation does not provide for a direct right of the public (individuals, NGOs) to initiate actions for compensation for damage caused to the environment. The right to sue for the protection of the interests of the State is vested with the legally authorized bodies in the field of environmental protection and prosecution.

Consequently, an individual or an NGO can initiate legal actions for compensation for damage caused to the environment only by appealing to the authorized bodies in the field of environmental protection or to the Prosecutor's Office.

In accordance with Article 13 of the Environmental Code of the Republic of Kazakhstan, individuals have the right to bring court actions for compensation for damage caused to their health and property due to violations of environmental legislation of the Republic of Kazakhstan.

By virtue of paragraph 6, Article 321 of the Environmental Code of the Republic of Kazakhstan, non-pecuniary damage caused by the violations of environmental legislation of the Republic of Kazakhstan shall

be compensated in accordance with civil legislation of the Republic of Kazakhstan. Articles 951 and 952 of the Civil Code regulate the issues on grounds for and amounts of compensation for non-pecuniary damage.

## **8) Legal action for the protection of "the public interest» - actio popularis**

Article 8 of the CCP provides that public authorities, legal persons or citizens are entitled to apply to the court for the protection of the rights and legitimate interests of others or of an indefinite number of persons in the cases stipulated by law.

Article 56 of the CCP establishes that in the cases stipulated by law, public authorities and bodies of local self-government, organizations or individuals can apply to court for the protection of the rights, freedoms and legitimate interests of other persons at their request, as well as for the protection of the state or public interests.

Within the meaning of Article 14 of the Environmental Code and the provisions of the Aarhus Convention, environmental non-governmental associations, including environmental NGOs, can apply to courts to protect the interests of an indefinite number of persons (*See also, Section B. 3 (b)*).

## **9) Timeliness**

### **Administrative procedure**

A complaint against an action (or omission) of an official, as well as on a decision of a public authority shall be submitted to a superior official or authority or to the court within three months, when a citizen became aware of the action or the decision of the official or the authority. The missed deadline for appeal is not a basis for a public authority, an officer, or a court to refuse admission of a complaint. The reasons for missing the deadline are ascertained during consideration on the merits and can become the grounds for denial of the complaint.

There are no special provisions defining or limiting the moment when the right to challenge accrues. Persons are entitled to challenge any actions / omissions from the moment they consider their rights or legitimate interests to be violated.

### **Judicial Procedure**

Chapter 27 of the CCP regulate the procedure of special action proceedings for appeal directly to the court of decisions, actions (omissions) of public authorities, bodies of the local self-government and its officials with respect to any natural or legal person whose rights and interests are affected by the corresponding decisions and actions (or omissions). Pre-trial (administrative) appeal to the superior bodies, organizations, or official is not a prerequisite for submission of an appeal to the court and its consideration and resolution by the court on the merits.

Citizen and NGOs can apply to the court within three months from the date when they became aware of a violation of their rights, freedoms and legitimate interests. The missed 3-month deadline for appeal is not a basis for a court to refuse admission of a legal action. The reasons for missing the deadline are ascertained during consideration in court hearing on the merits and can become the grounds for denial to meet the claim.

A lawsuit is considered by the court within a month (not including time for preparation of a case for court hearing) with the participation of a citizen, a representative of a legal entity, the head of a public authority, a body of local self-government, public association, organization, official or public servant, decisions and actions of which are being challenged. In accordance with Article 167 of the CCP preparation of civil cases for trial should be completed no later than in seven days after receiving of a lawsuit, unless otherwise stipulated by legislative acts. In exceptional cases, for particularly difficult cases, except for cases regarding alimony, compensation for damage caused by injury or other damage to health, as well as by loss of a breadwinner and for claims arising from employment relations, this period may be extended up to one month by a reasoned ruling of a judge.

It should be borne in mind that in case an examination is commissioned and in other cases provided for in Articles 242-243 of the CCP, the court shall decide whether to suspend the proceedings. A period of time when the proceedings were suspended is not included in the time period of the proceedings.

The court's decision is sent to eliminate the violations of law to the head of a public authority, a body of local self-government, a public association, an organization, an official, or a public servant, whose decisions and actions have been challenged or to a superior authority, an organization, or an official within three days after the court decision comes into force.

Court decisions that have not entered into legal force can be appealed, protested in the appellate procedure as prescribed in Chapter 40 of the CCP. A complaint or a protest can be filed (brought) within

fifteen days from the date a copy of a court decision was handed out. A case in appellate instance shall be considered within one month from the date of its receipt by the court. Decisions made in the retrial can be appealed, protested in the general procedure.

A cassation complaint or a protest can be filed within fifteen days after the appellate court makes its decision and ruling in its final form. The deadline is calculated from the date when the copies of decisions of the court of appellate instance were handed out. A complaint or a protest filed after the deadline will be left without consideration and returned to the person who filed the complaint or the protest. The court of cassation shall review a case on an appellate complain or a protest within one month from the date the court receives the case.

In accordance to Chapter 43 of the CCP the judicial decisions of local and other courts which had come into force can be reviewed in supervisory procedure by the Supreme Court of the Republic of Kazakhstan on the request of the persons involved in the case, and of the Prosecutor General of the Republic of Kazakhstan. The resolution of the Supreme Court of the Republic of Kazakhstan, made in supervisory procedure can be reviewed in exceptional cases, if newly discovered evidence shows that the decision taken can lead to serious and irreversible consequences for human life and health or to the economy and security of the Republic of Kazakhstan.

A motion, a protest can be filed within one year from the date of entry into force of a court ruling, a court order, or a court decision. The deadline for filing the protest is extended by the court, if the motion for filing of the supervisory protest was submitted to the prosecutor within the established deadline, but a decision on the motion was not made. The protest must indicate this circumstance.

The motion is considered within one month from the date of its submission, and if there is a need to evoke the case materials - within one month from the date when the case materials come. In the result of a preliminary consideration of the motion the judge issues an order: 1) to initiate supervisory proceedings to review the contested judicial act and consider the motion in the court of supervisory instance with the evocation of the civil case materials, 2) denying to initiate a supervisory proceedings to review the contested judicial act, and 3) returning the motion.

The court of supervisory instance having received the court order initiating supervisory proceedings to review the contested judicial act and consider the motion or the protest, sends to the parties the copies of the motion and the court order initiating supervisory proceedings, a notice on the proceedings in the court of supervisory instance with the date, time and venue of the hearing. A case shall be considered by the court of supervisory instance within one month from the date of its referral to the court of supervisory instance with the court order initiating supervisory proceedings or from the date of submission of the protest by the prosecutor.

## **D. Costs**

### **1) Financial expenses associated with administrative procedure**

In administrative appeal of the legality of actions, omissions of public authorities and officials the amount of expenses depends only on the chosen method of submission (mail, personal reception, etc.) of the appeal to the authorized bodies and officials, as well as on the use of legal aid, and services of a legal representative.

### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

In accordance with Article 100 of the CCP, judicial expenses consist of the court fees and the expenses associated with the proceedings.

In accordance with Article 107 of CCP the expenses associated with the proceedings on the case include: 1) the amounts payable to witnesses, experts and specialists; 2) costs associated with production of on-site inspections; 3) costs associated with the storage of evidences; 4) the cost for retrieval of a defendant; 5) the costs of publications and announcements on a case; 6) the costs of serving notices and subpoenas to the parties; 7) travel expenses of the parties and third persons, costs of accommodation, incurred in connection with attendance at court; 8) the costs payable to legal representatives; 9) the costs associated with the execution of decisions, judgments, rulings and court orders; 10) other expenses deemed necessary by the court.

Most of judicial expenses (amounts payable to witnesses, experts and specialists, interpreters, the costs of a defendant's retrieval procedures, and in cases stipulated by law, the costs of the court fees and other costs as well) are paid from the national budget.

In practice, as a general rule, judicial expenses are reduced to payment of the court fee, services of legal representative, as well as the costs of examinations performed by expert organizations. The courts of all instances resolve questions on the distribution of the costs between the parties depending on the outcome of a case and taking into account the requirements of the law. In accordance with Article 111 of the CCP, in material claims the costs of using of a representative by the party in whose favor the decision was made recoverable from the losing party should not exceed 10 percent of the satisfied part of the claim. The amount of judicial expenses depends on whether a plaintiff is a legal entity or an individual.

Also, the amount of the judicial expenses depends on the type of case (action proceedings, special action proceedings).

Civil and economic proceedings are conducted by courts according to same rules provided by the CCP and same rules apply to the distribution of judicial expenses.

Issues of distribution of judicial expenses are based on the principles of reasonableness, proportionality and fairness, are regulated by the normative order of the Supreme Court of the Republic of Kazakhstan dated December 25, 2006 № 9 on Application by the Courts of the Republic of Kazakhstan of Legislation on Judicial Expenses in Civil Cases.

According to Article 535 of the Tax Code for filing of statements of claims in action proceedings, claims in special action proceedings, complaints in special proceedings (which include the complaints against decisions, actions / omissions of the authorized persons) to the court the court fee is charged in the follows amounts:

1) for material claims (claims for compensation of damages): for individuals - 1 percent of the claim; for legal entities - 3 percent of the claim;

2) for complaints on illegal actions of public authorities and its officials, which infringe the rights of individuals - 30 percent of a monthly rate;

3) for complaints on illegal actions of public authorities and its officials, which infringe the rights of legal entities - 500 percent of the monthly rate;

8) for claims in special action proceedings, claims (complaints) in cases of special proceedings, except for cases provided in paragraph 2), 3), 4) - 50 percent of the monthly rate;

12) for requests on provision of copies (duplicates) of judicial decisions, judgments, rulings, other court decisions, as well as copies of other documents of case materials, provided by the courts at the request of the parties and others persons involved in the case - 10 percent of the monthly rate for each document, and 3 percent for each page.

The monthly rate (MR) and the minimum wage are established by the Law of the Republic of Kazakhstan dated November 29, 2010 № 357-IV on the National Budget for 2011-2013. As of January 1, 2011 the MR for calculation of allowances and other social payments, as well as for penalties, taxes and other payments in accordance with the laws of the Republic of Kazakhstan is 1512 tenge (10,32 U.S. dollars<sup>83</sup>), while the minimum wage as of January 1, 2011 year is 15 999 tenge (109 USD).

For lawsuits that contain both material and non-material claims, it is required to pay both the court fee established for material claims and the court fee established for non-material claims.

In cases of administrative offenses, as well as for appeals of decisions, actions / omissions to the authorized persons in administrative procedures (to superior authorities), the fee is not charged.

By virtue of Article 541 of the Tax Code the following categories shall be exempt from payment of the court fees:

plaintiffs - for claims for compensation for damage caused by injury or other damage to health, as well as by the death of a breadwinner;

plaintiffs - for claims for compensation for non-pecuniary damage caused by a crime;

plaintiffs - for claims for collection of funds to the State in compensation for damage caused to the State by the violations of environmental legislation of the Republic of Kazakhstan;

natural and legal persons who, in the cases stipulated by the legislation of the Republic of Kazakhstan, file claims to the court for the protection of the rights and legitimate interests of other persons or of the State;

plaintiffs - the participants of the Great Patriotic War and related persons, persons awarded orders and medals of the former Soviet Union for hard work and an impeccable military service in the home front during the Great Patriotic War, persons who have worked (served) at least six months in the period from June 22, 1941 to May 9, 1945 and were not awarded orders and medals of the former Soviet Union for hard

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<sup>83</sup> This report uses the operational rate of Kazakhstan tenge to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 146,5 tenges.

work and an impeccable military service in the home front during the Great Patriotic War, disabled persons, and also one of the parents of a child disabled from childhood - for all cases and documents;

individuals and legal entities - for filing of motions in the court: on reversal of a court order to terminate the proceedings or to dismiss a lawsuit without consideration; on postponement of execution of a court decision; on change of the method of execution of a court decision; on security of a claim or on change of one type of security of a claim to other; on review of decisions or rulings of the court on newly discovered evidence; on adding or reducing of fines imposed by the court; on reversion of execution of court decisions on restoration of the time limits; on reversal of a court decision rendered without participation of the parties in hearings; as well as complaints: on actions of law enforcement officers; individual complaints on court orders denying adding or reducing of fines; other individual complaints on court orders; complaints on the decisions in cases on administrative offenses; on reversal of a court decision rendered without participation of the parties in hearings;

prosecutors - for all claims;

associations of persons with disabilities and (or) organizations established by them that employ at least 35 percent of disabled people with loss of hearing, speech or vision, when submitting claims in its interests.

The court fee shall be paid for cases brought before the courts - before filing the appropriate lawsuit (a complaint), as well as before provision by the court of copies of documents.

Possibility to postpone the payment of the court fee is not provided by law.

### **3) Costs of legal aid associated with judicial consideration of cases relating to the environment**

The issue of remuneration of attorneys is regulated by the Law of the Republic of Kazakhstan on Advocacy (1997) and by the Rules of payment for legal assistance provided by attorneys, and reimbursement of expenses related to the protection and representation at the expense of the national budget (1999).

According to Article 58 of the CCP citizens have the right to conduct their cases in court in person or through representatives. Personal participation of a citizen in court hearings does not deprive him of the right to have a representative in this case.

According to Articles 5 and 6 of the aforementioned Law of the Republic of Kazakhstan on Advocacy, the amount of remuneration for legal assistance provided by attorneys, and reimbursement of expenses related to the protection and representation, is established by a written agreement of an attorney with the person who applied for assistance. In practice, a prepayment (before consideration of a case) is preferable, because the party, intended to recover judicial expenses, shall submit the evidence of such expenses to the court considering the case.

In the cases prescribed by law legal assistance is provided by attorneys free of charge, and payments of these costs to attorneys are made from the state budget.

By virtue of article 114 of the CCP citizens can get legal assistance free of charge. On the basis of Article 114 of CCP a judge in preparing a case for trial or the court considering a case based on the financial situation of a citizen is entitled to exempt him partially or in full from payment for legal assistance and rule that compensation for the expenses related to representation be made from the state budget. A judge (court) must exempt a person on his motion in whole or in part from payment of legal assistance and rule that compensation for the expenses related to representation be made from the state budget in the following cases provided by law:

1) in disputes on damages caused by the death of a breadwinner, by injury or other damage to health associated with employment;

2) in disputes not related to business activities, if plaintiffs and defendants are the members of the Great Patriotic War and persons equated to them, the conscripts, disabled persons (groups I and II), retired by age.

Documents and other evidence supporting the right to receive legal assistance free of charge shall be attached to the motion for exemption from payment of legal assistance and compensation of the costs associated with the representation.

Upon review of the motion the judge or the court shall issue a reasoned order on full or partial exemption from payment of legal assistance and compensation of expenses related to representation, or dismisses the motion. The order of the court or the judge on full or partial exemption from payment of legal assistance and compensation of the costs of representation shall be immediately forwarded to a professional organization of attorneys, which in the period prescribed by the court is obliged to insure participation of an attorney in trial.

By virtue of Article 115 of the CCP if a person, who applied in the cases stipulated by this Code for the protection of the rights, freedoms and legitimate interests of other persons and the State (Art. 55 and Art.

56 CPC), lost the case in whole or in part, judicial expenses incurred by a defendant shall be reimbursed from the national budget in full or in proportion to the part of the claim, which plaintiff lost.

#### **4) Costs of examination, involvement of experts and witnesses**

Chapter 8 of the CCP (Articles 100-117 CCP) regulates the concept, structure, payment and distribution of judicial expenses in civil cases (which, as a general rule, include appeals against decisions, actions / omissions of officials and public authorities).

According to Article 108 of the CCP, the expenses of witnesses, experts, specialists and interpreters incurred in connection with attendance at the court, travel and accommodation expenses, and per diem in the amount established for persons sent on missions, are reimbursed. Experts and specialists are also reimbursed for the cost of their chemical reagents and other consumables that they spent during the exercise of the assigned work, and the payments they made for use of equipment and utilities during the exercise of the assigned work.

Working persons summoned to court as witnesses during their absence in connection with attendance at trial retain their average wage in the workplace. Witnesses, who are not employed, are compensated for distraction from their normal occupations given the actual time they spent on the basis of the minimum monthly wage established by law.

Experts and specialists are being paid for work performed by them on behalf of the court, if such work is beyond the scope of their official duties. The amount of remuneration is determined by the court in consultation with the parties.

Payment for examination performed by the bodies of judicial examination is done in accordance with the laws of the Republic of Kazakhstan.

The payments to witnesses, experts, specialists, as well as payments for examination performed by the bodies of judicial examination are made by the party who submitted the appropriate motion. If such motions are submitted by both parties, or if a witness or a specialist is involved or examination is commissioned on the initiative of the court, the appropriate expenses shall be paid by the parties in equal parts.

Amounts payable to experts and specialists for the work performed by them on behalf of the court, if such work is beyond the scope of their official duties, shall be made in advance on a deposit of the court by a party, who submitted the appropriate motion. The amount of remuneration is determined by the court in consultation with the parties.

Amounts payable for the performance of examination by the bodies of judicial examination shall be paid to the relevant budget in the form of prepayment by the party which submitted the motion, or by the party charged with this obligation by the court.

The amounts payable to experts and specialists, in case one or both parties are exempted from payment of judicial expenses, are paid from the national budget.

According to Article 109 of the CCP the amounts payable to witnesses, experts and specialists are paid by the court from the account opened in accordance with the budget legislation of the Republic of Kazakhstan, upon the performance of their duties.

Amounts payable to interpreters are covered from the national budget. The amount of remuneration is determined by the court on the basis of existing norms of remuneration for the relevant work.

On the basis of Article 110 of the CCP the court awards all incurred judicial expenses of the party in whose favor the decision was rendered to be covered from the losing party, even if the winning party was exempt from payment of judicial expenses. If the claim is granted in part, judicial expenses are distributed between the plaintiff and the defended in proportion to the amount of the satisfied claims.

If a higher court varies a decision or makes a substitute decision without referring the case for a new trial, the court changes the distribution of costs accordingly.

According to the rules and established practice, the cost of examination is determined by an expert institution, based on the amount of hours spent on the examination, given the remuneration of the expert's work is made from the republican budget. The court is notified on the cost of examination along with the referral of the expert opinion to the court. Upon review of the case the court decides the issue on how to distribute the costs of the examination.

In cases when the examination is conducted by a private person having an appropriate license, the cost of examination is determined by the conditions of the contract concluded between the parties.

#### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

Article 165 of the CCP provides for compensation for damages caused to a defendant by application of measures securing a claim. In particular, the court applying the measures securing the claim may require a

plaintiff to provide securities of possible damages to a defendant. After the entry into force of the decision by which the claim was denied, the defendant may bring legal action for damage compensation caused to him by measures securing the claim, made at the motion of the plaintiff.

At the same time the law does not establish a duty of a plaintiff (individual/NGO) in environmental matters to pay a bond (other financial guarantees) due to his motion for injunctive relief as a security for a claim.

In judicial practice there are only a few cases of claims filed for compensation for damages from a plaintiff associated with application of injunctive relief. In general, litigation initiated by the public relates to omissions of the public authorized or their officers to provide environmental information or failure to enforce environmental legislation on offenders.

An obligation of a plaintiff (an applicant) to compensate for damages caused to a defendant by measures securing a claim (provided for by Article 165 of CCP), in practice, is not a deterrent for individuals / NGOs seeking for injunctive relief. This is confirmed by the absence in judicial practice on environmental disputes of examples of lawsuits against plaintiffs (applicants) for damages caused to defendants by application of injunctive relief.

### **E. Legal aid (state, non-state)**

#### **State**

During pre-trial and extra-judicial stages of disputes resolution the following persons are entitled to get a free legal advice and their legal documents drafted by attorneys: participants of the Great Patriotic War and related persons, conscripts, disabled persons (groups I and II), retired by age on cases not associated with business activities, minors left without parental care.

Other persons are also entitled to apply for free legal aid on the cases: on compensation for damage caused by the death of a breadwinner, by injury or other damage of health associated with employment, on collection of alimony, pensions and benefits, on rehabilitation, etc.

In 2009, by the Resolution of the President of the Republic of Kazakhstan № 32-36.125 dated May 5, the National Action Plan for Human Rights in the Republic of Kazakhstan for 2009-2012, was approved. The Plan envisages the drafting and adoption of the Law of the Republic of Kazakhstan on Providing Free Professional Legal Aid by October 1, 2011. The Ministry of Justice of the Republic of Kazakhstan was appointed to draft the law.

Based on the experience of foreign countries the Ministry of Justice proposed to envisage in the draft law the establishment of special departments within the territorial bodies of the Ministry of Justice - state bureaus of legal aid, and vest them with appropriate powers of coordination and control over the provision of legal services not only in civil and administrative, but also in criminal proceedings. These bodies operating within the jurisdiction of the Ministry of Justice would provide free legal assistance to disadvantaged and vulnerable groups (give legal advice, draft petitions, complaints, appeals, motions and other legal documents).

It is planned to set up state bureaus of legal aid in all cities of Kazakhstan. In the first place, in those areas where the number of attorneys is not enough in order to provide the necessary free legal aid to those citizens who need it, but because of their financial status are not able to pay to receive it.

#### **Non-state**

Due to the small number of lawsuits in this category of cases special public interest legal organizations providing legal aid services to the public in matters relating to the environment do not exist in the country (such as Organization for the Protection of Consumers' Rights which operates on the appropriate matters). NGO "Green Salvation" is the most active and frequently represents the interests of individual citizens or interests of an indefinite number of persons in courts.

# KYRGYZSTAN

## **A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation**

### **1) Legislative system<sup>84</sup>**

The most significant regulatory legal acts of the Republic of Kyrgyzstan in the field of environmental protection are the Law on Environmental Protection (1999), the Law on Air Protection (1999), the Law on Ecological Expertise (1999), the Law on Industrial and Consumer Waste (2001), the Law on Water (1994), the Law on Drinking Water (1999), the Law on Associations of Water Users (2002), the Law on Fauna (1999), the Law on Specially Protected Natural Areas (1994), the Law on the Protection and Use of Flora (2001), the Law on Subsoil (1997), the Law on the Rate of Payment for Environmental Pollution (emissions, discharges of pollutants, disposal of waste) (2002), the Law on Tailings Ponds and Dumps (2001), the Law on Chemicalization and Plant Protection (1999), the Law on the Protection of the Ozone Layer (2006), the Law on the Protection of Health of Population in the Republic of Kyrgyzstan (1992), the Law on the Protection of the Population and Territories from Natural and Technological Emergency Situations (2000), the Law on State Regulation and Policy on Emission and Absorption of the Greenhouse Gases (2007), the Water Code (2005), and the Land Code (1999).

### **2) Regulatory and control (supervisory) authorities**

Within the structure of the national governmental authorities there are over 15 ministries, departments, and committees subordinated to the Government of the Republic of Kyrgyzstan in some way involved in the protection of the environment. Public authorities within their competence develop normative legal documents, governmental and industry programs on ensuring environmental safety, conduct research in the field within their competence, apply administrative and economic sanctions in cases of violations of the requirements in the field of environmental protection.

Governmental authorities involved in work in the field of environmental protection:

The State Agency of Environmental Protection and Forestry – in accordance with the Regulation of the State Agency of Environmental Protection and Forestry under the Government of the Republic of Kyrgyzstan, the Agency is a specially authorized body in the field of environmental protection and forest management, enforcing the unified policy and exercising interdepartmental control in the field of environmental protection, biodiversity conservation, sustainable use of natural resources, development of mountain areas, forestry and hunting, and environmental security of the State.

The Ministry of Natural Resources – is the authorized state body in the field of use of mineral resources and development of the extractive industry. In particular, this Ministry monitors the quality of groundwater and exercises state control over rational use and protection of mineral resources by the mining companies. The Ministry of Natural Resources also carries out ecological expertiza and environmental control within the licensed areas and mining allotments. Within its structure there is the Gosgortekhnadzor exercising, among other, the supervision over the use of highly toxic substances. According to its Regulation the Ministry of Natural Resources also carries out ecological expertiza and environmental control within the geological licensed areas and mining allotments. However, the Ministry of Natural Resources is not included in the list of enforcement agencies and has no local departments.

Other authorized bodies include the Ministry of Emergency Situations, the Ministry of Health Protection, the Ministry of Energy, the Ministry of Agriculture and the State Committee for Water Management and Land Reclamation.

### **3) Role of the Prosecutor's Office**

The activity of the Prosecutor's Office is regulated by the Constitution of the Republic of Kyrgyzstan, as well as by the Law on the Prosecutor's Office of the Republic of Kyrgyzstan.

The main functions of the Prosecutor's Office are supervision over the proper and uniform implementation of legislative acts, as well as criminal prosecution, and participation in court proceedings.

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<sup>84</sup> State Register of legal acts of the Kyrgyz Republic on the web page of the Ministry of Justice in Russian - <http://www.minjust.gov.kg>

System of the Prosecutor's Office includes: General Prosecutor's Office of the Republic of Kyrgyzstan, prosecutor's offices of regions, of the city of Bishkek and military prosecutor's offices of the Republic of Kyrgyzstan, inter-district, city, and district prosecutor's offices.

#### **4) Judicial System**

The judicial system of the Republic of Kyrgyzstan is established by the Constitution of the Republic of Kyrgyzstan and the laws of the Republic of Kyrgyzstan and consists of the Supreme Court of the Republic of Kyrgyzstan and local courts.

Regional, Bishkek, Osh city, district and municipal courts of general jurisdiction, military courts, arbitration courts of regions and of the city of Bishkek are established, reorganized and abolished by the President of the Republic of Kyrgyzstan in accordance with the administrative-territorial organization of the Republic of Kyrgyzstan. If necessary, the jurisdiction of a local court can have an inter-district nature.

#### **5) The Ombudsman**

In accordance with Article 108 of the Constitution and the Law on the Ombudsmen, control over observance of constitutional human and citizen's rights and freedoms on the territory of the Republic of Kyrgyzstan and within its jurisdiction on a permanent basis is conducted by the Ombudsman of the Republic of Kyrgyzstan (hereinafter - the Ombudsman). The scope of this Law covers only the relations arising as to exercise of rights and freedoms of individuals between a citizen of the Republic of Kyrgyzstan, regardless of his location, a foreigner or a stateless person, who is present on the territory of the Republic of Kyrgyzstan, and public authorities, bodies of local self-government and their officials. In practice, no case relating to the environment was ever considered by the Ombudsman.

### **B. Information on the procedures for making decisions in environmental matters, and opportunities to challenge them**

#### **1) Decision-making system**

Information on the procedure for decision-making on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is indicated in Figure 9 (pp. 88-90).

In Kyrgyzstan, the requirements of Article 6 of the Aarhus Convention on public participation in decision-making on specific activities are applicable not only to large-scale facilities and activities included in Appendix 1 of the Convention, but also to all projects on economic and other activities which are subject to the domestic procedure of assessment of environmental impact (OVOS).

#### **2) The appeal in non-judicial (administrative) procedure**

An appeal is usually filed to the body that took a decision, or to a superior authority. In accordance with the Law on the Procedure of Consideration of the Citizens' Appeals, the Law on Administrative Procedures, it is possible to submit a citizen's appeals to the governmental authorities, both in writing and orally. All submitted appeals are subject to registration. Refusing to admit an appeal a public authority issues a reasoned decision, which shall be referred to a citizen no later than within five days from the date of the receipt of his appeal or is declared to him personally during the personal appointment in the authority.

Administrative cases can be considered during the personal appointment without the application of the simplified procedure or without administrative hearings. Administrative cases which were not resolved during the personal appointment can be considered within the simplified procedure without administrative hearings. A simplified procedure of consideration of administrative cases is applied only on the consent of the person concerned or his representative.

Within the simplified procedure cases are considered and resolved solely by an authorized officer or by the chairman of a collegiate body in accordance with the rules of procedure of the administrative body.

**Figure 9**

Procedure (decision) on matters relating to the environment <sup>85</sup>	Body authorized to carry out the procedure (to make the decision)	Period of validity of decisions, permits or other documents issued due to the procedure	The possibility of public participation	Body to which one can appeal the decision / action / omission	Legal act regulating the carrying out of the procedure (making the decision)
Decision to construct a facility, to implement an activity;	<p>1. the State Agency for Architecture and Construction</p> <p>2. The State Agency of Environmental Protection and Forestry, its local department</p> <p>3. The State Inspectorate for Supervision over Industrial Safety and Mining Supervision under the Ministry of Natural Resources</p>	<p>The permit is issued for a period specified in the application, for the duration of construction of a facility, with further annual prolongation.</p> <p>2 years</p> <p>for the period from 3 to 5 years</p>	yes	to the body that made the decision; to a higher authority; to the Ombudsman, to the International Court of Arbitration, to the Prosecutor's Office, to the court	<p>the Law of the RK on Urban Planning and Architecture Regulation on the procedure for issuance of permits for design, construction and other changes in real estate and the procedure for commissioning of facilities when construction is completed in the Republic of Kyrgyzstan.</p> <p>the Law on Environmental Protection, the Law on Ecological Expertise, General technical regulations on environmental safety, Instruction on the procedure for carrying out the state ecological expertiza, the OVOS procedure</p> <p>Regulations on the procedure for issuance of permits in the system of Gosgortekhnadzor within the Ministry of Emergency Situations of the Republic of Kyrgyzstan.</p>

<sup>85</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

<p>Decision on the OVOS, conclusion of expertiza (ecological, urban, complex, etc.);</p>	<p>The State Agency of Environmental Protection and Forestry, its local departments</p> <p>the Ministry of Natural Resources</p> <p>the State Agency for Architecture and Construction</p>	<p>2 years</p> <p>for the period from 3 to 5 years (in accordance with the license agreement)</p> <p>According to the project for the duration of construction of a facility, with further annual prolongation.</p>	<p>yes</p>	<p>to the body that made the decision;</p> <p>to a higher authority;</p> <p>to the Ombudsman,</p> <p>to the International Court of Arbitration,</p> <p>to the Prosecutor's Office,</p> <p>to the court</p>	<p>the Law of the RK on Urban Planning and Architecture</p> <p>Regulation on the procedure for issuance of permits for design, construction and other changes in real estate and the procedure for commissioning of facilities when construction is completed in the Republic of Kyrgyzstan.</p> <p>the Law on Environmental Protection, the Law on Ecological Expertise, General technical regulations on environmental safety, Instruction on the procedure for carrying out the state ecological expertiza, the OVOS procedure</p> <p>Regulation on the procedure for issuance of permits in the system of Gosgortekhnadzor within the Ministry of Emergency Situations of the Republic of Kyrgyzstan.</p>
<p>Permits for the use of natural resources (within the activity listed in Annex I to the Aarhus Convention), including their renewal, a review of their conditions;</p>	<p>the Ministry of Energy,</p> <p>the Ministry of Natural Resources,</p> <p>the Ministry of Transport and Communications</p> <p>the State Agency of Environmental Protection and Forestry, its local departments</p>	<p>1, 3, 5 years, depending on the risk category of an object</p>	<p>yes</p>		

Permits for emissions / discharges of pollutants, including their renewal, a review of their conditions; Permits concerning waste management;	the Ministry of Natural Resources, The State Agency of Environmental Protection and Forestry (SAEPF), its local departments		yes		General technical regulations on environmental safety
Other, if there are, within the activities listed in Annex I to the Aarhus Convention.	the President (guarantor of the Constitution), the Government, the Parliament		yes	to the body that made the decision; to a higher authority; to the Ombudsman, to the International Court of Arbitration, to the Prosecutor's Office, to the court	
OVOS in a Transboundary Context	the SANPF, the Ministry of Foreign Affairs, the Government	At all stages of design, post-project monitoring	yes	the SANPF, the Ministry of Foreign Affairs, the Government, the Compliance Committee of the Espoo Convention	the Laws on Environmental Protection, the Law on Ecological Expertise, General technical regulations on environmental safety, Instruction on the procedure for carrying out the state ecological expertiza, the OVOS procedure, the Espoo Convention

The period for making a decision on an appeal is determined by the authorized officer or the chairman of a collegiate body and shall not exceed one month from the date of admission of the appeal.

The chairman of a collegiate body shall report at the next meeting of the collegiate body on all the cases considered and resolved within the simplified procedure and the decisions made for their approval in the prescribed manner.

### **Consideration of administrative cases in the hearings**

Preparing a case for consideration in a hearing the chairman of a collegiate body (an official) shall take steps to ensure proper and timely resolution of the administrative case.

The announcement on the consideration of an administrative case is placed on the information stand of the appropriate public authority not later than three days before the hearing, and the appropriate notice is sent (delivered) to the participants to the hearing or is announced during the private appointment.

An administrative case shall be considered and the decision on it taken within a period not exceeding one month from the date of the receipt of the appeal.

The hearing is open to all comers taking into account the capacity of the respective conference room. Representatives of the media, non-governmental associations and other persons are entitled to attend the hearings.

The minutes of the hearings are drawn up. The participants of the hearings have the right to examine the minutes of the hearings or procedural actions and submit their comments on the completeness and correctness of it. Acceptance or rejection of the comments is recorded in the minutes.

A decision on an administrative case shall be made in writing and signed by all members of a collegiate body (an official). The signatures shall be certified by the seal of an administrative authority in the prescribed manner.

## **3) Judicial review**

### **a) The role of courts, jurisdiction**

The legislation provides for economic, administrative, criminal and civil proceedings, which can be initiated by both natural and legal persons.

According to the Code of Civil Procedure (CCP), a district court (a district court in a city, a city court) has jurisdiction over all civil cases except for the cases under the jurisdiction of a military court and of an inter-district court. Cases on appeal of illegal decisions or decisions that violate environmental rights and freedom fall within the jurisdiction of an inter-district court. However, cases on compensation for damage caused as a result of an environmental offense shall be considered in civil proceedings by a district court. Cases on appeal of illegal decisions that caused environmental damage, even if a plaintiff claims for its compensation, shall be considered by an inter-district court.

The absence of guidelines on the application of the rules of legislation on civil procedure makes it difficult for citizens to choose which court is competent to consider such disputes, as well as leads to delays in obtaining a remedy.

Moreover, the rates of the court fees for application to an inter-district court are significantly higher. It should be noted that the rates of the court fee approved by the Government do not correspond to all type of disputes, which also makes it difficult to submit a statement of claim to the court. For example, there is no information on the rate of the court fee for the claim on cancellation of the normative legal acts of public authorities and bodies of local self-government. In addition, practice of application by the courts of the provisions of the Aarhus Convention is absent.

The abolishment of the Constitutional Court as a separate institution of the judiciary and the establishment of the Constitutional Chamber of the Supreme Court of the RK questions the independence and objectivity of this body when making decisions, because in some cases there can be a conflict of interests, when there will be a necessity to declare unconstitutional one or another normative act based on which the Supreme Court of the Republic of Kyrgyzstan has already made its decisions.

The introduction of the provision to the CCP of the RK providing for the impossibility to appeal the denial of the motion for disqualification of a judge, also allows a judge to render illegal decisions, even in the case of distrust of a party, which is also one of the mechanisms of corruption.

The criminal law also does not contain any restrictions in the initiation of criminal prosecution (by means of appeal to the competent authorities) for crimes related to the environment, depending on who submits an appeal - an individual or an NGO.

## **b) Standing (of individuals, NGOs) in matters relating to the environmental**

Individuals and NGOs are entitled to apply to the court for the protection of their violated or disputed rights, freedoms or legitimate interests.

### **4) Other (non-judicial) methods of dispute resolution**

The availability of the institute of the arbitration courts as a non-judicial mechanism for the protection of the legitimate rights and interests is very important for the system of protection of the violated rights.

The Constitution provides that, in accordance with the decision of the citizens, of the local kenesh or other representative body of local self-government on the territories of ails, settlements, and cities the courts of elders (aksakals) can be formed of the elders and other respected citizens. Courts of elders consider submitted by the parties (on their agreement) property, family and other stipulated by the law disputes with the aim to achieve reconciliation and adoption of a fair decision consistent with the law. Decisions of the courts of elders can be appealed in accordance with the legislation of the Republic of Kyrgyzstan.

## **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

### **Administrative procedure**

#### **1) General overview of the remedies in administrative review procedure of decisions, actions, omissions**

The legislation provides for cancellation of a decision, and liability of officials, etc.

#### **2) General overview of the remedies in appeals against on-going activities**

The legislation provides for the limitation, suspension, and termination of environmentally harmful activities and the limitation, suspension or termination of enterprises and other entities, if their operations are in violation with environmental laws or they exceed the limits of emissions and discharges of polluting substances.

#### **3) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions / actions / activities in the case of their appeal is not provided by the legislation.

#### **4) The prohibition on an activity**

##### **a) temporary**

The republican state agency for environmental protection of the Republic of Kyrgyzstan is entitled to make decisions on the limitation, suspension or termination of environmentally harmful activities and the limitation, suspension or termination of enterprises and other entities, if their operations are in violation with environmental laws or they exceed the limits of emissions and discharges of polluting substances.

##### **b) permanent**

The republican state agency for environmental protection of the Republic of Kyrgyzstan is entitled to terminate the right of use of natural resources, make decisions on the termination of environmentally harmful activities and termination of enterprises and other entities, if their operations are in violation with environmental laws or they exceed the limits of emissions and discharges of polluting substances.

### **Judicial Procedure**

#### **5) General overview of the remedies in judicial review of decisions, actions, omissions**

The legislation provides for the following remedies: 1) recognition of a right; 2) restoration of the situation that existed before the violation of law; 3) restriction of actions that violate or may violate a right; 4) declaration of a transaction null and void and enforcement of the consequences of its invalidity; 5) invalidation of an act of a public or local authority; 6) self-defense of civil rights; 7) enforcement of the specific performance; 8) compensation for damages; 9) recovery of penalties; 10) compensation for non-pecuniary damage; 11) termination or modification of a legal relation; 12) not application by the court of an act of a public authority or a body of local self-government, that does not comply with the appropriate legislation.

Individuals and NGOs are entitled to the same legal remedies.

## **6) General overview of the remedies in challenging of on-going activity**

In case of challenging of existing activities the remedy would be suspension / termination of the activities that violate laws relating to the environment.

## **7) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions, actions or activities in the case of their appeal is not provided by the legislation.

## **8) Injunctive relief**

### **a) temporary**

In case of violation by officials of the rules, regulations and instructions during the implementation of a certain type of activity, this type of activity can be suspended by the court (judge) until the violations are eliminated and / or the original conditions of a facility are restored.

At a plaintiff's motion for application of the measures securing a claim, the court can impose an arrest on movable and immovable property, assets, accounts, etc., as well as suspend validity of one or another normative legal act, such as regulations of the government or a city hall.

### **b) permanent**

Permanent injunctive relief is possible on the ground of the court decision in the case of appeal to the court.

## **9) Claim for compensation for damage / injury (including caused to the environment), compensation for non-pecuniary damage**

Legal and natural persons, including foreigners, which have caused damage to the environment, health and property of citizens, legal persons and the State by pollution of the environmental, by deterioration, destruction, damage or unsustainable use of natural resources, destruction of natural ecosystems or by other environmental offenses, shall compensate for it in full in accordance with the Civil Code and other normative legal acts.

Compensation for damage caused to the environment in the result of environmental offenses, shall be made voluntarily or on a court order in accordance with the duly approved rates and methods of calculation of the amount of damage, and in their absence - based on the actual costs of the restoration of the environment, as well as the costs of the incurred losses, including loss of profit.

Damage caused to health of the citizens as a result of the adverse impact on the environmental caused by activity of legal entities and individuals, shall be compensated in full in accordance with the degree of disability of a victim, and the costs of his treatment, rehabilitation, nursing, and other expenses, as well as appropriate pensions or benefits under the legislation of the RK.

Compensation for damage caused to health of citizens is made based on the court decisions on the lawsuits of victims, their relatives, legal representatives, labor unions, or the public prosecutor.

The amount of money in compensation for damage caused to health of citizens shall be recovered from the wrongdoer or from the company, institution or organization which he represents, and if they cannot be found - at the expense of the appropriate funds for environmental protection.

Damage caused to property of citizens, legal persons and the State in the result of the adverse impact on the environment caused by economic or other activity shall be compensated in full by the wrongdoer of the damage.

In determining the amount of damage caused to property of citizens as a result of the adverse impact on the environment caused by activity of legal entities and individuals, all of the following is included: the real losses associated with the destruction and depreciation of buildings, residential and industrial premises, equipment, property, land, production from this land and the lost profit.

In case of a multiple wrongdoer of the damage, the persons who jointly caused the damage are jointly and severally responsible in accordance with the legislation.

In the process of privatization of entities the residual contamination or damage caused to the environment in the past, before 1992 is considered to be the object of responsibility of the State. In the other cases mentioned responsibility is borne in due course by legal or natural persons - the owners of the polluting entities.

## **Non-pecuniary damage**

Non-pecuniary damage shall be compensated, if caused by wrongdoer's fault, except for the cases of damage caused to life and health of a citizen by a source of high danger, as well as in other cases stipulated by law for which a wrongdoer is liable without his fault.

Non-pecuniary damage caused by actions (or omissions) that violate the property rights of a citizen, shall not be compensated, except for the cases stipulated by law.

If a citizen suffered non-pecuniary damage (physical or moral suffering) caused by actions infringing his personal non-material rights or non-material values, as well as in other cases stipulated by law, the court can impose on the wrongdoers an obligation to provide monetary or other material compensation for the said damage.

In determining the amount of compensation for non-pecuniary damage, the court shall take into account the degree of guilt of a wrongdoer and other relevant circumstances.

In the cases provided by law, non-pecuniary damage can be compensated to a legal entity.

#### **10) Legal action for the protection of "the public interest» - actio popularis**

The Code of Civil Procedure contains an Article according to which civil proceedings can be initiated on a lawsuit of a person applying for the protection of the rights, freedoms or legitimate interests of another person, as well as protecting the interests of an indefinite number of persons, or for the protection of the state or public interests.

Public authorities, bodies of local self-government, other bodies, individuals and legal entities can apply to courts to protect the rights, freedoms and legitimate interests of other persons at their request or on behalf of an indefinite number of persons.

#### **11) Timeliness**

Time limits of administrative review:

The period for making a decision on an appeal is determined by the authorized officer or the chairman of a collegiate body and shall not exceed one month from the date of admission of the appeal. An administrative case shall be considered and the decision on it made within a period not exceeding one month from the date of the receipt of the appeal. In the exceptional cases, this period can be extended by an administrative authority at the request of the interested parties or on its own initiative, but not more than for one month. Information on the extension of the period of consideration of a case with its reasoning shall be included in the minutes.

Acts of legislation on administrative procedures can set shorter time limits for consideration of certain categories of administrative cases.

Time limits for consideration in judicial procedure (including procedures of various courts for individuals and legal entities)

General time limits for consideration of cases are determined by the Code of Civil Procedure (CCP). According to it on each of the instances these periods shall not exceed the statutory established maximum of two months, but in practice time limits for consideration of cases are not adhered and consideration of cases can last for years.

### **D. Costs**

#### **1) Financial expenses associated with administrative procedure**

Consideration of the citizens' appeals is free of charge.

Administrative costs can include costs associated with travel and accommodation expenses incurred by interested persons, witnesses, experts, specialists and interpreters in connection with attendance at administrative hearings, remuneration for work performed on behalf of the interested parties or an administrative body, other expenses associated with administrative proceedings and execution of decisions.

Administrative costs are borne by the interested persons or an administrative authority in the manner provided by law.

#### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

Judicial expenses consist of the court fee and the costs associated with legal proceedings and execution of decisions, rulings and orders. Currently, the court fee and other judicial expenses are borne by the parties, applicants, and by the third parties with independent claims as to the subject-matter in dispute.

In accordance with the legislation on the results of the consideration of cases the following categories are exempt from payment of the court fee: governmental and public bodies, individuals and legal entities that

have filed in the cases provided by law a case to the court for the protection of the rights and legitimate interests of other persons; individuals and legal entities - for filing to the court of complaints on decisions in cases of administrative offenses taken by the authorized bodies; environmental authorities - on claims for recovery of funds in favor of the State in compensation for damage caused to the State by pollution and unsustainable use of natural resources, violation of the regulations on hunting, fishing and protection of fish stocks.

The court or a judge is entitled to fully or partially exempt poor and needy citizens from payment of the court fees for court cases - plaintiffs, the categories of which are determined by the Government of the Republic of Kyrgyzstan.

Exemption from payment of the court fee prior filing a lawsuit is particularly significant. Currently the court fee is recovered on the basis of a judicial decision.

### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

Representation by an attorney is not required. Terms, conditions and amount of the fee are determined by agreement.

With the adoption of the Law on State-guaranteed Legal Aid the Republic of Kyrgyzstan guarantees every citizen a professional legal assistance at the account of the state budget in case a citizen lacks his own resources to protect his legitimate rights and interests.

### **4) Costs of examination, involvement of experts and witnesses**

Judicial expenses (costs) associated with the production of various examinations, participation of experts in cases concerning the environment, are incurred by the person who initiated the examination.

In accordance with the legislation there is a rate of payment established by the Government which is paid by the party who initiated the examination prior the examination.

### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

A plaintiff (an individual / an NGO) in issues relating to the environment shall compensate for damages of a defendant caused by application of an injunctive relief as a measure securing a claim, only if the dependent claims for it and proves the possible losses, and only if the defendant wins the trial.

## **E. Legal aid (state, non-state)**

The practice of lawyers / legal public interest organizations operating in the environmental field and / or providing services on legal assistance to the public in matters relating to the environment exists, but it is very sporadic.

With the adoption of the Law on State-guaranteed Legal Aid the Republic of Kyrgyzstan guarantees every citizen a professional legal assistance at the account of the state budget in case a citizen lacks his own resources to protect his legitimate rights and interests. (See also section D. (3).

# REPUBLIC OF MOLDOVA

## **A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation**

### **1) Legislative system<sup>86</sup>**

According to Article 37 of the Constitution of the Republic of Moldova (1994)<sup>87</sup> every human being has the right to the ecologically safe for life and health environment, as well as for safe food and household items. Para 2 of this Article stipulates that the State guarantees to everyone the right to free access to accurate information about the state of the environment, living and working conditions, quality of food and household items, and on its dissemination. Classification or misrepresentation of information on any factors harmful to human health is prohibited by law.

Legislation of the Republic of Moldova relating to the environment is well developed. The system of legislation relating to the environment contains a significant number of laws and codes<sup>88</sup>: the Land Code (1991), the Water Code (1993), the Law on the Protection of the Environment (1993), the Law on Phytosanitary quarantine (1995), the Law on Health Care (1995), the Law on the Water Protection Zones of Rivers and Reservoirs (1995), the Forest Code (1996), the Law on Ecological Expertiza and Environmental Impact Assessment (1996), the Law on Industrial and Consumer Wastes (1996), the law on the Treatment of Harmful Products and Substances (1997), the Law on Natural Resources (1997), the Law on Air Protection (1998), the Law on the Natural Areas Protected by the State (1998), the Law on the Green Areas in Urban and Rural Settlements (1999), the Law on Drinking Water (1999), the Law on Access to Information (2000), the Law on Biological Safety (2001), the Law on Ecological Agriculture (2005), the Law on the Safe Implementation of Nuclear and Radiological Activity (2006), the Law on Flora (2007), the Law on Ecological Network (2007), the Code of Mineral Resources (2009).

### **2) Regulatory and control (oversight) authorities**

A specially authorized body in the field of environmental protection in the Republic of Moldova is the Ministry of Environment, which develops and implements state policy in the field of environmental protection and sustainable use of natural resources.

The executive body of the Ministry of Environment is the State Ecological Inspectorate (hereinafter - SEI), which consists of four zonal environmental agencies (Chisinau, Balti, Cahul, Comrat (Gagauzia), the zonal environmental agencies include 31 district units of environmental agencies. There are six border posts of environmental control, which charge fees for imported fuel and environmentally harmful products and control the emissions of vehicles. The structure of the SEI includes the Fisheries Service, which is responsible for monitoring of fish populations and control of fishing industry in the basins of the Dniester and Prut rivers. The Forestry Agency "Moldsilva" is a central governmental body under the Government that exercises state policy in forestry and hunting.

State and municipal control over observance of legislation in the field of environmental protection is carried out by the SEI. The main powers of the SEI and its territorial divisions include: conducting of the state ecological expertiza, regulation of environmental impacts by the issuance of permits for air emissions, water use, wastewater discharges, waste management and logging, control over compliance with environmental requirements and the imposition of administrative sanctions for violation of environmental laws, including the termination or suspension of any economic activity conducted in violation of environmental requirements, filing claims for compensation for damages caused by violations of environmental laws, as well as recovery of fines.

Departmental environmental control within the Ministry of the Environment is carried out by the State Agency on Geology of the Republic of Moldova "AGeoM" (departmental control over compliance with requirements, standards, rules and regulations for exploration of mineral resources, the rules of state inventory and reporting) and by the State Water Concern "Apele Moldova" (departmental control over compliance with requirements, standards, rules and regulations for exploration of mineral resources, the rules of state inventory and reporting in this area). Departmental control is also exercised by the Forestry Agency

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<sup>86</sup> Electronic database of the legislation of the Republic of Moldova in Moldovan - <http://justice.md/>.

<sup>87</sup> Official gazette of the Republic of Moldova - N 1 dated 12/08/1994

<sup>88</sup> Texts of codes, laws and regulations in Russian are available at the Ministry of Environment of the Republic of Moldova web-page - <http://www.mediu.gov.md/ru/aln/>

"Moldsilva" which: controls over compliance with the applicable legislation relating to the scope of its activities; submits proposals to suspend or reverse it in case of deviations from the existing norms and standards; exercises administrative control over the advisability of issuance of documents by the bodies of central and local government relating to the Agency's scope of authority, and submits proposals within the established procedure to reverse them, if they contradict the legislation in force, establishes jointly with other central and local public administration bodies the procedure for the drafting, coordination, assessment and approval of regulations within the scope of its authority.

### **3) Role of the Prosecutor's Office**

The Prosecutor's Office does not have the authority to control over the compliance with environmental legislation. In accordance with the Law on the Prosecutor's Office, the prosecutor is involved as a participant in proceedings in civil cases and cases involving offenses which were initiated by the Prosecutor's Office or participation of the prosecutor in which is stipulated by law. In case the prosecutor while implementing his powers identifies an unlawful administrative act of a normative or individual nature issued by a public authority or an official which violates the rights and freedoms of citizens, the prosecutor is entitled to bring a protest on it. In case a public authority or an official groundlessly rejects the protest or leaves it unconsidered the prosecutor is entitled to apply to the competent court for the recognition of the administrative act invalid.

### **4) The judicial system**

Justice is exercised by the courts: the Supreme Judicial Chamber, the appellate chambers, and the courts. Specialized courts (economic, military, etc.) can be established in accordance to the law to hear certain categories of cases.

In accordance with Article 28 of the Code of Civil Procedure (CCP) courts of general jurisdiction hear civil cases involving individuals and entities, public authorities relating to the protection of violated or disputed rights, freedoms and legitimate interests, if their protection is not carried out in other courts, in particular, cases of disputes on the rights arising from land, environmental and other legal relations based on equality of the parties, on the freedom of contract and other grounds of their rights and responsibilities; cases of disputes arising from administrative relations.

The economic courts consider economic disputes arising from civil, financial, land relations, as well as from other relations arising between legal persons and natural persons engaged in entrepreneurial activities without establishing a legal entity, but with the status of individual entrepreneurs, acquired in the manner prescribed by law; cases of suspension or revocation of licenses / permits related to entrepreneurial activity.

As the administrative courts, the courts consider disputes arising from failures to duly answer appeals within the period prescribed by law, and the legality of administrative acts issued by public authorities of the villages (communes), cities and districts, officials of these bodies, as well as private parties of all levels providing public services.

The appellate chambers, as courts of first instance, consider disputes relating to challenging of acts of normative nature, decisions, actions (omissions) of public bodies of municipalities, the Council and the City Hall of Chisinau, the officials of these bodies, infringing the rights, freedoms and legitimate interests of citizens and organizations. The Appellate Chamber of Chisinau also considers cases associated with failure to duly answer within the period prescribed by law to appeals regarding the legality of administrative acts issued by central bodies of public administration.

Judges are sufficiently aware of the environmental legislation. In 2010 A Guide for Judges on the Aarhus Convention was written and published and two workshops were organized for judges on implementation of the Aarhus Convention. Judges have access to electronic databases, including environmental legislation. On December 24, 2010 the Resolution of the Plenum of the Supreme Judicial Chamber on the Practice of the application by the courts of some provisions of environmental legislation was adopted.

Court decisions in matters relating to the environment are accessible to everyone. All courts, including the Supreme Judicial Chamber have their own websites that contain all judgments (the Supreme Judicial Chamber website - [www.csj.md](http://www.csj.md)).

### **5) The Ombudsman**

The functioning of the Ombudsman is regulated by the Law on the Parliamentary Commissioners (1997). The Parliamentary Commissioner investigates alleged violations of the rights of citizens by actions or omissions of public authorities and announces his opinion as to such violations. However, the opinion of the Ombudsman is not binding.

## **B. Information on the procedures for making decisions in environmental matters, and opportunities to challenge them**

### **1) Decision-making system**

The Licensing Chamber issues licenses for: construction of buildings and (or) engineering facilities and networks, reconstruction, enhancement, restoration; extraction of mineral resources and (or) manufacturing and bottling of mineral and natural drinking water; collection, storage, processing, sale and export of scrap and wastes of ferrous and nonferrous metals, waste batteries, including those in processed form; activity related to import, export, use, transportation, maintenance, storage of sources of ionizing radiation and radioactive materials (including radioactive waste), including the measurement of ionizing radiation fields; import and (or) production, warehousing, wholesale trade of toxic chemicals and materials, as well as products and other household chemicals; manufacturing, import and (or) re-exports of substances that deplete the ozone layer, as well as equipment and products containing such substances.

The Ministry of Environment or its subdivisions conduct the state ecological expertise that is required for planning and design documentation for the objects and types of planned economic activities that affect or may affect the environment and / or involve the use of natural resources, regardless of its purpose, location, type of ownership and subordination of these objects, the amount of capital investments, the source of funding and the method of construction. The list of activities, projects on which are subject to the state ecological expertiza is given in Article 6 of the Law on Ecological Expertiza and OVOS. The state ecological expertiza of planning and project documentation in the field of construction, urban planning and territorial development is carried out prior the final consideration of documentation by the Ministry of Construction and Regional Development.

A decision on allocation and use of land is made by the Government or local authority, depending on the category of land. A decision on authorization for subsoil use is made by the Government and the Ministry of the Environment. Water bodies that are in public ownership of the State are allocated for individual use by a decision of the Government approved by the Ministry of the Environment.

Water bodies owned by the administrative-territorial units, are allocated on the basis of the decision of the local public authorities, in coordination with the Ministry of the Environment. Certain types of special water-use are carried out on the basis of the decision of SEI. Withdrawal of forest lands covered by forests, in order to use these lands for public and community needs is done on the basis of the decision of the Government. Permits for the emission of pollutants into the atmosphere from stationary sources are issued by the State Environmental Inspectorate. Permits for waste disposal are issued by the Ministry of the Environment.

Information on the procedure for making decisions on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is indicated in Figure 10 (pp. 99-102).

### **2) Challenging of decisions in non-judicial (administrative) procedure**

A person who considers that any of his legal rights have been violated by an administrative act is entitled to submit to the public authority that issued it a preliminary application for the reversal of this act in whole or in part (Article 14 of the Law on Administrative Court). If the public authority that issued the administrative act is subordinated to a superior authority, the preliminary application can be submitted on the choice of the applicant to the authority that issued the administrative act, as well as to the superior authority.

According to Article 92 of the Law on Environmental Protection, in case of disagreement with the decisions of the representatives of the authorities in the field of environmental protection, natural and legal persons are entitled to apply to a superior authority in the field of environmental protection for consideration and resolution of their issues, and in case of disagreement with a decision of this body - are entitled to appeal them to the court.

**Figure 10**

Name of procedure (decision) on matters relating to the environment <sup>89</sup>	Body authorized to carry out the procedure (to make the decision)	Period of validity of decisions, permits or other documents issued due to the procedure	The possibility of public participation <sup>90</sup>	Body to which one can appeal the decision / action / omission	Legal act regulating the carrying out of the procedure (making the decision)
<p>1) construction of buildings and (or) engineering facilities and networks, reconstruction, enhancement, restoration;</p> <p>2) extraction of mineral resources and (or) manufacturing and bottling of mineral and natural drinking water;</p> <p>3) collection, storage, processing, sale and export of scrap and wastes of ferrous and nonferrous metals, waste batteries, including those in processed form;</p> <p>4) activity related to import, export, use, transportation, maintenance, storage of sources of ionizing radiation and radioactive materials (including radioactive waste), including the measurement of ionizing radiation fields</p> <p>5) import and (or) production, warehousing, wholesale trade of toxic chemicals and materials, as well as products and other household chemical products; manufacturing, import and (or) re-exports of substances that deplete the ozone layer, as well as equipment and products containing such substances;</p>	Licensing Chamber	5 years	Not provided for by special legislation	to the Administrative Court (Appeal Chamber of Chisinau)	the Law on the Regulation of Economic Activity by Licensing

<sup>89</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

<sup>90</sup> In the column "Is public participation envisaged", which refers to the absence of specific legislation one should take into account the provisions of the Law on the Transparency of Decision-Making process (2008), which sets the standards applied to ensure transparency in decision making within the central and local public authorities and other public bodies and regulates the relations between these bodies and citizens, associations established in accordance with the law, and other interested parties as to their participation in decision-making process.

6) The List of facilities and activities for which it is required to develop OVOS documentation prior to their design	Is carried out by a developer according to the established procedure with participation of contractor for documentation development	Period of validity of OVOS documentation is not established by law	provided, including by Regulation on public participation in decision-making in environment matters (2000)	In court	The Law on Ecological Expertiza and OVOS, Annex to the Law - Regulation on the OVOS
7) The State Ecological Expertiza is required for planning and design documentation for the objects and types of planned economic activities that affect or may affect the environment and / or involve the use of natural resources	the Ministry of Environment or its subdivisions (including SEI)	The legislation does not establish a period of validity of the conclusion of the consolidated state ecological expertiza	provided, including by Regulation on public participation in decision-making in environment matters (2000)	The preliminary appeal to the authority that took the decision and the ability to appeal the refusal or failure to provide an answer to the competent court	The Law on Ecological Expertiza and OVOS Instruction on the organization and carrying out of the state ecological expertiza
8) Permit for the use of natural resources: A) Allocation and use of lands: - owned by the State;  - owned by the administrative-territorial units  B) Authorization for subsoil use	decision of the Government decision of bodies of local public authorities In both cases, when there is a need to change the purpose of the land (agricultural and forest land for any other purposes) a Government Resolution is required.  the Ministry of the Environment decision on the basis of a resolution of the Government or the conclusion of the Agency for Geology and Mineral Resources, depending on the type of	The legislation does not provide for a period of validity of the decisions.  To extract the minerals - for the period of development of a deposit of these resources; For the operation of underground facilities and disposal (storage)	not provided by the special legislation  Not provided for by special legislation	The preliminary appeal to the authority that took the decision and the ability to appeal the refusal or failure to provide an answer to the competent court  preliminary appeal to the authority that took a decision and the ability to appeal the refusal or failure to provide an answer to the competent court	Regulation on the Procedure for allocation, changing of the purpose and the exchange of land (2007)  the Code on Mineral Resources (2009), Regulation on the procedure for allocation of mineral resources for use (2009)

	use	of hazardous substances and wastes - without limitation.			
C) Authorization for water use	Water bodies that are owned by the State are allocated for individual use on the basis of a decision of the Government approved by the Ministry of the Environment. Water bodies owned by the administrative-territorial units - on the basis of a decision of local public authorities in consultation with the Ministry of the Environment.	The period of validity is not established.	Not provided for by special legislation	preliminary appeal to the authority that took the decision and the ability to appeal the refusal or failure to provide an answer to the competent court	the Water Code (1993)
Special water use: a) intake of surface and / or ground water for drinking, domestic, manufacturing and irrigation purposes; b) discharge of water after use (waste water, sewage, drainage, rainwater, mine waters) into the natural receiving waters (flowing water, lakes), or subsurface injection.	SEI	For a period of 3 years	Not provided for by special legislation	preliminary appeal to the authority that took the decision and the ability to appeal the refusal or failure to provide an answer to the competent court	the Water Code (1993), the Order of the Director of the State Environmental Inspection on the Division of competences in issuance of environmental permits (2008)
D) Withdrawal of forest lands covered by forests, in order to use these lands for state and public needs	decision of the Government	The period of validity is not established.	Not provided for by special legislation	preliminary appeal to the authority that took the decision and the ability to	The Forest Code (1996)

				appeal the refusal or failure to provide an answer to the competent court	
9) Emission of pollutants into the atmosphere from stationary sources	State Environmental Inspectorate	Free of charge for the period of validity of the MPE amounts	Not provided for by special legislation	preliminary appeal to the authority that took the decision and the ability to appeal the refusal or failure to provide an answer to the competent court	The Law on Air Protection (1997)
10) Import, export and transit of the ozone depleting substances, products and equipment containing such substances	Permit issued by the Ministry of the Environment	90 days	Not provided for by special legislation	preliminary appeal to the authority that took the decision and the ability to appeal the refusal or failure to provide an answer to the competent court	the Order of the Minister of the Environment, 2005.
11) Waste Management	Permit issued by the Ministry of the Environment	1 year	Not provided for by special legislation	preliminary appeal to the authority that took the decision and the ability to appeal the refusal or failure to provide an answer to the competent court	the Order of the Minister of the Environment, 2005.

Authorities that issued administrative acts or superior authorities empowered to consider applications and complaints are established according to the law. Legally, considering complaints they should be guided by the legislation. However, by virtue of subordination, they do not fully meet the criteria for "independence and impartiality" in dealing with complaints.

The public does not have the right to challenge actions / omissions of private parties, who violate the provisions of law relating to the environment, in non-judicial (administrative) procedure.

### **3) Judicial procedure. Standing (of individuals, NGOs) in matters relating to the environmental**

The legislation provides for two types of court proceedings: administrative and action proceedings. A natural person and (or) NGO is entitled to apply to the court in matters relating to the environment within both types of proceedings.

In accordance with Article 3 of the Law on Administrative Court, a subject-matter of a claim to the administrative court is the administrative acts of normative or individual nature, infringing any legal right of a person, including of a third-party issued by: public authorities and for the purpose of this law the equivalent bodies, their subdivisions, officials and public servants. A similar provision is contained in Article 277 of the CCP, under which, any person, who considers himself infringed on any of his legitimate right by an administrative act of a public authority or by failure to duly respond to an appeal within the period prescribed by law, is entitled to apply to the competent court in order to cancel the act, for recognition of his rights and compensation for any damage.

Complaints of citizens and NGOs can serve as a ground for prosecution, which is initiated by the bodies of criminal prosecution on the grounds prescribed by law.

CCP provides that an interested person (individual, NGO) is entitled in the manner prescribed by law to apply to the court for the protection of violated or disputed rights, freedoms and legitimate interests.

Organizations and individuals are entitled to apply to the court with a lawsuit for the protection of the rights, freedoms and legitimate interests of other persons, upon their request, or to protect the rights, freedoms and legitimate interests of an indefinite number of persons. An NGO is entitled to apply to the court for the protection of the rights and interests of other persons, if such organization is registered in accordance with the law and its statute provides that it deals with the protection of the rights and interests of others. A lawsuit for the protection of the interests of a legally incapable person can be brought regardless of the request of the person concerned or his legal representative. Organizations and individuals that brought legal action to protect the interests of others enjoy the procedural rights and perform the procedural duties of the plaintiffs, except for the right to conclude amicable agreements and obligation to pay judicial expenses.

If the contested administrative act of normative or individual nature infringes any legitimate rights of a person, a pre-trial procedure of appeal of the act is required.

If there is a violation of environmental rights in the result of actions / omissions of individuals or legal entities, the lawsuit is filed directly to the court.

### **4) Other (non-judicial) methods of dispute resolution**

Indirectly, the possibility of a non-judicial dispute resolution is provided for in Article 94 of the Law on Environmental Protection, according to which disputes in the field of environmental protection in which the interested parties cannot reach a mutual agreement, shall be settled in judicial procedure. The Law on Mediation (2007), provisions of which are applicable to environmental disputes, is in force.

However, the practice of mediation is minimal, and there are no examples of resolution of environmental disputes. The number of mediators is scarce; their services are not in demand.

## **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

### **Administrative procedure**

#### **1) General overview of the remedies in administrative review procedure of decisions, actions, omissions and on-going activity**

Suspension at the initiative of the Chief State Inspector of Environment and the chief environmental inspectors of the zones or at the request of the bodies of local self-government of any activity, if it contradicts the law on the protection of the environment in accordance with the Law on Environmental Protection, is a remedy. Citizens and NGOs (in accordance with Article 30, para 1 (e) of the Law on Environmental Protection) can initiate this. Individuals have the right to submit appeals to the public authorities to suspend operations or terminate activity of business entities that cause irreparable damage to

the environment. Or, in accordance with paragraph (g) of this Article, individuals have the right to apply directly or through organizations, parties, movements, associations to the authorities in the field of environmental protection, administrative or judicial authorities with demands to terminate the activity that harms the environment, regardless of whether due to termination business entities incur direct losses or not).

## **2) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions / actions / activities in case of appeal is not provided by the legislation.

## **3) The prohibition on the activity (temporary, permanent)**

The prohibition on the activity (temporary, permanent) is based on the decision of the Chief State Inspector of the Environment and the chief zonal inspectors of the environment, if this activity contradicts the law on the protection of the environment and causes irreparable damage to the environment regardless of whether due to such prohibition business entities incur direct losses or not (in accordance with Article 30, para 1 (g), (e) of the Law on Environmental Protection).

## **Judicial Procedure**

### **4) General overview of the remedies in judicial review of decisions, actions, omissions**

In the administrative court, the following remedy can be used - suspension of the contested act. Also the legislation provides for compensation for material and non-pecuniary damage caused to the plaintiff by an unlawful administrative act or by failure to consider the preliminary application of the applicant within the period established by law.

In civil proceeding at the request of participants to the trial the court can take measures to secure the claim, in particular, prohibit the defendant to perform certain actions. Article 11 of the Civil Code lists the following remedies: recognition of rights, restoration of the situation that existed before the violation of a right and suppression of actions that violate or may violate the right, etc. CCP also establishes the rule according to which the court shall protect the rights, freedoms and legitimate interests by awarding the execution of duties, recognition of a legal relation existing or non-existent, establishing the fact, which has legal significance, and by other remedies provided by law.

### **5) General overview of the remedies in challenging of the ongoing activities conducted in violation of the law relating to the environment**

According to Article 30 of the Law on Environmental Protection citizens also have the right to apply directly or through organizations, parties, movements, associations to the judiciary with the demands to terminate an activity, if this activity contradicts the law on the protection of the environment and causes irreparable damage to the environment regardless of whether due to such prohibition business entities incur direct losses or not (in accordance with Article 30, para 1 (g), (e) of the Law on Environmental Protection).

## **6) Automatic suspension of decisions / actions / activities in the case of their appeal**

Mandatory provisions obliging a defendant to suspend his activity are not enshrined in the legislation.

## **7) The prohibition on the activity**

### **a) temporary**

Conditions / criteria for imposition of a ban on an activity by the court are (Article 174 CCP, Article 21 para 2 of the Law on Administrative Court): failure to take measures securing the claim can create judicial difficulties or make the execution of court decision impossible, if there is sufficient evidence that damage is inevitable and in order to avoid such damage. The law does not differentiate the possibilities of issuance of injunctions based on the legal status of a defendant.

Measures securing a claim, including the prohibition of activities are temporary in nature, since they can be revoked by the judge or the court that ruled to take these measures, or by the judge or the court that hears the case.

### **b) permanent**

According to Article 30 of the Law on Environmental Protection citizens also have the right to apply directly or through organizations, parties, movements, associations, to the courts demanding the cessation of activities that are harmful to the environment.

## **8) Claim for compensation for damage / injury (including caused to the environment), compensation for non-pecuniary damage**

According to Article 30 para 1 (h) of the Law on Environmental Protection, individuals are entitled to compensation for damage caused by pollution or other actions to the environment and human health.

Citizens, NGOs are entitled to apply to the court for compensation for injury, property damage, including on issues relating to the environment. The legislation does not expressly provide for the right of the public to sue for damages caused to the environment. However, based on the meaning of Article 73 para 1 of CCP), according to which an organization, an individual is entitled to apply to the court with a lawsuit for the protection the rights, freedoms and legitimate interests of other persons, upon their request, or to protect the rights, freedoms and legitimate interests of an indefinite number of persons, it is theoretically possible to initiate such proceedings. If the damage was caused to the environment, health or life of individuals, a claim for compensation for such damages can be filed in the interests of the victims.

At the same time, if damage was caused only to the environment, despite the formal recognition of the right of the public to appeal to the court in this case, in practice, some problems may arise, in particular, the recognition of the public as a "proper plaintiff", the procedure of calculation of the amount of damages and the establishment of "a victim", deciding to whom should damages be paid (to the Government, local public authorities, the Ministry of Environment or to someone else).

## **9) Legal action for the protection of "the public interest» - actio popularis**

Organizations and individuals are entitled to apply to the court with lawsuits for the protection of the rights, freedoms and legitimate interests of other persons, upon their request, or to protect the rights, freedoms and legitimate interests of an indefinite number of persons.

## **10) Timeliness**

The right to appeal in administrative procedure accrues from the moment when a person was notified of a decision or found out about it.

In accordance with Article 15 of the Law on the Transparency of Decision-Making Process (2008), public authorities provide access to the decisions taken by posting them on the official web-page, by posting in a public place at their location, and / or by dissemination, as appropriate, through the central or local media, as well as by other ways established by law.

The Regulation on public participation in decision-making in environmental matters (Article 15) establishes that notification of the public on the planned economic activity and decision-making process is done by the announcement on the meetings of councils of local public administration, mayor's offices of settlements and in other public places, announcement in the press, on radio and television, by direct notification of the leaders of non-governmental organizations.

In accordance with Article 13 of the Regulation on OVOS, bodies of local public administration within 5 days after obtaining the statement of the impact on the environment (EIS) shall announce in the media when and where the public can get acquainted with it, get a copy of it, conduct a public ecological expertiza and hold public discussion. Public shall have open access to OVOS documentation and the EIS for 30 calendar days. During this period, comments on these documents can be sent in writing to the person named by the bodies of local public administration.

According to Article 8 of the Law on the Filing of Petitions (1994) a non-judicial body shall inform an applicant in writing on the decision taken on the results of his application with the 30-day period, and if the application does not require additional investigation and consideration - either immediately or within 15 days from the date of its registration.

A preliminary application shall be submitted to the public authority which issued the act by a person who considers that any of his legitimate rights have been violated by the administrative act, within 30 days from the date when the content of the act was communicated to him.

According to Article 15 of the Law on Administrative Court, the preliminary application shall be considered by the authority that issued the administrative act or by a superior authority within 30 days from the date of its registration with immediate notification of the applicant of the decision on it, unless the law provides otherwise.

Further, a person not satisfied with the response received on his preliminary application or not having received any response, is entitled within the period prescribed by law (30 days) to apply to the competent administrative court with a statement of claim on cancellation of the said act in whole or in part, and compensation for damages.

The statement of claim on cancellation of an administrative act or on recognition of one's rights shall be filed within a 30-days period. Legality of administrative acts of normative nature can be challenged at any time. The prescribed 30-day period is a period of limitation.

The general period of limitation as prescribed by the Civil Code is 3 years for claims brought to the court challenging actions / omissions of individuals or legal entities. Period of limitation does not apply to claims for compensation for damage caused to life or health of a person (including resulting from the violations of environmental laws). In this case, the damage shall be compensated for the period preceding the filing of the claim, but not more than for three years. The period of limitation, missed for valid reasons, can be restored.

The law does not set any mandatory time limits for consideration of this category of cases in court.

In accordance with Article 22 para 2 of the Law on Administrative Court, in the event a claim is admitted for consideration, a judge shall order the first court appearance of the parties not later than in 10 days after admitting the claim for consideration. In other cases, the administrative court shall set the date of the case consideration on the merits in a "reasonable time", if the organic law does not provide otherwise. CCP enshrines a similar rule, but the criteria of "reasonableness" of the time limit are not given.

A decision of the administrative court on a statement of claim considered on the merits can be appealed in cassation procedure within 15 days from the date of its issuance or from the date the party, who was not present at the hearing, gets acquainted with the full text of the decision.

The deadline for filing an appellate complaint is 20 days from the date of communication of the reasoned decision, unless the law provides otherwise, even if the appellate complaint was filed earlier.

In accordance with Article 446 of CCP, all final decisions, rulings and orders of the courts can be reviewed in the reopening procedure. In this case, an application for review in the reopening procedure shall be submitted within the following time limits: within three months from the date when a person concerned has become aware of substantial circumstances or facts on the case, that were not and could not have been known by him earlier; within three months from the date of discovery of a written evidence of probative value, which were held by one of the parties to the trial or which could not have been presented to the court due to circumstances beyond the control of the parties to the trial.

#### **D. Costs**

##### **1) Financial expenses associated with administrative procedure**

Applicants are exempt from the financial burden in appeals against decisions, actions, or omissions in administrative procedure.

##### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

Plaintiffs in lawsuits arising from administrative relations are exempt from payment of the court fee. In accordance with the provisions of the Law on the State Duty (1992), for filing claims in property-related disputes the court fee shall be collected in the amount of 3% of the claim. For filing of other claims of non-material nature (those that cannot be assessed) the court fees is collected in the amount of 5 nominal units (1 nominal unit - 20 leus (approximately 1,7 U.S. dollars<sup>91</sup>), 5 nominal units - 100 leus or around 8,3 USD).

The minimum wage in the private sector is 1100 leus or about 92 USD; in the public sector - 740 leus or about 62 USD. The minimum pension is 440 lei, which is approximately 37 USD.

From payment of the court fee to the court are exempt, inter alia: organizations and individuals authorized by law to apply to the court with statements of claim for the protection of the rights, freedoms and legitimate interests of other persons or for the protection of the interests of the State or society and to submit statements on appeal against decisions of the courts; plaintiffs - on claims for compensation for damage caused by injury or other health impairment, and by the death of a breadwinner; plaintiffs - on claims for compensation for damage caused by pollution and unsustainable use of natural resources; prosecutors - in cases prescribed by law for statements of claim for the protection of the rights and legitimate interests of others; parliamentary commissioners - for statements of claim for the protection of interests of the applicants, whose constitutional rights and freedoms have been violated.

In accordance with Article 4 para 2 of the Law on the State Duty, the judge or the court, taking into account the financial situation of individuals and legal entities, confirmed by the presented evidence, on the

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<sup>91</sup> This report uses the operational rate of Moldovan Leu to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 12 leus.

basis of their motion is entitled to fully or partially exempt them from paying the court fee as well as allow repayment by installments or delay payment of the court fee. The court fee, from the payment of which a plaintiff was exempt, is collected from a defendant in proportion to the satisfied part of the claim. The court fee is paid prior filing a lawsuit to the court.

### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

The legislation does not require to use services of an attorney or other professional in the legal field. But in practice, the use of attorney's services is preferable. The attorney's fee is determined by agreement or as a percentage of the amount won. It is paid prior consideration of a case, but it can be agreed to pay after the end of the case, taking into account the amount of work done.

### **4) Costs of examination, involvement of experts and witnesses**

In accordance with Article 92 of the Code of Civil Procedure the amounts payable to witnesses, experts, specialists and interpreters, and the amounts of other necessary expenses on the case are paid in advance by the party, who filed the appropriate motion to the deposit account of the court. If the motion is filed by both parties, or involvement of witnesses and specialists, examination or other actions, that shall be paid, are made at the initiative of the court, the required amount is paid to the deposit account of the court by the parties in equal parts.

Failure to pay the costs listed above within the date set by the court entails the deprivation of the right to invite a witness, expert or interpreter, or carry out an examination. Costs of examinations are determined by the experts themselves prior the beginning of an examination. These amounts should also be paid before the beginning of the examination. These costs do not depend on the status of the participants.

### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

According to Article 182 of CCP the judge or the court, granting a security of a claim, may require a plaintiff to provide a security of possible damages that may be caused to a defendant. The law does not specify criteria for determining those damages. When the decision (by which the claim is denied) has become effective, the defendant has the right to claim compensation for damages from the plaintiff caused to him by measures securing the claim imposed at the motion of the plaintiff.

This rule conflicts with the provisions of the Law on Environmental Protection establishing that individuals have the right to apply directly or through organizations, parties, movements, associations ... to the judicial bodies with claims to cease the activity harming the environment notwithstanding whether business entities will suffer direct losses or not.

### **6) Other issues of judicial expenses**

The "loser pays" principle applies when the court renders decisions. Article 94 of the Code of Civil Procedure provides that the court obliges the party that lost a lawsuit, to pay all judicial expenses incurred by the party in whose favor the decision was made. If a claim is partially satisfied, judicial expenses shall be reimbursed to the plaintiff in proportion to the satisfied claims, and to the defendant - in proportion to that part of the claim, in satisfaction of which the plaintiff was denied. If there are several plaintiffs or several defendants, they are required to pay judicial expenses in equal parts, proportionally or jointly in accordance to their interests, or depending on the nature of the dispute among them.

At the same time, Article 971 of the Code of Civil Procedure provides that in cases when a lawsuit brought by a person for the protection of the rights, freedoms or interests of the plaintiff was denied in full or in part, in cases as stipulated by the Organic Law, all judicial expenses incurred by the defendant shall be reimbursed from the state budget in full or in part in proportion to that part of the claim, which was denied. Thus, organizations and individuals that bring legal action to protect the interests of others enjoy the procedural rights and perform the procedural duties of the plaintiff, except for the obligation to pay judicial expenses under the general rule.

## **E. Legal aid (state, non-state)**

The only center providing legal services in these types of cases is Public Environmental Advocacy NGO Eco-Lex. Under the Law on Legal Aid (2007), the State guarantees that free legal assistance is provided to persons in need of legal assistance in cases of administrative offenses, civil and administrative

cases, who do not have sufficient funds to pay for these services, providing that these cases are complicated from the legal and procedural points of view.

"Need" is established based on the financial situation of a client. "The complexity of a case" involves the following criteria: the number of participants (parties), the number of witnesses, victims, the duration of the proceedings (i.e., number of the hearings, the need to conduct any kind of examination, the stage of the process (appellate or cassation proceedings)).

# RUSSIAN FEDERATION

## A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation

### 1) Legislative system<sup>92</sup>

In accordance with Article 42 of the Constitution of the Russian Federation, everyone shall have the right to favorable environment, reliable information about its state and for a restitution of damage inflicted on his health and property by ecological transgressions.<sup>93</sup>

The major laws and codes of the Russian Federation relating to the environment are: the City Planning Code (2005)<sup>94</sup>, the Forest Code (2006)<sup>95</sup>, the Land Code (2001)<sup>96</sup>; federal laws: on Environmental Protection (2002)<sup>97</sup>, on Ecological Expertiza (1995)<sup>98</sup>, on Specially Protected Natural Areas (1995)<sup>99</sup>, on the Territories of Traditional Nature Use of Indigenous Peoples of the North, Siberia and the Russian Far East (2001)<sup>100</sup>, on Air Protection (1999)<sup>101</sup>, on the Internal Waters, Territorial Sea and Contiguous Zone of the Russian Federation (1998)<sup>102</sup>, on the Continental Shelf of the Russian Federation (1995)<sup>103</sup>, on Fauna (1995)<sup>104</sup>, on Sanitary and Epidemiological Wellbeing (1999)<sup>105</sup>, on Radiation Safety (1996)<sup>106</sup>, on Industrial and Consumers Waste (1998)<sup>107</sup>, on the Hydrometeorological Service (1998)<sup>108</sup>, on the Destruction of Chemical Weapons (1997)<sup>109</sup>, on the Use of Atomic Energy (1995)<sup>110</sup>, etc.

### 2) Regulatory and control (supervisory) authorities

General regulation in the field of protection of the environment is carried out by the public authorities and the bodies of local self-government. Powers in the area of relations on the protection of the environment are divided into three levels: powers of the Government of the Russian Federation; powers of the public authorities of the subjects of the Russian Federation<sup>111</sup>, and powers of bodies of local self-government. Some of the most important powers, such as environmental protection, protected areas, as well as legislation on the protection of the environment the Constitution of the Russian Federation considers to be of the joint jurisdiction of the Russian Federation and its subjects.

In Russia there is the following system of public authorities carrying out various functions in the field of environmental protection: bodies of general jurisdiction - the President of the Russian Federation, the Government of the RF, bodies of special competence - the Ministry of Natural Resources and Ecology of the Russian Federation, the Federal Service for Ecological, Technological and Atomic Control, the Federal Service for Supervision over the Use of Natural Resources, the Federal Service for Hydrometeorology and Environmental Monitoring, the Federal Water Resources Agency, the Federal Agency for Subsoil Use, etc.

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<sup>92</sup> The electronic database of the legislation of the Russian Federation in Russian – [www.garant.ru](http://www.garant.ru).

<sup>93</sup> The Constitution of the Russian Federation dated December 12, 1993 / / Collected Legislation of the Russian Federation (hereinafter - CL of the RF). 2009. № 4. p. 445.

<sup>94</sup> CL of the RF, 2005, № 1, p. 16.

<sup>95</sup> CL of the RF, 2006, № 50. p. 5278.

<sup>96</sup> CL of the RF. 2001, № 44. p. 4147.

<sup>97</sup> CL of the RF, 2002, № 2, p.133.

<sup>98</sup> CL of the RF, 1995, N 48, p.4556.

<sup>99</sup> CL of the RF, 20.3.1995. № 12. p. 1024.

<sup>100</sup> CL of the RF, 15.5.2001. № 20. p.1972.

<sup>101</sup> CL of the RF, 1999, № 18. p. 2222.

<sup>102</sup> CL of the RF, 1998. № 31. p. 3833.

<sup>103</sup> CL of the RF, 1995. № 49. p.4694.

<sup>104</sup> CL of the RF, 1995. № 17. p.1462.

<sup>105</sup> CL of the RF, 1999. № 14. p.1650.

<sup>106</sup> CL of the RF, 1996. № 3. p.141.

<sup>107</sup> CL of the RF, 1998. № 36. p.3009.

<sup>108</sup> CL of the RF, 1998. № 30. p. 3609.

<sup>109</sup> CL of the RF, 1997. № 18. p. 2705.

<sup>110</sup> CL of the RF, 1995. № 48. p.4552.

<sup>111</sup> Units of the Russian Federation like States in the US (translator's note).

Bodies of special competence - are the public authorities, specially authorized by the Government of RF or the President of RF to carry out the appropriate functions in the field of environmental protection. Based on their competences, these bodies are divided into inter-sectoral and sectoral. Inter-sectoral bodies carry out functions related to all (or most) natural objects or activities related to the impact on the environment. Sectoral bodies regulate environmental protection in certain sectors (transport, industry, energy, etc.). They are: the Ministry of Internal affairs of Russia, the Ministry of the Defense of Russia, the Federal Security Service of Russia, etc.

For the purpose of separation of powers in the field of environmental control the system of division of controlled objects is established by the legislation. Criteria are introduced for classifying these objects to the federal level, depending on the magnitude of the negative impact of the economic entities on the environment.

The Ministry of Natural Resources and Ecology of the Russian Federation (hereinafter - the Minprirody of Russia) is a federal executive authority responsible for the development of the public policy and legal regulation in the field of research, use, reproduction and protection of natural resources, including minerals, water bodies, forests located on the lands of specially protected natural areas, wildlife and habitats, in the field of hunting, hydrometeorology and related areas, in the field of environmental monitoring, pollution, including the regulation of radiation control and monitoring, as well as for the development and implementation of the public policies and legal regulation in the field of the protection of the environment, including the issues related to industrial and consumers waste (hereinafter - the waste), specially protected natural areas and the state ecological expertiza. The Minprirody of Russia has under its jurisdiction the Federal Service for Hydrometeorology and Environmental Monitoring, the Federal Service for Supervision over the Use of Natural Resources, the Federal Agency for Water Resources and the Federal Agency for Subsoil Use.

The Federal Service for Control over the Use of Natural Resources (hereinafter - Rosprirodnadzor) is a government agency authorized to carry out state environmental control at the federal level. State environmental control exercised by Rosprirodnadzor, includes: control over the protection of air, over activities related to waste management (except for radioactive wastes), over geological survey, rational use and protection of mineral resources, land control, forest supervision and control, control over reproduction and use of Fauna and habitats, and over organization and functioning of specially protected natural areas, Lake Baikal, the control and oversight over the use and protection of water bodies as well as control of the inland marine waters of the Russian Federation and the territorial sea of the Russian Federation, within the exclusive economic zone of the Russian Federation, and on the continental shelf of the Russian Federation.

The Federal Service for Ecological, Technological and Nuclear Oversight (Rostekhnadzor) is a federal body of executive power, which, in particular, exercises the functions of control and oversight in the field of safe management of works related to subsoil use; industrial safety; safety in the use of nuclear energy (except for the activities on the design, production, testing, operation and disposal of nuclear weapons and nuclear power plants for military purposes); safety of electrical and heating systems and networks (except for household systems and networks); safety of hydraulic facilities (except for the navigation hydraulic facilities, as well as hydraulic facilities under the jurisdiction of the local authorities); safety of production, stockpiling and use of industrial explosives, as well as special functions in the area of the national security in this area. Rostekhnadzor is a state regulating body of safety in the use of nuclear energy; an authorized body in the field of industrial safety; a body of state mining, energy, and construction oversight. Rosprirodnadzor, Rostekhnadzor, Roshydromet, Rosvodresursy, Rosnedra operate directly and through their regional departments in coordination with other federal authorities, state authorities of the subjects of the Russian Federation, local authorities, non-governmental associations and other organizations.

The Police of RF is one of the authorities, specially authorized to oversight the compliance with the legislation. Environmental Police - is a department for combating the crimes in the area of environmental protection. Its main tasks are: detection, suppression and prevention of crimes in the field of environmental protection, identification of physical, legal persons and officials liable for commitment of crimes, ensuring control over environmental safety in their respective territories; cooperation with state environmental, sanitary-epidemiological and other health protecting and regulatory bodies. The first environmental police office was established in Naberezhnye Chelny (Tatarstan) in 1991 as an experiment. In a few years, similar offices were established in Kazan and in several other major cities, including Moscow.

### **3) Role of the Prosecutor's Office**

The Prosecutor's Office of the Russian Federation, in conformity with the provisions of the Federal Law on the Prosecutor's Office of the Russian Federation (1992) - is a single centralized system of bodies exercising oversight on behalf of the Russian Federation over the observance of the Constitution and the

execution of the laws in force on the territory of the Russian Federation. Prosecutors' inspections of various structures, institutions, organizations are very efficient and effective means to detect and prevent violations in the field of environmental protection.

In the field of law enforcement the Prosecutors' Office conducts oversight over compliance with the Constitution of the Russian Federation and the execution of the laws in force on the territory of the Russian Federation, by the federal ministries, state committees, services and other federal executive authorities, representative (legislative) and executive authorities of the subjects of the Russian Federation, bodies of local self-government, military authorities, controlling (overnighting) bodies, their officials, as well as managing boards and directors of business and non-profit organizations, as well as conformity with the legislation of the legal acts issued by the authorities and officials.

Prosecutor or his deputy in cases of violations of the law: initiates administrative proceedings, brings the persons who have violated the law to another type of responsibility established by law for violation in the field of environmental protection, warns on impermissible to break the law, challenges legal act contradicting the law by applying to the court or the economic court for declaration of such acts null and void; submits recommendations on elimination of violations of law. In Russia there are also specialized inter-district environmental prosecutor's offices, which the citizens and NGOs have the opportunity to address in case of violations of environmental laws for the organization of the inspections and elimination of the violations.

#### **4) The judicial system**

In the Russian Federation the cases concerning the environment can be considered by: the federal courts, the constitutional (charter) courts as well as by the magistrates of the subjects of the Russian Federation. The federal courts include: the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, supreme courts of the republics, territorial and regional courts, courts of the federal cities, autonomous regions, and district courts.

The Supreme Arbitration Court of the Russian Federation, federal arbitration courts of districts (arbitration cassation courts), arbitration appellate courts, and arbitration courts of the subjects of the Russian Federation.

The courts of the subjects of the Russian Federation include: constitutional (charter) courts of the subjects of the Russian Federation, the magistrates, who are judges of general jurisdiction of the subjects of the Russian Federation.

Individuals and NGOs can initiate cases to protect the environmental rights of citizens and organizations on cancellation of the decisions on the design, allocation, construction, reconstruction, operation of facilities, economic and other activities of which may have a negative impact on the environment, on limitation, suspension or termination of business and other activities which have a negative impact on the environment, bring claims to the court for compensation for environmental damage, etc. in the courts of two kinds.

In the courts of general jurisdiction, in accordance with the provisions of the Code of Civil Procedure of the Russian Federation (2002) (hereinafter CCP RF): in general claim proceedings in the case of violation of rights of citizens (to a healthy environment, to participation in environmental decision-making, to access to environmental information, to compensation for damages caused by an environmental offense, etc.), or in proceedings of cases arising from administrative relations (on appeals against normative legal acts affecting the rights of citizens to a healthy environment; on appeals against the decisions and actions (omissions) of public authorities, bodies of local authorities, their officials, state and municipal employees).

In the courts of arbitration, in accordance with the provisions of the Code of Arbitration Procedure of the Russian Federation (2002) (CAP): in a general claim proceedings in the case of violation of rights of citizens, or NGOs, or in proceedings in cases arising from administrative relations (on claims on the recognition of a legal act invalid, on appeals against non-normative legal acts, decisions and actions (omissions) of public authorities, bodies of local self-government, other bodies and organizations vested with some state or other public powers by federal law and their officials).

Individuals and NGOs have the right to appeal to the appropriate authorities with statements on the detected, observed or recorded crimes in this area, with the request of verification of the facts and initiation of a criminal case. Such statements are verified and, if the facts and circumstances therein are confirmed, the prosecutor's office can initiate the criminal proceedings.

The public has access to court decisions taken on issues relating to the environment, if the courts have published these decisions on Internet sites. Decisions made by the Supreme Court of RF, the Supreme Arbitration Court, are publicly available. They can be found on the official websites of the courts, in the specialized press of the courts, in legal databases.

Judges are not sufficiently aware of the legislation relating to the environment. Cases and situation on environmental matters are rarely mentioned in the reviews of legislation and jurisprudence of the Supreme Court of the Russian Federation.

## **5) The Ombudsman**

The Commissioner for Human Rights in the Russian Federation was established in accordance with the Constitution in order to guarantee the state protection of the rights and freedoms of citizens, their observance and respect for them by public authorities, bodies of local self-government and their officials. Competence of the Ombudsman is envisaged in the Federal Constitutional Law on the Commissioner for Human Rights in the Russian Federation (1997).

The Commissioner considers all complains against decisions or actions (omissions) of public authorities, bodies of local self-government, their officials and civil servants, if a complainant had earlier appealed these decisions or actions (omissions) in judicial or administrative procedure, but does not agree with the decisions taken on his complaint. Moreover, if there is information about the mass or gross violations of rights and freedoms of citizens, or in cases of special public importance, or in cases of necessity to protect the interests of persons incapable to use remedies on their own, the Commissioner can take appropriate measures on his initiative within his competence.

Upon review of complaints the Ombudsman, in particular, is entitled: to apply to the court to protect the rights and freedoms infringed by decisions or actions (omissions) of public authorities, bodies of local self-government or their officials, to apply to the court or prosecutor's office with the request to scrutinize decisions, verdicts, court rulings or orders, and decisions of judges which have become effective; to appeal to the Constitutional Court of the Russian Federation with the complaint on a violation of constitutional rights and freedoms of citizens by law, applied or applicable in a particular case.

A public authority or a body of local self-government or an official who received the Ombudsman's findings with recommendations on possible measures to be taken for the restoration of these rights and freedoms, as well as for the elimination of the causes that resulted in a complaint to the Ombudsman, shall consider them within one month and inform the latter on the measures taken in writing. The Ombudsman discontinues proceedings on a complaint, if he deems the results of the measures taken on his findings to be satisfactory.

## **B. Information on the procedures for making decisions in environmental matters, and opportunities to challenge them**

### **1) Decision-making system**

Information of the procedure for making decisions on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is indicated in Figure 11 (pp. 113-115).

### **2) Challenging of decisions in non-judicial (administrative) procedure**

The public has the right to file an appeal / complaint about the illegality of the decisions in matters relating to the environment, to the body that made the decision and / or to a superior authority in accordance with the Federal Law on the Procedure for Consideration of Appeals of the Citizens of the Russian Federation" (2006). Citizens can submit proposals, applications and complaints.

Also, the Federal Law on Challenging in the Court of Actions and Decisions, Violating Rights and Freedoms of Citizens (1993) provides for the right of the public to appeal against actions (decisions) violating their rights and freedoms to a superior public authority, a body of local self-government, institution, enterprise or association, public association, an official, a public servant. A superior authority, association or an official shall consider a complaint within one month. If a citizen's complaint is denied or he has not received a reply within one month from the date of its filing, he has the right to file a complaint to the court.

The public concerned is entitled to a direct appeal to the court at any time. The procedure for a pre-trial appeal to a superior or another body is not mandatory.

**Figure 11**

<b>Procedure (decision) on matters relating to the environment<sup>112</sup></b>	<b>Body authorized to carry out the procedure (to make the decision)</b>	<b>Period of validity of decisions, permits or other documents issued due to the procedure</b>	<b>The possibility of public participation</b>	<b>Body, to which one can appeal the decision / action / omission</b>	<b>Legal act regulating the carrying out of the procedure (making the decision)</b>
Construction permit	A body of local self-government at the location of the land, or a federal body of executive power, an executive authority of a subject of the Russian Federation, or a body of local self-government in accordance with their competence.	For the period stipulated by the project of construction of a facility. A permit for individual housing construction is issued for ten years.	Public hearings are provided for: Projects of master plans of settlements, master plans of urban areas; draft guidelines on land use and development; permits for conditionally permitted type of use of land or construction of an object; permits for deviation from the limiting parameters of permitted construction, reconstruction of objects of construction	Court	Urban-planning Code of the Russian Federation dated December 29, 2004 N 190-FL
Decision on preliminary approval of the location of an object, of implementation of activity Decision an allocation of land for construction	An executive body of state power or local self-government  Adopted by an executive body of state power or local self-government	valid for three years	Bodies of local self-government of urban or rural settlements inform the public on possible or forthcoming allocation of land for construction.	a superior body, Prosecutor's Office, the court	the Land Code of the Russian Federation dated October 25, 2001 N 136-FL
Decision on preparation of OVOS (environmental impact assessment)	A person interested in the implementation of activity		At all stages of the OVOS PP is organized by bodies of local self-government or the relevant public authorities with the assistance of the developer	a superior body, Prosecutor's Office, the court	Regulation on Environmental Impact Assessment of planned economic and other activities on the environment in the Russian Federation approved by the Order of the Goscomecologia dated May

<sup>112</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

					16, 2000 N 372
State Ecological Expertise (SEE)	SEE is organized and conducted by the federal executive authority in the field of ecological expertize or by public authorities of the subjects of the Russian Federation depending on the object of SEE the Ministry of the Protection of the Environment and Natural Resources of the Russian Federation and its territorial bodies.	A positive conclusion of the SEE is legally binding for a period specified by the federal executive authority in the field of ecological expertize or public authorities of the subjects of the Russian Federation, conducting a certain state ecological expertize.	The public has the right: to put forward proposals on conducting a public ecological expertize; to submit reasoned proposals on environmental aspects of the planned economic and other activities; to receive from the authorities organizing the carrying out of the SEE information on the results of the expertiza, in cases of having also the public EE to participate as observers in the meetings of expert committees of SEE and to participate in the discussion of the findings of the public ecological expertiza.	One can appeal a conclusion of the SEE to the court	Federal Law dated November 23, 1995 N 174-FZ on Ecological Expertize. Resolution of the Government of RF dated 11 June 1996 N 698 on approval of the Procedure for carrying out of the state ecological expertiza
Urban planning expertiza	Public authorities of RF, public authorities of the subjects of RF in the field of urban planning under the jurisdiction of the Ministry of Regional Development of the Russian Federation	Not provided	no	In court	Urban-planning Code of the Russian Federation dated December 29, 2004 N 190-FL Resolution of the Government of RF dated March 5, 2007 N 145 on the Procedure of organizing and conducting of the state expertiza of project documentation and the results of engineering research Resolution of Gosstroj dated October 29, 1993 N 18-41 on the Procedure of the state expertiza of urban planning documentation and construction projects in the Russian Federation
Expertiza of industrial safety	For carrying out of the expertiza - an organization licensed to conduct this expertiza by the Gosgortekhnadzor of Russia.	Not provided	no		Federal law dated 21 July 1997 N 116-FL on Industrial Safety of Hazardous Production Facilities Resolution of the Federal Mining and Industrial Supervision of

	For approval of the conclusion of expertiza - the federal executive authority in the field of industrial safety, or its territorial body.				Russia dated November 6, 1998 N 64 on approval of the Rules of carrying out of industrial safety expertiza
Permits for the use of natural resources (within the activity listed in Annex I to the Aarhus Convention), including their renewal, a review of their conditions	The public authorities of the Russian Federation, authorities of the subjects of RF	Different	Provided	a superior body, Prosecutor's Office, the court	Land, Water, Air, Forest, Urban Planning Codes, the Law of the Russian Federation dated February 21, 1992 N 2395-I on Subsoil and others
Permits for emissions / discharges of pollutants, including their renewal, a review of their conditions	The Federal Service for Ecological, Technological and Nuclear Supervision	Different	yes	Rostekhnadzor and its territorial departments, in court	The Federal Law dated January 10, 2002 N 7-FL on Environmental Protection The Federal Law dated May 4, 1999 N 96-FL on Air Protection Order of the Ministry of Natural Resources and the Environment dated October 31, 2008 N 288 on approval of the Administrative regulation of the Federal Service for Ecological, Technological and Nuclear Supervision of the execution of public functions on issuance of permits for emissions, discharges of pollutants into the environment
Permit concerning waste management (license)	Licensing federal executive bodies, and licensing executive bodies of the subjects of the Russian Federation	Depending on the type of a license	Notification of the public is provided	In court	The Federal Law dated June 24, 1998 N 89-FL on Industrial and Consumers Waste. The Federal Law dated 8, 2001 N 128-FL on Licensing of Certain Types of Activities

A body of a pre-trial consideration of complaints meets the criteria for "independence and impartiality" only formally. Despite the fact that the law on the Procedure for Consideration of Appeals of the Citizens of the Russian Federation prohibits the bodies receiving the public complaint to forward them for consideration to the public authority, the body of local self-government or the official whose decision or action (omission) are being challenged, often complaints are forwarded directly to the authority or official whose actions are contested. In such cases, consideration of a complaint cannot meet the criteria for "independence and impartiality."

In practice, there is no difference in the procedure of filing complaints by individuals and legal entities in administrative procedure. In accordance with the Constitution of RF citizens have the right to appeal personally and also to submit individual and collective appeals to public authorities and bodies of local self-government. A similar right is provided by the Federal Law on the Procedure for Consideration of Appeals of the Citizens of the Russian Federation, which establishes the right of citizens to appeal personally, as well as submit individual and collective appeals.

A citizen shall send a written appeal directly to that public authority, body of local self-government or official, within whose responsibility the resolution of the issues in the appeal falls. The appeal shall be registered within three days of its receipt. A response to the appeal in the form of an electronic document is sent on the email address specified in the appeal, or in writing at the postal address specified in the appeal. Only a complainant is informed of the decision made on his complaint, informing the general public occurs sporadically.

### **3) Judicial procedure. Standing (of individuals, NGOs) in matters relating to the environmental**

Any interested person, both physical and legal (including NGOs) can apply to the court for the protection of violated or disputed rights, freedoms or legitimate interests in matters relating to the environment. In accordance with the provisions of the Code of Civil Procedure (CCP) and the Code of Administrative Procedure (CAP), standing is recognized equally for all citizens and organizations which under the legislation of the Russian Federation have the right to judicial protection of their rights, freedoms and legitimate interests.

It can be: person whose rights and legitimate interests have been violated, or will be violated; persons who were not provided information, or provided untimely or inadequate information about the state of the environment; persons who have suffered damage of their health due to an environmental offense; persons who suffered damage of property due to an environmental offense; organizations or citizens protecting the rights, freedoms and legitimate interests of other persons, upon their request, or protecting the rights, freedoms and legitimate interests of an indefinite number of persons; NGOs, operating in the public interest in matters relating to the environment (shall submit to the court its statute which lists protection of the environment and (or) judicial protection of the public interest as its activity); NGOs who have been refused in registration of the public ecological expertise; and in other cases provided by law in the field of environment protection.

The public (an individual, NGO) have the right to challenge in court actions / omissions by private persons and public authorities who violate the provisions of the legislation relating to the environment.

### **4) Other (non-judicial) methods of dispute resolution**

The Law on Alternative Procedure of Dispute Resolution involving mediation (mediation procedure) (in force from January 1, 2011) regulates relations associated with the application of mediation procedure to the disputes arising from civil relations. However, it says that this procedure does not apply to disputes, if such disputes affect or may affect the rights and legitimate interests of third parties not involved in the mediation procedure, or the public interest. Practice of application of this law in matters relating to the environment is absent.

## **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

### **Administrative procedure**

#### **1) General overview of the remedies in administrative review procedure of decisions, actions, omissions**

Appealing in administrative procedure individuals and NGOs have the opportunity to submit a proposal, an application or a complaint in writing or in an electronic form to a public authority, a body of local self-government or an official, as well as orally appeal to a public authority, a body of local self-

government. Under the proposal in this case it is meant a recommendation on improvement of laws and other normative legal acts, activity of public authorities and bodies of local self-government, on development of social relations, improvement of socio-economic and other spheres of governmental and social regulation; the application - a request of a citizen to assist in the implementation of constitutional rights and freedoms, or a notification on the violation of laws and other legal acts, deficiencies in the work of public authorities and bodies of local self-government and officials, or criticism of the activities of these bodies and officials; the complaint - a request for restoration or protection of violated rights and freedoms or legitimate interests.<sup>113</sup>

The public has the right to submit to the public authorities of the Russian Federation, public authorities of the subjects of the Russian Federation, bodies of local self-government appeals challenging decisions on the design, allocation, construction, reconstruction, operation of facilities, economic and other activity of which may have a negative impact on the environment.

## **2) General overview of the remedies in appeals against an ongoing activity**

The public has the right to submit to the public authorities of the Russian Federation, public authorities of the subjects of the Russian Federation, bodies of local self-government appeals on the limitation, suspension or termination of economic and other activity which has a negative impact on the environment.

A controlling authority is entitled to suspend / terminate the activity that violates laws relating to the environment. However, this authority is vested in only certain bodies and on specific issues. For example, the Federal Service for Supervision over the Use of Natural Resources within its authority has the right to suspend the use of forests.

The public (an individual, an NGO) has the right to challenge omissions of supervisory authorities in administrative procedure.

## **3) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions, actions or activities in case of their appeal in administrative procedure is not provided by law. The decision to suspend an activity or a decision which is appealed in administrative procedure can be taken within its jurisdiction by the administrative body considering the case, or by the court.

## **4) The prohibition on the activity (temporary and/or permanent)**

The public has the right to submit to the public authorities of the Russian Federation, public authorities of the subjects of the Russian Federation, bodies of local self-government appeals on the limitation, suspension or termination of economic and other activity which has a negative impact on the environment.

## **Judicial Procedure**

## **5) General overview of the remedies in judicial review of decisions, actions, omissions**

Civil Code of RF provides for the following remedies: restoration of the situation that existed before the violation of a right, and suppression of actions that infringe or may infringe it; invalidation of an act of a public authority or a body of local self-government; non-application by the court of an act of a public authority or a body of local self-government, that contradicts the law; getting complete and reliable information about the state of the environment, measures for its protection from the proposed and (or) the current economic and other activities; recognition of the disputed transaction to be invalid and the application of the consequences of its invalidity, of the consequences of nullity of a void transaction; termination or suspension of an environmentally harmful activity (i.e., conducted in violation of legislation on environmental protection); compensation for damages; recovery of a penalty; compensation for non-pecuniary damage; execution of a duty in kind; termination or modification of a legal relationship.

Possibilities to use the above listed remedies vary for individuals and NGOs to the same extent as possibilities to exercise certain rights vary for individual and legal entities.

## **6) General overview of the remedies in challenging of on-going activities conducted in violation of the law relating to the environment**

The public has the right to file a lawsuit to the court challenging a decision on the design, allocation, construction, reconstruction, and operation of facilities, economic and other activities, which may have

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<sup>113</sup> Proposals, applications and complains are the forms of citizens' appeals (translator's note).

negative impact on the environment, on limitation, suspension and termination of economic and other activities that adversely impact the environment.

#### **7) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions / actions / activities in case of their appeal in judicial procedure is not provided by law.

#### **8) Injunctive relief**

##### **a) temporary**

CCP RF (Article 140) and CAP (Article 91) provide for such a measure of security for the claim as prohibition to a defendant to perform certain actions and prohibition to others to perform certain actions relating to the subject-matter of the dispute. Within these measures both temporary restriction for the period of the trial and until the fulfillment of certain conditions (requirements) under the court decisions are possible.

In civil proceedings, security for a claim is allowed at any stage of the proceedings, if failure to secure the claim may make it difficult or impossible to execute the court decision.

In arbitration proceedings, security for a claim is also allowed at any stage of the arbitration process, if failure to take these measures may make it difficult or impossible to execute a judicial act, including, if the execution of the act is conducted outside the Russian Federation, as well as to prevent significant harm to a plaintiff.

The law provides for a possibility to use injunctions against individuals/organizations and/or public authorities/organizations. But there are exceptions, for example, it is not possible to suspend a validity of a contested normative legal act.

##### **b) permanent**

The court is entitled to order the suspension / termination of the activity that violates the law relating to the environment. In case of failure to voluntarily comply with the court ruling, it is possible to enforce court decisions, in accordance with the Federal Law on Enforcement Proceedings (2007), through the service of judicial enforcers, which activity is regulated by the Federal Law on Judicial Enforcers (1997).

#### **9) Claim for compensation for damage / injury (including caused to the environment), compensation of non-pecuniary damage**

In accordance with Article 11 and 12 of the Federal Law on Environmental Protection citizens, public and other non-profit association operating in the field of environmental protection are entitled to file claims to the court for compensation for environmental damage, damage caused to health and (or) property.

Under paragraph 6 of Article 46 of the Budget Code of RF (1998) amounts on claims for compensation for damage to the environment shall be paid to the budgets of appropriate municipal districts, urban districts, federal cities of Moscow and St. Petersburg at the place of environmental damage in full amount.

In accordance with Article 151 of CCP RF, if a citizen has suffered non-pecuniary damage (physical or moral suffering) due to the actions that violated his non-material rights or infringed his other non-material values, the court can impose the obligation on an offender to compensate for this damage.

#### **10) Legal action for the protection of "the public interest» - actio popularis**

The concept of a legal action for the public interest is mentioned in the legislation of Russia, but its definition is not given. The term "public interest" is mentioned in the Tax, Civil, Urban Planning, Land, Forest, Labor, Arbitration, Civil Procedure, Criminal Procedure codes of the Russian Federation, in the Code of Administrative Offenses, and the Federal Law on the Public Chamber of the Russian Federation (2005).

CCP RF (Article 46) provides for the right of an organization or a citizen to apply to the court for the protection of the rights, freedoms and legitimate interests of other persons, upon their request, or for the protection of the rights, freedoms and legitimate interests of an indefinite number of persons.

#### **11) Timeliness**

The legislative does not set deadlines for appeals in administrative procedure. The right of appeal in administrative procedure accrues from the moment when a person became aware of a decision or a violation of his rights.

In administrative procedure under the Law on the Procedure of Consideration of Appeals of the Citizens of the Russian Federation time limits for consideration of applications and complaints are from 10 to 30 days and 60 days in exceptional cases. In practice, these deadlines are rarely met. Often within 30 days an applicant only receives a notification letter that his application or complaint was accepted for consideration.

The right to recourse to the court accrues from the moment when a citizen or an organization became aware of a violation of their rights and legitimate interests.

In case filing of a statement of claim to the court the general limitation period in accordance with the Civil Code is three years. At the same this limitation does not apply to: claims for the protection of non-material rights and other non-material values, except for cases provided by law; claims for compensation of damage caused to life or health. However, the claims filed after the expiration of the three years period from the date when the right to compensation for such damage accrued, are met only with regard to three years preceding the filing of the claim; claims of an owner for the elimination of all violations of his property rights, even if these violations are not associated with the deprivation of possession.

In the event of challenging in the court of decisions, actions (omissions) of a public authority, a bodies of local self-government, an official, governmental or municipal servant CCP RF (Article 256), CAP (Article 198) the limitation period is three months. The Law on Appealing to the Court of Actions and Decisions, Violating Rights and Freedoms of Citizens to the following deadlines are established for application to the court: three months from the day when a citizen become aware of a violation of his rights; one month after the receipt by a citizen of a written notice on the refusal on his complaint by a superior authority, association, or an official or after the expiration of one month after filing the complaint, if a citizen has not received a written reply.

Expiration of the time limits for application to the court is not a ground for refusal to admit a statement of claim. However, complaints and documents brought to the court after expiration of the procedural deadlines, if a plaintiff does not file the motion for restoration of procedural deadlines, are not considered by the court and returned to the person by whom they were filed. The deadline for filing of a complaint missed for a good reason can be restored by the court.

All civil cases under consideration of the court of first instance shall be considered and resolved by the court before the expiration of two months from the date of the receipt of a statement of claim by the court, except for consideration of: statements on challenging legal act, which are considered by the court within a month, and by the Supreme Court of the Russian Federation - within three months from the date of its filing; claims contesting decisions, actions (omissions) of a public authority, a body of local self-government, or an official, governmental or municipal servant have to be considered by the court within ten days, and by the Supreme Court of the Russian Federation within two months.

Time limits of the proceedings in the court of cassation:

The Supreme Court of a republic, a territorial or regional court, a court of a city of federal importance, a court of an autonomous region, a court of an autonomous district, a district (fleet) military court shall consider the submitted cassation complaint or protest on a case not later than within one month from the date of its receipt; The Supreme Court of the Russian Federation shall consider the submitted cassation complaint or protest on a case not later than within two months from the date of its receipt.

Time limits of consideration in supervisory instance:

A supervisory complain shall be considered in the supervisory court, except the Supreme Court of the Russian Federation, for not more than in one month, unless the case was evoked, and not more than in two months, if the case was evoked, not including the period from the date of evocation to the date of its arrival at the supervisory court. In the Supreme Court of the Russian Federation a supervisory complained shall be considered within two months, if the case materials were not evoked, and within three months, if the case materials were evoked not including the period of time from the date of evocation to the date of its arrival at the Supreme Court of the Russian Federation. The Chairman of the Supreme Court of the Russian Federation or his deputy, if the case is evoked and in view of its complexity, may prolong the time of consideration of the supervisory complaint, but not more than for two months.

Thus, in case of compliance with the procedural deadlines the whole procedure of case consideration in the courts takes about 6 months. But in practice these time limits are prolonged - in two or more times, sometimes the lawsuits are considered for several years.

All arbitration cases under consideration of the court of first instance shall be considered within a period not exceeding three months from the date of the receipt of a statement of claim by the arbitration court, including the time for preparation of a case for trial and for adoption of the decision on the case. The exception to this rule are cases concerning the challenging of a normative legal act, which are considered by a panel of judges within a period not exceeding three months from the date of the receipt of a statement of

claim by the court, including the time for preparation of a case for trial and adoption of the decision on the case, as well as cases concerning challenging non-normative legal acts, decisions and actions (omissions) of the bodies exercising public authority, officers, which are considered by a single judge within a period not exceeding three months from the receipt of appropriate statement of claim to arbitration court, including time for preparation of a case for trial and adoption of the decision on the case. This time limit can be extended by a reasoned ruling of the judge hearing a case, the chairman of the arbitration court up to six months in the view of a particular complexity of the case, or a significant number of participants to the arbitration process.

An arbitration court of second instance considers an appeal within a period not exceeding two months from the date of the receipt of the appeal together with the case materials to the arbitration court of appeal, including time for preparation of the case for trial and the adoption of the judicial act, unless otherwise provided by the Code. An arbitration court of third instance considers a cassation complaint within a period not exceeding two months from the date of the receipt of the complaint together with the case materials to the arbitration court of cassation, including time for preparation of the case for trial. A statement on supervisory review of the judicial act is considered by a panel of judges of the Supreme Arbitration Court of the Russian Federation within a period not exceeding one month from the date of the receipt of the statement or the date of receipt of the case materials, if they have been evoked from a lower arbitration court.

Thus, theoretically, consideration of a case in arbitration courts of all instances shall take about 8 months. However, in practice these deadlines are not met.

## **D. Costs**

### **1) Financial expenses associated with administrative procedure**

According to Article 2 of the Federal Law on the Procedure of Consideration of Appeals of the Citizens of the Russian Federation (2006), consideration of individual complaints of citizens, as well as individual and collective appeals to public authorities, bodies of local self-government and officials is free of charge.

Representation by an attorney (a lawyer) is possible, but not required.

### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

Judicial expenses consist of the court fee and the costs associated with the proceedings.

When applying to the court one shall pay the court fee for the consideration of a case. The amounts of the court fee for applying to the court, specifics of its calculation and payment are regulated by the Chapter 25.3 of the Tax Code. Part Two (2000). In particular, for the cases heard before the courts of general jurisdiction, the court fee shall be paid in the following amounts: for claims challenging a decision or action (omission) of a public authorities, a body of local self-government, officials, governmental or municipal servants who violated rights and freedoms of individuals and organizations - 200 rubles (around 7 U.S.dollars<sup>114</sup>); for claims challenging (wholly or partly) normative legal acts of public authorities, bodies of local self-government or officials: for individuals - 200 rubles (around 7 USD); for organizations – 3000 rubles (around 101 USD); for statements of claim of the material nature that can be assessed, if the amount claimed does not exceed 20 000 (approximately till 673 USD) - 4 percent of the claim, but not less than 400 rubles (around 13,5 USD); from 20 001 rubles to 100 000 rubles (approximately from 673 to 3 365 USD) - 800 rubles (around 27 USD) plus 3 percent of the amount exceeding 20 000 rubles (around 673 USD), from 100 001 to 200 000 rubles (approximately from 3 365 to 6 729,5 USD) – 3 200 rubles (around 108 USD) plus 2 percent of the amount exceeding 100 000 rubles (around 3 365 USD) and so on; for statements of claim of material nature, that cannot be assessed, as well as for claims of non-material nature: for individuals - 200 rubles (around 7 USD); for organizations - 4000 rubles (around 135 USD).

For an appeal, and (or) cassation complaint - 50 percent of the court fee payable for filing of a claim of non-material nature; for a supervisory complaint - in the amount of the court fee payable for filing of a claim of non-material nature.

In cases heard before the arbitration courts, the court fee shall be paid in the following amounts: for filing of statements of claim of the material nature that can be assessed, if the amount claimed does not exceed 100 000 rubles (3 365 USD)- 4 percent of the claim, but not less than 2000 rubles (67,3 USD); from 100 001 to 200 000 rubles (approximately from 3 365 to 6 729 USD) - 4000 rubles (134,6 USD) plus

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<sup>114</sup> This report uses the operational rate of Russian Ruble to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 29,72 rubles.

3 percent of the amount exceeding 100 000 rubles (3 365 USD); from 200 001 rubles to 1 million (approximately from 6 729 to 33 647 USD) - 7 000 rubles (235,5 USD) plus 2 percent of the amount exceeding 200 000 rubles (or 6 729 USD); from 1 million and one rubles to 2 million rubles (approximately from 33 647 to 67 295 USD) - 23 000 rubles (around 774 USD) plus one percent of the amount exceeding 1 million rubles (or 33 647 USD); more than 2 million rubles (or more than 67 295 USD) - 33 000 rubles (1 110 USD) plus 0.5 percent of the amount exceeding 2 million rubles (or 67 295 USD), but not more than 200 000 rubles (6 729 USD); 2) for claims on the recognition of a normative legal act invalid, on the recognition of a non-normative legal act invalid and the recognition of decisions and actions (or omissions) of public authorities, bodies of local self-government, other bodies, officials to be illegal: for individuals - 200 rubles; for organizations - 2000 rubles; for filing of other non-material claims, including the claims on recognition of rights, claims for the performance of the duties in kind - 4000 rubles; for filing of the motion on application of measures securing a claim - 2000 rubles.

For filing appeal, and (or) cassation complaints, supervisory complaints on decisions or orders of the arbitration courts, as well as court rulings on dismissal of a case, on the abandonment of a claim without consideration, on the issuance of writs for execution of decisions of the arbitration courts, on the refusal to issue writs of execution - 50 percent of the amount of the court fee payable for filing of a claim of non-material nature. In cases heard before the arbitration courts, the court fee shall be paid taking into account the following: when submitting statements of claims that contain both the claims of material and non-material nature, one shall pay both the court fee established for claims of material nature, and the court fee established for non-material claims.

In cases heard before the Constitutional Court of the Russian Federation, the court fee shall be paid in the following amounts: for filing of a request or a motion - 4500 rubles (around 151 USD) ; for filing of a complaint by an organization - 4500 rubles (around 151 USD); for filing of a complaint by an individual - 300 rubles (around 10 USD).

In cases heard before the constitutional (statutory) courts of the subjects of the Russian Federation, the court fee shall be paid in the following amounts: for filing of a statement of claim by an organization - 3000 rubles (around 101 USD); for filing of a statement of claim by an individual - 200 rubles (6,7 USD).

The other judicial expenses associated with the proceedings include: amounts payable to witnesses, experts, specialists and interpreters; travel and accommodation expenses of the parties and third parties incurred in connection with attendance at court; the costs of services of representatives; the cost of production of the on-site inspections; compensation for actual loss of time; postal costs associated to the consideration of a case incurred by the parties, other necessary expenses recognized by the court.

One should bear in mind that the minimum wage in Russia from January 1, 2009 to the present time is equivalent to 4330 Russian rubles) that equals 146 USD (Article 1 of the Federal Law on the Minimum Wage (2000).

The Tax Code of the Russian Federation establishes that the general courts, the arbitration courts, the Constitutional Court of the Russian Federation on the basis of the financial situation of a payer are entitled to reduce the amount of the court fee, or delay (allow repayment by installments) of its payment.

The following categories are exempt from payment of the court fee in cases heard before the courts of general jurisdiction: prosecutors - for statements of claims for the protection of the rights, freedoms and legitimate interests of the citizens, an indefinite number of persons or interests of the Russian Federation, subjects of the Russian Federation and municipalities; the authorized federal executive body for the control (oversight) in the area of consumers' protection (its territorial bodies), as well as other federal executive bodies exercising functions of control and supervision in the field of the protection of consumer's rights and safety of goods (works, services) (their territorial bodies), bodies of local self-government, non-governmental organizations of consumers (associations, unions) - for claims filed in the interest of a consumer, a group of consumers, an indefinite number of consumers; Commissioner for Human Rights in the Russian Federation - for filing of a motion for verification of a final decision, sentence, court order or ruling or a decision of a judge; public authorities, bodies of local self-government, acting in cases heard before the courts of general jurisdiction, as well as magistrates, as plaintiffs or defendants.

The following categories are exempt from payment of the court fee in cases heard before the arbitration courts: prosecutors and other authorities applying to the arbitration courts in cases prescribed by law, to protect the state and (or) the public interest; public authorities, bodies of local self-government, acting in cases heard before the arbitration courts as plaintiffs or defendants.

The court fee for applying to the court in cases of challenging the decisions, actions, or omission relating to the environment, as well as for filing of a claim for compensation for damage under the general rules shall be paid before applying to court. Possibility to delay the payment of the court fee is provided by the legislation: the Tax Code RF, CCP RF, CAP RF. For this purpose one shall file the motion for the

postponement of payment of the court fee along with a lawsuit or a complaint. This possibility is used mainly by the citizens due to their difficult financial situation at the day they apply to the court.

### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

When applying to the court neither individuals, nor NGOs are obliged to use the services of attorneys or other specialist in law. In practice, the involvement of a legal specialist is preferable. Legislation of Russia does not establish any terms for the calculation of attorney's fees. The fee is determined either on the basis of the rates established by a law firm, or by agreement, including a percentage of the amount won (the most common method). In cases on the protection of public interest legal services can be provided free of charge. If the agreement on a specific amount is reached, in most cases, the fee is paid in full to an attorney before consideration of a case. If the parties agreed on the percentage of the amount won, as a rule, the minimum amount for participation of an attorney is paid before the trial, and the rest of the agreed amount is paid after the trial, if the case is won.

The attorney's fee does not depend on whether a client is a citizen or an NGO; it is a matter of agreement.

### **4) Costs of examination, involvement of experts and witnesses**

In civil proceedings the costs incurred by witnesses, experts, specialists and interpreters in connection with attendance at court, travel and accommodation expenses and additional costs associated with living outside the place of permanent residence (per diem) shall be reimbursed. Experts, specialists and interpreters are paid for the work done by them on behalf of the court, if this work is beyond the scope of their duties as employees of a public institution.

The amount of money payable to witnesses, experts and specialists, or other costs related to the proceedings, recognized by the court to be necessary, are paid in advance to the account of the appropriate court, office of the Judicial Department of a subject of the Russian Federation, as well as to the body carrying out the organizational support of the magistrates, by the party who submitted the appropriate motion. If the appropriate motion is filed by both parties, the amount required shall be paid by the parties in equal parts.

These rules also apply to the allocation of judicial expenses incurred by the parties in connection with the consideration of the case in appeal, cassation and supervisory instances. The same rules apply in arbitration proceedings. There are no differences in calculation of the amounts of the expenses of this category depending on who is a payer: an individual or an organization, including an NGO. Differences exist only for the payment of the court fee for consideration of a case.

The amount of remuneration of experts and specialists is determined by the court in consultation with the parties and in agreement with experts and specialists. The cost of examinations or other expert services can be determined by an expert or an expert institution on the basis of their established rates. It is possible to find out the cost of a certain examination in advance, before a decision to have it is made, by applying to the relevant institution, or the expert.

The court of general jurisdiction is entitled to exempt a citizen taking into account his financial situation from the payment of these costs, or reduce their amount. In this case, the costs are reimbursed from the appropriate budget.

### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

In arbitration courts, a defendant may request a person filing the motion for a preliminary injunction, or invite him on his own initiative to provide security for compensation for any possible damages to the defendant (the counter-security) by making a cash deposit on the account of the court in the amount proposed by the court, or by providing a bank guarantee, a bail or other financial security of the same amount.

In the courts of general jurisdiction the court can order a plaintiff to provide a security for the defendant's potential damages. The amount of the security associated with application of injunctive relief is determined by actual expenses or the amount of security is offered by the court.

The legislation does not provide for the obligation of a plaintiff (an individual / an NGO) in matters relating to the environment to compensate for damages to a defendant associated with plaintiff's motion on application of injunctive relief, as a measure to secure a claim. However, after the entry into force of the court decision, which denied the claim, a defendant and other persons whose rights and (or) legitimate interests were violated by the measures securing the claim, are entitled to claim for damages from a person,

on whose motion the interim measures were taken. The resolution of these issues is affected by judicial discretion.

The main obstacles precluding the application of the court-ordered preliminary injunctions in matters relating to the environment are extensive expenses associated with application of the securing measures both on the stage when the measures are taken and in the event the claim is denied.

### **5) Other issues of judicial expenses**

The 'loser pays' principle applies in accordance with the legislation. As a general rule a person, who lost in civil or arbitration proceedings, is obliged to pay to the other party all judicial expenses, unless otherwise provided by law. If the claim is granted in part, judicial expenses are awarded to a plaintiff in proportion to the satisfied claims, and to a defendant - in proportion to that part of the claim, which plaintiff lost. If involvement of witnesses, appointment of experts, specialists and other payable actions are carried out on the initiative of the court, the appropriate costs shall be reimbursed from the federal budget. The court is entitled to exempt a citizen taking into account his financial situation from the payment of these costs, or reduce their amount. In this case, the costs are reimbursed from the appropriate budget.

In arbitration proceedings, the costs of the services of a representative incurred by a party in whose favor the court rendered the decision shall be collected by the court from the other party in the case within the reasonable limits. The court fee from the payment of which a plaintiff was duly exempt shall be recovered from a defendant to the federal budget in proportion to the satisfied claims, if the defendant is not exempt from the payment of the court fee. In case of agreement of the parties participating in the case on the distribution of judicial expenses, the arbitration court awards judicial expenses in accordance with their agreement. Unpaid or not fully paid costs of the examination shall be collected in favor of an expert or a state expert institution from the parties involved in the case, in proportion to the satisfied claims.

Also in arbitration proceedings, the court can oblige a person that abuses his procedural rights or does not execute its procedural obligations, if it leads to the disruption of the hearing, delaying the trial, obstructing the proceedings and adoption of legal and valid judicial act to pay all judicial expenses on the case. Also, if a dispute has arisen due to the violation by a person participating in the case of a pretension or other pre-trial procedure of dispute resolution prescribed by federal law or contract, including breach of the period to respond to the pretension, failure to reply to the pretension, the arbitration court orders this person to pay all judicial expenses regardless the outcome of the case.

In accordance with Article 9 of the Federal Law on Appealing to the Court of Actions and Decisions, Violating Rights and Freedoms of Citizens, judicial expenses associated with the processing on a complaint can be assigned by the court on a citizen, if the court orders to dismiss the complaint, or on a public authority, a body of local self-government, an institution, enterprise or association, public organization, an official or public servant, if the court declares that their actions (decisions) were illegal. Judicial expenses are borne by the public authorities, a body of local self-government, institution, enterprise or association, public organization, an official or public servant, also if the court finds their actions (decisions) legitimate, but the appropriate complaint of a citizen filed to a superior authority, association, or official has been left without consideration or the response was given not on time.

In accordance with Civil Procedure, Arbitration Procedure and Tax codes the court can exempt a citizen taking into account his financial situation from the payment of judicial expenses, or reduce their amount as well as distribute the expenses between the parties.

In litigations, for example, on suspension of the environmentally harmful activity and on compensation for damages, the court fee can be very high and, unlike businesses, citizens and NGOs often have difficulties in collecting the amount just to pay the court fee, not to mention the costs of production of examinations, involvement of witnesses, experts, etc.

The amount of judicial and other expenses can be a barrier to access to justice in environmental matters.

Unpaid or not fully paid costs of the examination shall be collected in favor of an expert or a state expert institution from the parties involved in the case, in proportion to the satisfied claims.

### **E. Legal aid (state, non-state)**

The state system of the provision of legal aid in matters relating to the environment is absent. This is exclusively done by non-governmental organizations. In Russia, there are only a few NGOs specializing in providing legal assistance to the citizens and NGOs in the environmental field.

Individuals and NGOs have opportunities to get free legal aid in environmental matters from NGOs, lawyers, or law firms. In general, NGOs providing legal assistance in this area provide advice to individuals and NGOs free of charge. Other lawyers and law firms, as a rule, do not provide services for free.

# TAJIKISTAN

## **A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation**

### **1) Legislative system<sup>115</sup>**

The main legislative acts of the Republic of Tajikistan (RT) in the field of environmental protection include: the Law on Nature Protection (1993), the Law on Subsoil (1994), the Law on Air Protection (1996), the Law on Specially Protected Areas (1996), the Land Code (1996), the Forest Code (1996), the Water Code (2000), the Law on Plant Quarantine (2001), the Law On Industrial and Consumer Waste (2002), the Law on Ecological Expertiza (2003), the Law on Radiation Safety (2003), the Law on Sanitary and Epidemiological Safety of Population (2003), the Law on the Production and Safe Use of Pesticides and Agrochemicals (2003), the Law on the Protection and Use of Flora (2004), the Law on Biological Safety (2005), the Law on Fauna (2008), the Law on the Protection of Soil (2009).

### **2) Regulatory and control (supervisory) authorities**

In the system of executive bodies of the country the main regulatory functions in the field of environmental protection are carried out by the Committee for Environmental Protection (CEP) under the Government of the Republic of Tajikistan (the Law on Environmental Protection). Its scope of the powers and duties includes state control over the use and protection of land, mineral resources, surface and underground waters, air, forests and other vegetation, fauna, natural resources, as well as over the compliance with the standards of environmental safety. Multiple authorities in the system of environmental protection ensure compliance with and observance of the provisions of environmental law, including environmental monitoring, licensing of the use of natural resources, collection and dissemination of environmental information, etc.

The state administration of environmental protection, rational management and restoration of natural resources is conducted through coordination of the Ministry of Health of the Republic of Tajikistan, the Ministry of Internal Affairs of the Republic of Tajikistan, the Ministry of Agriculture of the Republic of Tajikistan, the State Committee of Tajikistan on Land Management and Geodesy as to control over the protection of the environment and the use of natural resources, as well as other national authorities in the field of environmental protection and natural resource use.

### **3) Role of the Prosecutor's Office**

The Prosecutor's Office (the Constitutional Law of the Republic of Tajikistan on the Public Prosecutor's Offices of the Republic of Tajikistan (2005) exercises control over the strict observance and uniform enforcement of laws on the territory of the Republic of Tajikistan.

### **4) The judicial system**

The Constitutional Court, the Supreme Court, the Supreme Economic Court, the Military Court, the Court of Gorno-Badakhshan Autonomous Region, regional, Dushanbe city, city and district courts, the Economic Court of the Gorno-Badakhshan Autonomous Region, the economic courts of the regions, and the economic court of Dushanbe city form the judicial system of the Republic of Tajikistan (the Constitutional Law on the Courts (2001).

### **5) The Ombudsman**

The powers of the Commissioner for Human Rights in the Republic of Tajikistan are enshrined in the law of the same name – on the Commissioner for Human Rights (2008). According to Article 11 of the mentioned law the Commissioner for Human Rights has broad powers in observance of the rights and freedoms of individuals and citizens, including the right of citizens to a healthy environment (Article 11 of the Law on Nature Protection). Process of appeal to the Ombudsman is regulated by Article 14 which provides that such appeal is only possible after the exhaustion of judicial and / or administrative proceedings.

## **B. Information on the procedures for making decisions on environmental matters, and opportunities to challenge them**

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<sup>115</sup> Electronic database of the legislation in Russian - <http://mmk.tj/ru/legislation/legislation-base/>

## **1) Decision-making system**

Information of the procedures for making decisions on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is indicated in Figure 12 (pp. 127-128).

## **2) Challenging of decisions in non-judicial (administrative) procedure**

Article 12 of the Law on Nature Protection, guarantees the right of citizens to protection of their health from the adverse effects of the environment by a possibility to recover damage caused to public health due to environmental pollution and other harmful effects on the environment in administrative procedure. Article 9 of the said Law entitles natural and juridical persons to appeal in the manner and terms established by the laws of the Republic of Tajikistan any actions and decisions of officials and controlling authorities.

The legal basis for administrative appeal of a decision is administrative and procedural legislation of the Republic of Tajikistan, consisting of the Code of Administrative Procedures (2007) (CAP) and the Law on Citizens' Appeals (1996).

In accordance with the Code of Administrative Procedures any natural or legal person is entitled to administrative review of their applications and complaints. By interested parties who are entitled to file an administrative complaint shall be deemed legal or natural persons in respect of which an administrative-legal act is adopted, as well as those whose legitimate interests are directly and immediately affected by the administrative-legal act or by an action of an administrative body. In this case the administrative body - is an executive body of state power, including a local executive body, a public authority, and a body of local self-government in towns and villages, as well as any natural or legal person exercising public powers under the law. Majlisi Milli, Majlisi Namoyandagon, Majlisi Oli (the Parliament), the President of the Republic of Tajikistan, the Government, courts and the Prosecutors' Office are not considered to be administrative bodies.

Article 90 of the said Law provides that an administrative complaint shall be considered and resolved by an administrative body which took an administrative act in the presence of the director of the official or the department that adopted the administrative act. According to the rule an administrative act adopted by the head of an administrative authority is appealed to a superior administrative authority. Moreover, an applicant has the right to direct appeal to the court for the protection of violated rights and interests without recourse to an administrative authority. In cases if an administrative application / complaint does not fall within the jurisdiction of an administrative authority, it shall forward the application / complaint to the appropriate authority and notify the applicant.

Article 35 of the Code of Administrative Procedures does not make distinctions on the parties to the administrative procedures, therefore procedures for individuals and legal entities are identical.

The starting point of administrative procedure is an administrative appeal. The administrative appeal shall be made in writing. All administrative procedures shall be conducted in the official language. It is allowed to submit an appeal in another language, but the applicant is required to translate it within the established term and certify it by a notary.

## **3) Judicial procedure**

### **a) The role of courts, jurisdiction**

The courts hear and resolve cases on claims of citizens and organizations, public authorities and bodies of local self-government on the protection of the violated or disputed rights, freedoms and legitimate interests, including disputes arising from the ecological relationships (Article 24 of the Code of Civil Procedure (CCP) (2008). According to Article 249 of the CCP the courts also have jurisdiction over the cases arising from public legal relations, in particular, on appeals against decisions and actions (omissions) of public authorities, bodies of local self-government, officials and public servants.

In Tajikistan, the judicial power is exercised through the constitutional, civil, economic, administrative and criminal proceedings (Article 2 of the Constitutional Law on the Courts).

**Figure 12**

<b>Procedure (decision) on matters relating to the environment<sup>116</sup></b>	<b>Body authorized to carry out the procedure (to make the decision)</b>	<b>Period of validity of decisions, permits or other documents issued due to the procedure</b>	<b>The possibility of public participation envisaged</b>	<b>Body to which one can appeal the decision / action / omission</b>	<b>Legal act regulating the carrying out of the procedure (making the decision)</b>
OVOS (as a part of ecological expertiza)	Environmental Protection Committee under the Government of RT	with no fixed terms	Public participation takes place at all stages of the OVOS	The decision can be appealed to a superior administrative authority (Article 90 of the Administrative Code of RT <sup>117</sup> ) and / or directly to the court	The Law of RT on Ecological Expertiza, the Order of the Government of RT on the Environmental Impact Assessment (OVOS)
Licensing of certain types of activities	Depending on the type of activity	Validity periods for the licenses are: for the licensed activities provided for in Article 17 of this Law - at least 5 years, for the licensed activities under Article 18 of this Law - at least 3 years.	Public participation is not envisaged.	The decision can be appealed to a superior administrative authority and / or directly to the court	the Law of RT on Licensing of certain activities
Construction of a facility, implementation of activity	The State Committee of RT for Construction and Architecture	Normative term of the construction of a facility is indicated in the project documentation for construction.	The Law of RT on Architectural, Urban Planning and Construction Activities <sup>118</sup> provides for public discussion of urban development projects, public participation (Article 5, 11, 17, 19)	In administrative procedure - to a superior body and / or directly to the court	The Law of RT on Architectural, Urban Planning and Construction Activities
Ecological Expertise	Environmental Protection Committee under the Government of RT State Ecological Expertise	with no fixed terms	Yes, public participation is enshrined in the objectives and principles of ecological expertise.	In administrative procedure - to a superior body and / or directly to the court	The Law of RT on Ecological Expertise

<sup>116</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

<sup>117</sup> Hereinafter, this acronym means the Code of Administrative Procedures.

<sup>118</sup> Law of the Republic of Tajikistan on Architectural, Urban Planning and Construction Activities (2008)

Waste Management	Environmental Protection Committee under the Government of RT	Activity on collection, use, processing, transportation and disposal of hazardous waste - at least 5 years	Public control over waste management is envisaged.	In administrative procedure - to a superior body and / or directly to the court	The Law on Industrial and Consumer Wastes dated May 10, 2002 № 44
Conclusion of a body of sanitary and epidemiological control	State Sanitary and Epidemiological Service under the Ministry of Health of the Republic of Tajikistan	is determined by the body on its discretion	No, public participation is not envisaged.	The decision can be appealed to a superior administrative authority and / or directly to the court	the Law of the Republic of Tajikistan on Sanitary and Epidemiological Safety of the Population, the Regulation on performance, registration and issuance of sanitary-epidemiological conclusions
Permit for controlling measuring and weighing devices	Agency on Standardization, Metrology, Certification and Trade Inspection (Tajikstandart)	The term of validity of a certificate is established by the Agency on Standardization, Metrology, Certification and Trade Inspection (Tajikstandart) when it is issued	Public participation is not envisaged. The legislation affirms the right of citizens and non-governmental organizations to information on testing and approval of a type of measuring devices on a contractual basis	The decision can be appealed to a superior administrative authority and / or directly to the court	The Law of RT on Insuring Uniform Measurement, the Procedure for testing and approval of a type of measuring devices
State testing of chemicals, biological agents, plant growth stimulators, mineral fertilizers and other substances and preparations in the laboratory and production (field) conditions for biological, toxicological, environmental assessment. Registration	The Commission on Chemical Safety of the Republic of Tajikistan	The term of validity of the registration is determined by the Commission on Chemical Safety	The Commission on Chemical Safety, if necessary, invites to the hearings at its meetings representatives of the ministries, agencies and individuals operating on the territory of the Republic of Tajikistan in the field of chemicals and biological agents	Direct appeal to the court	Regulation on Chemical Safety of the Republic of Tajikistan
Notification on the release of GMOs into the environment	The National Commission	"Limited time period" is indicated by the applicant in the notification	No, participation in decision-making is not envisaged.	Direct appeal to the court	The Law of RT on Biological Safety dated March 1, 2005, № 88

The Constitutional Court of the Republic of Tajikistan (the Constitutional Law on the Constitutional Court (1995)) as an independent judicial authority is established to protect, insure the supremacy and the direct effect of the Constitution of the Republic of Tajikistan and the protection of rights and freedoms of humans and citizens. The jurisdiction of the Constitutional Court includes the resolution of cases on the conformity with the Constitution of the Republic of Tajikistan of: laws, legal acts of both houses of the Parliament, including the joint ones, of the President, the Government, the Supreme Court, the High Economic Court and other public bodies; international treaties of Tajikistan that have not entered into legal force; legal acts of local representative and executive bodies; agreements concluded by the regions, districts and cities of the republic; agreements between the republican and local authorities; of elections and referenda, etc.

Consideration of the matters brought by the subjects of constitutional appeal to the Constitutional Court is closely linked to the context of the appeal. Natural and legal persons have the right to appeal to the Constitutional Court directly or through the bodies of representative power and the prosecutors.

Citizens have the right to directly appeal to the Constitutional Court regarding the violations of constitutional rights and freedoms associated with the applied or applicable law and other legal act in a particular legal relationship, as well as regarding conformity with the Constitution of Tajikistan of laws, other legal acts and guides of the Plenum of the Supreme Court of Republic of Tajikistan, the Supreme Economic Court of Republic of Tajikistan, applied by the court against them in a particular case.

Direct appeals of judicial persons to the Constitutional Court is also envisaged by the provisions of Article 37 of the Constitutional Law on the Constitutional Court and is possible in case of the violation of constitutional rights and interests by the applied or applicable law and other legal act in a particular legal relationship, as well as regarding conformity with the Constitution of Tajikistan of laws, other legal acts and guides of the Plenum of the Supreme Court of Republic of Tajikistan, the Supreme Economic Court of Republic of Tajikistan, applied by the court against them in a particular case.

Civil proceedings are carried out according to CCP. According to Article 36 of the said Law both individuals and legal entities can participate. Legal actions of citizens and legal entities for the protection of violated or disputed rights, freedoms and legitimate interests are considered within civil proceedings.

The current legislation (the Constitutional Law on the Courts (Chapter 4), CCP (Article 24) establishes that the economic courts have jurisdiction over economic disputes. The currently in force Constitutional Law on the Courts makes no mention of entities that can apply to the economic courts, although the old edition of the Constitutional Law on Economic Courts clearly identified that enterprise, institution, organization, and citizens can apply to the economic courts in the area of business or other economic activity. Only cases relating to the economic activity can be submitted to the economic courts.

Within the criminal proceedings the courts consider cases on all crimes stipulated by Chapter 24 of the Criminal Code (1998). Natural and legal persons are obliged to notify the competent authorities (law enforcement agencies, prosecutors) of the facts and findings of violations of criminal law, if such information became available to them. The chief of the investigative committee is entitled to initiate criminal proceedings, and the prosecutor - to act as a public prosecutor in the courts (Articles 36, 38 of the Code of Criminal Procedure (2009)). Claims related to the negligent infliction of serious or moderate bodily harm can be filed as private-public prosecution (application directly to the court by a victim or another person).

#### **b) Standing (of individuals, NGOs) in matters relating to the environmental**

The right to appeal to the court is vested in individuals and legal entities, public authorities, without discrimination. Article 19 of the Constitution of the Republic of Tajikistan stipulates that everyone has the right to demand that his case is heard by a competent, independent and impartial court established by law.

Individuals have the right to appeal to the court for violation of their own rights and interests and represent the interests of persons under their guardianship. Individuals can also apply to the court to protect the public interest.

Legal persons have the right to apply to the court for the protection of the violated rights and interests. Non-governmental organizations have the right to appeal to the court / investigative authorities for the protection of the public interests. Non-governmental organizations in Tajikistan can apply to the court both for the protection of the public interest (violations arising from administrative acts and actions / omissions) and for the protection of their own rights and interests (Article 24 of the Law on Non-governmental Associations (2007)). They can also appear in the court as a private prosecutor (Article 6 of the Code of Criminal Procedure of RT).

#### **4) Other (non-judicial) methods of dispute resolution**

According to the Law on Arbitration Courts (2008) the parties upon their consent have the right to appoint a third party to resolve the dispute ad hoc. The third party acting as arbitrator shall meet certain requirements: shall have a higher legal education, be impartial, capable, have no previous convictions, a judge, prosecutor, etc.

The parties to arbitration are legal entities, private entrepreneur and individuals who filed lawsuit to protect their rights and interests to the arbitration court, and those against whom the lawsuits are brought (Article 2 of the Law on Arbitration Courts). In accordance with this provision non-governmental organizations can apply for the arbitration. Disputes arising from civil and economic relations can be decided in arbitration.

### **C. Procedural and other remedies in matters relating to the environment, and the issue of timing**

#### **Administrative procedure**

##### **1) General overview of the remedies in administrative review procedure of decisions, actions, omissions**

Natural and legal persons can appeal in the manner and within the time limits established by the laws of the Republic of Tajikistan any actions and decisions of officials and controlling authorities.

Practice of non-governmental organizations and citizens on appeals against decisions, actions / omissions of public authorities, authorized governing and controlling structures, in Tajikistan is very limited. Available experience suggests that the main practical problems are: failure to comply with the procedural time limits for consideration of complaints, consideration of administrative complains without making the appropriate decisions (by oral negotiations).

Available remedies include the following: 1) suspension of validity of an administrative act in the event of filing of an administrative complaint to an administrative authority on the administrative act (Article 74 CAP RT); 2) suspension of execution of an administrative act for a period of not more than 1 month (Article 76); 3) an administrative act may be amended, invalidated or declared unenforceable by the body that issued it (Article 99); 4) an administrative complaint can be satisfied in full, in part or denied (Article 110); 5) court order to issue an administrative act (Article 135).

##### **2) General overview of the remedies in appeals against an ongoing activity**

Officials of the bodies of state control in the field of environmental protection in accordance with their authority have the right to require elimination of the identified deficiencies, to issue binding instructions or opinions on allocation, design, construction, commissioning, renovation and operation of facilities; to bring responsible persons to administrative responsibility, submit materials to bring them to disciplinary, administrative or criminal responsibility, to bring legal actions to the court or economic court for compensation for damage caused to the environment or human health by the violations of environmental legislation.

Violation of environmental requirements during the operation of enterprises, installations and other facilities entails the limitation, suspension, and termination of activities of enterprises, institutions, organizations or shops, departments, branches, and equipment by the decisions of specially authorized state bodies in the field of environmental protection, sanitary control over the safe works in industry and mining with the simultaneous termination of funding of the prohibited activities by the bank institutions.

##### **3) Automatic suspension of decisions / actions / activities in the case of their appeal**

Article 98 of the CAP of RT states that if the legislation of the Republic of Tajikistan does not provide otherwise, the validity of the appealed act is considered to be suspended from the date of registration of an administrative complaint. This binding norm shall not apply in the following cases: if it would significantly increase the expenses of administrative bodies; the contested administrative act is adopted in the view of the protection of public order; adopted in times of emergency or martial law on the basis of the appropriate law; suspension of execution will create a significant threat to public order or security; an interested party can request in the prescribed manner the administrative authority to renew a suspended administrative act.

##### **4) The prohibition on the activity (temporary and/or permanent)**

According to Article 43 of CAP the court / official has the right to choose administrative suspension of certain activities as a measure of administrative sanction. In addition, competent authorities can make decisions to revoke a right, granted to a person. Administrative suspension of certain activities means

temporary cessation of the activities of individuals engaged in entrepreneurial activities without establishment of a legal entity, activities of legal entities, their branches, representative offices, departments, production sites, as well as of operation of units, facilities, buildings and installations, performance of certain types of activities, works and services.

Under the Law on Nature Protection during the allocation, assessment of technical - economic feasibility of a project, design, construction, reconstruction, commissioning of enterprises, facilities and installations in industry, agriculture, water management, municipal economy, transport, energy, during laying of transmission lines, communications, pipelines, canals and other facilities that cause direct or indirect impact on the environment, the requirements of environmental safety and health shall be met and the measures on nature protection, rational use and reproduction of natural resources, on improvement of the environment shall be taken. Violation of these requirements entails suspension or limitation until elimination of deficiencies or complete cessation of activities as to allocation, design, construction, reconstruction, commissioning of environmentally harmful facilities, regardless of ownership and subordination, by the decisions of the specially authorized state bodies in the field of environmental protection and sanitary control (Article 38).

Violation of environmental requirements during the operation of enterprises, installations and other facilities entails the limitation, suspension, termination of activities of enterprises, institutions, organizations or shops, departments, branches, equipment by the decisions of specially authorized state bodies of the Republic of Tajikistan in the field of environmental protection, sanitary control over the safe works in industry and mining with the simultaneous termination of funding of the prohibited activities by the bank institutions (Article 43).

Officials of the bodies of state control in the field of environmental protection are authorized to issue decisions on the suspension of activity of economic entities. The decision is taken in order to prevent an immediate threat to life or health, the technogeneous disasters, irreparable damage to natural objects or the conditions of the natural environment. The decision is taken in case of two or more violations of the requirements and conditions in the field of environmental protection and if it is impossible to eliminate these violations by any other means.

Also, the competence of the specially authorized state body in the field of environmental protection includes bringing lawsuits to the court on suspension or termination of activity of legal persons, if their activities are conducted in violation of environmental laws, including lawsuits in case of exceeding the limits of emissions and discharges of polluting substances.

## **Judicial Procedure**

### **5) General overview of the remedies in judicial review of decisions, actions, omissions**

Based on the constitutional right of every citizen to go to the court (Article 19), it follows that all legal relations can be appealed directly to the court. The Code of Administrative Procedure (Article 90) also guarantees the right to go to the court for the protection of the violated right or freedom without recourse to an administrative authority.

Protection of civil rights is achieved by: recognition of a right; restoration of the situation that existed before the violation of rights and suppression of actions that violate or may violate the rights; recognition of the disputed transaction to be invalid and the application of the consequences of its invalidity, and the application of the consequences of declaration of the transaction to be null and void; invalidation of an act of a public or local authority; self-defense of one's rights; enforcement of duties in kind; compensation for damages; recovery of a penalty; compensation for non-pecuniary damage; protection of honor, dignity and business reputation; termination or modification of a legal relationship; non-application by the court of an act of a public or local authority which contradicts to law; by other remedies provided by law.

The above listed remedies are applicable for both legal entities and individuals, except for the following: compensation for non-pecuniary damage – applicable only to individuals, because is associated with the assessment of physical and mental suffering; protection of honor, dignity and business reputation – applies to legal persons only with regard to damage to business reputation.

### **6) General overview of the remedies in challenging of ongoing activity**

The Law on Nature Protection enshrines the right to appeal to court or to economic court for termination of environmentally harmful activities causing damage to health, property, and the environment. Based on the provisions of this Article the concept of "harmful activities" can include both actions and omissions.

### **7) Automatic suspension of decisions / actions / activities in the case of their appeal**

Submission of a lawsuit to the court suspends the validity of a contested administrative-legal act. The validity of the administrative-legal act shall not be suspended, if it relates to collection of taxes, fees or other mandatory payments; it was adopted in times of emergency or martial law on the basis of the appropriate law.

## **8) Injunctive relief**

### **a) temporary**

On the motion of the parties involved in the case, the judge is entitled to take measures to secure the claim. Security of a claim is allowed in all stages of the proceedings, if failure to take such measures may make it difficult or impossible to execute the judgment. Among the measures securing a claim the following shall be highlighted: seizure of property belonging to a defendant; prohibition to a defendant to conduct certain actions; prohibition to other persons to conduct certain actions regarding the subject-matter in the dispute, including the transfer of property to a defendant or performance of other obligations with regard to a defendant.

Where necessary, a judge can take other measures to secure a claim. A judge may apply multiple measures to secure a claim (Chapter 13 of CCP).

### **b) permanent**

Article 88 of the Law on Nature Protection provides that natural and legal persons have the right to appeal to the court or to the economic court for termination of environmentally harmful activities causing damage to their health and property, and the environment.

## **9) Claim for compensation for damage / injury (including caused to the environment), compensation of non-pecuniary damage**

According to Article 72 of the Law on Nature Protection individuals have a right to bring legal actions to the court against enterprises, institutions, organizations and individuals for compensation for damage caused to their health and property by the adverse impact on the environment. The damage caused to the citizens by the adverse impact on the environment caused by the activities of enterprises, institutions, organizations or individuals shall be reimbursed in full in accordance with the degree of disability of a victim, the costs of treatment, rehabilitation, nursing, and other expenses, as well as prescribed pensions or benefits.

Compensation for damage is made by a court decision on the lawsuit of a victim, his relatives, the prosecutor, the authorized governmental body, non-governmental organization (associations) on behalf of the victim.

The amount of money in compensation for damage caused to health of the citizens shall be recovered from the wrongdoer or if he cannot be found - at the expense of the appropriate funds for environmental protection.

## **10) Legal action in the protection of "the public interest» - actio popularis**

Article 5 of the Code of Civil Procedure provides for the right of individuals and / or legal entities to stand for the rights, freedoms and interests of an indefinite number of persons, or in the protection of the interests of the Republic of Tajikistan. The practical examples of application of this provision in cases relating to the environment are absent.

## **11) Timeliness**

### **a) administrative procedure**

If the legislation does not provide otherwise, an administrative complaint shall be filed within one month from the date of entry into force of an administrative act. In case of missing the deadline for appeal of an administrative act, it shall be extended, if the deadline was missed for a valid reason, but this period shall not exceed 1 year.

The right of appeal accrues from the date of adoption of an administrative act by an administrative authority. Violation of the time limits for adoption of an administrative act by an administrative body is also a ground for appeal (Article 89 CAP).

If the legislation does not specify otherwise an authorized administrative body shall consider an administrative complaint and take appropriate decision within one month (Article 97 CAP). Time limit for consideration of an administrative complaint may be extended for not more than one month.

## **b) judicial procedure (including procedures of various courts for individuals and legal entities)**

Civil cases are considered and resolved by a judge within three months from the date of receipt of a statement of claim by the court (Article 157 CCP). Cases in cassation instance shall be considered by the court no later than within one month from the date of its receipt. The Supreme Court shall consider a case within two months from the date of receipt of a cassation complain or protest.

Accordingly, based on a plaintiff's choice of methods for appeal, procedural time frames can be from 1 to 4 months.

### **D. Costs**

#### **1) Financial expenses associated with administrative procedure**

According to Article 113 of CAP it is prohibited to require payment of the state fee for consideration of an administrative complaint. Accordingly, challenging in administrative procedure shall be free of charge.

The interested party shall pay the costs associated with invitation of a witness or an expert. Each party bears the cost of the actions performed on its motion.

#### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

The range of cases for which the Law on the State Fee (2004) provides for payment of the fee is wide.

For cases heard by the Constitutional Court of the Republic of Tajikistan, the court fee is charged at the following rates: 1) for application of an individual - at the rate of one minimal wage; 2) for submission of public authorities, officials and legal entities - at the rate of ten minimal wages.

For cases heard by the courts of the Republic of Tajikistan, the court fee is charged at the following rates: for material claim with the amount claimed: up to 50 parameters for calculation - 3 % of the amount claimed; over 50 and up to 100 parameters for calculation - 2 % of the amount claimed; over 100 and up to 500 parameters for calculation - 0.7 % of the amount claimed; over 500 parameters for calculation - 0.5 % of the amount claimed; for non-material claim, subject-matter of which cannot be assessed: for individuals - 5% of the parameter for calculation; for legal entities - at the rate of 2 parameters for calculation.

According to the current legislation parameters for calculation are set by the Law of RT on the State Budget for a certain period. The national budget is adopted once a year that is why the numbers may vary annually. According to Article 31 of the Law of RT on the State Budget for 2011 dated January 1, 2011 a parameter for calculation for the calculation of taxes, duties and other obligatory payments, social benefits, as well as for the calculation of certain cost limits (lower or upper), applied in accordance with the laws of the Republic of Tajikistan, is established in the amount of 40 somoni (about 9 U.S. dollars<sup>119</sup>), and for penalties - 35 somoni (about 8 USD).

Presidential Decree dated June 20, 2008 № 480 on the Measures to enhance the level of social protection of population, to increase the existing salaries of employees of the budget institutions and organizations, pensions and scholarships, starting from July 1, 2008 the minimal wage in all sectors of the economy of the republic is established in the amount of 60 somoni (13.5 USD) and the minimal pension in the amount of 60 somoni (13.5 USD) per month.

#### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

Services of an attorney can be paid bases on a contract, and without such, in the cases explicitly provided by law (Article 8 of the Constitutional Law on Advocacy). Members of the Bar Association may also provide services for free. The Presidium of the Bar, as well as the body of preliminary investigations, the prosecutor and the court handling the case, can exempt an individual fully or partially from payment for legal assistance. In deciding whether to exempt an individual from payment for legal assistance the following is taken into account: his financial situation, age, disability, health state, presence of minor or disabled children, or dependents (Article 19 of the Constitutional Law on Advocacy).

According to Article 20 of the said Law, the amount of the attorney's fee is determined by agreement between the parties. In the absence of agreement, the amount of a fee is determined in accordance with the

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<sup>119</sup> This report uses the operational rate of Tajikistan somoni to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 4.45 somoni.

instruction approved by the Presidium of the Bar in coordination with the Ministry of Finance of the Republic of Tajikistan.

In case of exemption of a person from payment for legal assistance by the body of preliminary investigation, prosecutor or court and in case legal assistance is provided free of charge in accordance with the law, the costs of labor of an attorney are paid at the expense of the local budget in accordance with the prescribed procedure.

The legislation of the country does not include legal requirements on the procedure for payment of the attorney's fee. Surveys conducted among attorneys have shown that this procedure depends on the complexity of a case and the need to bear other expenses on a case. Accordingly, the procedures can be very different: 100% prepayment, partial prepayment of services, payment upon the consideration of a case, compensation of attorney's expenses by dividing the amount in several tranches.

#### **4) Costs of examination, involvement of experts and witnesses**

In addition to the court fee the parties to the trial also have to pay other judicial expenses.

According to the legislation other judicial expenses include: the amounts payable to witnesses, experts, specialists and interpreters; the costs of interpreter services incurred by foreign citizens and stateless persons, unless otherwise provided by international agreements recognized by Tajikistan; travel and accommodation expenses of the parties and third parties incurred in connection with attendance at court; the expenses for services of representatives; the costs of an on-sight inspection; postal costs associated with the proceedings incurred by the parties; the costs of storing of a physical evidence; other expenses recognized by the court.

The grounds for state judicial examination are: a court ruling, a judge order, an order of the person conducting the inquiry, of an investigator or a prosecutor, as well as motions of natural and legal persons from issuance of which a state judicial examination is considered to be appointed.

In civil and economic cases payment for state judicial examinations is carried out by the party at whose motion the state judicial examination is conducted, which is indicated in the order or ruling on the appointment of the state judicial examination.

Judicial experts, specialists are paid remuneration for carrying out their work on behalf of the court, if this work is beyond the scope of their duties as employees of a governmental institution. The amount of remuneration of judicial experts, specialists is determined by the court in consultation with the parties and by agreement with the judicial experts and specialists (Article 97 CCP RT).

The legislation does not provide for direct requirements on the differences of the amounts of payments depending on the legal status of the parties. The Law on State Judicial Examination (2005) points to the procedure determined by the Government on collection of funds from individuals and legal entities. However, this procedure has not been elaborated until now.

According to Article 96 of CCP RT the court, taking into account the financial situation of the parties, may delay or allow repayment by installments of judicial expenses associated with the proceedings for one or both parties, to reduce their size or exempt from paying them, and makes the appropriate ruling.

#### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

Bond (other financial guarantees) associated with the motion on application of injunctive relief in the legislation of RT is not envisaged.

Article 149 of CCP RT para 11 establishes that the person to whom by the securing measures applied before bringing lawsuit were caused damages may require its compensation from a plaintiff, if the plaintiff within the prescribed by the court time limit failed to submit a statement of claim, as to which the court had taken measures securing his property interests, and in case the claim was denied by the judicial decision which entered into force.

According to Article 149 para 12 of CCP RT disputes on compensation for damages are considered upon filing a lawsuit in general manner. Civil procedural law does not empower judges to impose any restrictions on compensation of damages to a defendant in connection with the application of preliminary injunction. In most cases, defendants go to the court with lawsuits for compensation for damages related to the ruling on preliminary injunctive relief.

There is no doubt that in case of the negative outcome of the trial for the plaintiff and the use by the defendant of the right to claim compensation for damages, both physical and legal persons (plaintiffs) may be placed in a situation of defendants liable to pay quite large amounts of actual damages and lost profits. Considering the capabilities of the parties, the chance to be held liable for damages in connection with application of injunctions is a restraining factor (deterrent) for citizens and environmental NGOs.

## **6) Other issues of judicial expenses**

Article 100 of CCP RT distributes judicial expenses between the parties. The court awards all incurred judicial expenses associated with consideration of the case of the party in whose favor the decision was rendered to be covered by the other party. If the claim is granted in part, the said amounts are awarded to a plaintiff in proportion to the satisfied claims, and to a defendant - in proportion to that part of the claim, which plaintiff lost.

These rules also apply to the distribution of judicial expenses incurred by the parties in connection with consideration of a case in the cassation and supervisory instances.

If a court of a higher instance not sending the case for retrial, varies the taken decision or makes a substitute decision, it accordingly modifies the distribution of judicial expenses. If in these cases, the court of a higher instance did not modify the decision as to distribution of judicial expenses, this issue is decided by the court of first instance at the request of the interested person.

### **E. Legal aid (state, non-state)**

The Constitutional Law on Advocacy guarantees legal assistance to every natural or legal person. These guarantees are provided by the measures of state support. This means that no attorney can refuse to provide legal assistance, except in cases expressly specified in the legislation. Services of lawyers are paid. The Presidium of the Bar, as well as the body of preliminary investigations, the prosecutor and the court handling the case, can exempt an individual fully or partially from payment for legal assistance. Accordingly, legal entities do not have these privileges.

Legal assistance is provided by attorneys in particular in the form of: consultations and clarifications, oral and written information on legal matters; preparation of statements of claims, complaints, motions and other legal documents; inquiry, data collection and preparation of materials for its consideration and resolution in the prescribed manner; representation in civil cases, administrative cases and other types of cases; participation in criminal proceedings, during consideration of economic disputes and in the Constitutional Court in the capacity of counsels and other representatives; as well as in other forms, not contradicting the applicable law.

In Tajikistan, there are also three Aarhus Centers, which aim at, inter alia, providing the public with necessary information, promoting the rights and interests of citizens. At the moment, in practice, every citizen has the right to apply to the Centers for competent legal advice.

We should also mention the activity of the Club of environmental organizations working in the field of environmental protection which prepares appeals to the public authorities. However, the Club does not have experience in litigation. If necessary, the club members are able to provide legal assistance to the population.

At this point in Tajikistan there is a number of human rights organizations (NGO "Law and prosperity", NGO "Human Rights Bureau," etc.), but they do not work on environmental issues. The Aarhus Centers are the exceptions and their capacity needs strengthening. Among the environmental organizations only NGOs "Youth of the 21st century" and "The brigade for the protection of nature" have capacities for working with legal documents. Services of the above mentioned NGOs currently are free of charge. Attorneys in Tajikistan do not provide free services. Any advice regardless of the issue is paid. The exceptions are the provisions of Article 19 of the Constitutional Law on Advocacy.

# TURKMENISTAN

## A. System of regulatory, control (oversight) authorities, judiciary and legislation relating to the environment

### 1) Legislative system<sup>120</sup>

The main legislative acts in the field of environmental protection are the Law of Turkmenistan on Environmental Protection (1991)<sup>121</sup>, the Law of Turkmenistan on State Protected Areas (1992)<sup>122</sup>, the Law of Turkmenistan on Subsoil<sup>123</sup>, the Law of Turkmenistan on the Protection and Rational Use of Flora (1993)<sup>124</sup>, the Forest Code of Turkmenistan (1993), the Law of Turkmenistan on State Ecological Expertise (1995)<sup>125</sup>, the Law of Turkmenistan on Air Protection (1996)<sup>126</sup>, the Law of Turkmenistan on the Protection and Rational Use of Fauna (1997)<sup>127</sup>, the Law of Turkmenistan on Hunting (1998)<sup>128</sup>, the Code of Turkmenistan on Land (2004), the Code of Turkmenistan on Water (2004), the Law of Turkmenistan on Hydrocarbon Resources (2008)<sup>129</sup>, the Law of Turkmenistan on the Protection of the Ozone Layer (2009)<sup>130</sup>, the Law of Turkmenistan on Radiation Safety (2009), the Sanitary Code of Turkmenistan (new edition (2009)<sup>131</sup>.

### 2) Regulatory and control (supervisory) authorities

The central body of executive power exercising state environmental policy, coordination and supervision in the field of the protection and rational use of natural resources is the Ministry of Nature Protection of Turkmenistan (MNP).

State control over observance of environmental legislation on the local level is exercised by the velayat departments of nature protection, which are under the jurisdiction of the MNP.

Stationary systematic monitoring of air quality and surface water is carried out by the Scientific Center of Environmental Monitoring (SCEM) within the National Institute of Deserts, Flora and Fauna under the MNP.

Environmental control and monitoring of the Turkmen section of the Caspian Sea is carried out by the Caspian Environmental Service – a department of the MNP.

State functions of control over the protection of the environment along with the Ministry of Nature Protection are also imposed on the Sanitary and Epidemiological Inspectorate of the Ministry of Health and Medical Industry, the Ministry of Water Resources, the Land Use Service under the Ministry of Agriculture, the State Corporation "Turkmengeologiya", the National Committee for Hydrometeorology under the Cabinet of Ministers, the State Agency for Management and Use of Hydrocarbon Resources under the President of Turkmenistan.

### 3) Role of the Prosecutor's Office

General supervision over compliance with environmental laws is exercised by the prosecutor's bodies, the system of which includes the Attorney General's Office, Prosecutor's Offices of velayats, cities with velayats rights, of etraps, and of cities with etraps' rights.<sup>132</sup>

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<sup>120</sup> The electronic database of legislation of Turkmenistan in English, Russian and Turkmen - <http://www.turkmenlegaldatabase.info/>

<sup>121</sup> Bulletin of the Supreme Council of Turkmen SSR, 1991, № 16, p.174.

<sup>122</sup> Bulletin of the Mejlis of Turkmenistan, 1992, № 5, p. 41.

<sup>123</sup> Bulletin of the Mejlis of Turkmenistan, 1992, № 12, p. 115.

<sup>124</sup> Bulletin of the Mejlis of Turkmenistan, 1993, № 11-12, p.110.

<sup>125</sup> Bulletin of the Mejlis of Turkmenistan, 1995, № 2, p.15.

<sup>126</sup> Bulletin of the Mejlis of Turkmenistan, 1996, № 4, p.66.

<sup>127</sup> Bulletin of the Mejlis of Turkmenistan, 1997, № 2, p.17.

<sup>128</sup> Bulletin of the Mejlis of Turkmenistan, 1998, № 3, p.53.

<sup>129</sup> Bulletin of the Mejlis of Turkmenistan in 2008, № 3, p. 40

<sup>130</sup> "Neutral Turkmenistan", 2009, August 21.

<sup>131</sup> "Neutral Turkmenistan", 2009, November 27.

<sup>132</sup> The territory of Turkmenistan is divided into 5 major territorial-administrative areas: Akhal, Balkan, Dashoguz, Mary, Lebap velayats. Velayats are divided into the etraps that corresponds to the division into districts.

#### **4) The judicial system**

In accordance with the Law of Turkmenistan on the Court (2009) the Supreme Court of Turkmenistan, the Economic Court of Turkmenistan, velayat courts and court of cities with the rights of velayats, as well as etrap courts and court of cities with etrap rights operate in Turkmenistan (Article 14).

#### **5) The Ombudsman**

Office of the Commissioner for Human Rights (Ombudsman) does not exist in Turkmenistan.

### **B. Information on the procedures for making decisions on environmental matters, and opportunities to challenge them**

#### **1) Decision-making system**

Information on the procedures of decision-making on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is indicated in Figure 13 (pp.138-139).

Legislative acts referred to in paragraph 1.1 on the decisions made in accordance with paragraph 1.1 do not provide for the provisions on challenging of the material and / or procedural legality of those decisions. At the same time, some of them contain such provisions. For instance, the State standard of Turkmenistan TDS-579-2001 Assessment of the environmental impact of planned economic and other activities in Turkmenistan, approved by the Main State Service "Turkmenstandartlary" dated June 05, 2001, № 75 provides for possibility to challenge the conclusions of the state ecological expertiza in accordance with the legislation of Turkmenistan (p.8.2.). In its turn, legislation of Turkmenistan on this matter provides for special rules on appeal to the public authority that adopted the decision, or to a higher authority (non-judicial dispute resolution mechanism).

#### **2) Challenging of decisions in non-judicial (administrative) procedure**

The public has the right to challenge in administrative procedure actions / omissions of individuals, public authorities, "which violate the provisions of law relating to the environment".

Legal rules of the non-judicial consideration of cases are provided in the special Law on Citizens' Appeals and the Procedure of its Consideration, dated January 14, 1999.

Under Article 2 of the Law, citizens of Turkmenistan in accordance with the Constitution and laws have the right to make written or oral proposals to the state, public and other authorities, company, organizations and institutions of all forms of ownership on improvement of their activities, to submit applications and complaints.

Government, public and other bodies and their officials are obliged to timely, objective and comprehensive consider citizens appeals, to verify the facts contained therein, to make decisions in accordance with applicable law, to enforce them, and to inform citizens on the outcomes of their appeals.

A response on the consideration of an appeal is necessarily given by an authority, company, organization, institution, which received the appeal and in whose competence the resolution of the issues raised in the appeal falls (Article 8).

Analysis of current legislation on the presence therein of the provision on the non-judicial mechanisms of consideration of cases shows that most of the regulations on the status of state administrative bodies (the regulations of the ministries, state committees and departments, statutes of public associations and enterprises, the legislation on the bodies of local self-government and others) contain such provisions. In addition, a number of ministries and departments have special structural units (departments), which consider letters, applications and complaints from the citizens.

The public has the right to challenge in administrative procedure actions / omissions of individuals, public authorities, "which violate the provisions of law relating to the environment".

#### **3) Judicial procedure**

##### **a) The role of courts, jurisdiction**

According to Article 1 of the Law of Turkmenistan on the Court the judicial power is exercised by means of economic, civil, administrative and criminal proceedings.

**Figure 13**

<b>Procedure (decision) on matters relating to the environment<sup>133</sup></b>	<b>Body authorized to carry out the procedure (to make the decision)</b>	<b>Period of validity of decisions, permits or other documents issued due to the procedure</b>	<b>The possibility of public participation</b>	<b>Body to which one can appeal the decision / action / omission</b>	<b>Legal act regulating the carrying out of the procedure (making the decision)</b>
1. Decision on approval of the Rules of the development of hydrocarbon deposits in Turkmenistan in the "golden" age of the Turkmen people (hereinafter - the Rules) for onward submission to the Government for approval (p.1.6.6.)	The State Agency for Management and Use of Hydrocarbon Resources under the President of Turkmenistan (hereinafter - the Agency)	Valid unless canceled by the authority which made this decision	Open hearings on the Rules with involvement of the public (paragraphs 1.6.3. -1.6.5. of the Rules)	the Agency	the Rules of the development of hydrocarbon deposits in Turkmenistan in the "golden" age of the Turkmen people approved by the Resolution of the President of the Turkmenistan dated October 22, 1999 №4416 (hereinafter - the Rules)
2. License for exploration of hydrocarbon resources	the Agency	Up to 6 years. The license's validity period can be extended twice for the period of up to two years each time.	Public participation in the approval of the Rules (p.1.6.4.)	the Agency	Law of Turkmenistan on Hydrocarbon Resources dated August 18, 2008; the Rules.
3. License for exploitation of hydrocarbon resources	the Agency	20 years. The license validity period can be extended for five years.	Public participation in the approval of the Rules (p.1.6.4.)	the Agency	the Law of Turkmenistan on Hydrocarbon Resources dated August 18, 2008; the Rules.

<sup>133</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

4. Decisions on OVOS	the Ministry of Nature Protection	3 years	Public participation at all stages of OVOS	the Ministry of Nature Protection or the court	The Law of Turkmenistan on Environmental Protection dated November 12, 1991 (article 16), the Law of Turkmenistan on State Ecological Expertiza dated June 15, 1995 (Article 5, 16), Regulation on the Procedure of State Ecological Expertiza, approved by the President of Turkmenistan on November 13, 1996, № 2864 (para 18); State standard of Turkmenistan TDS-579-2001 Assessment of the environmental impact of planned economic and other activities in Turkmenistan, approved by the Decree of the Main State Service "Turkmenstandartlary" dated June 5, 2001, № 75 (paras.4, 6.1.).
5. Decision (conclusion) on investment and technological projects	the Ministry of Construction, the Ministry of Petroleum and Mineral Resources, the Ministry of Energy and Industry	3 years	Public participation is not envisaged	Not provided	The Procedure for performance of the state expertiza and approval of investment and technological projects of oil and gas, energy and chemical complexes in Turkmenistan, approved by the Decree of the President of Turkmenistan dated January 22, 2003, № 6080
6. License for the use of natural resources and environmental protection	the Ministry of Nature Protection	3 years	Public participation is not envisaged	The license applicant can appeal the denial of a license by appealing to the licensing agency or to the court.	the Law of Turkmenistan on Licensing of Certain Types of Activities dated June 26, 2008, № 202-III; Regulation on licensing for use of natural resources and environmental protection, approved by the Decree of the President of Turkmenistan dated February 26, 2010, № 10937.

## **b) Standing (of individuals, NGOs) in matters relating to the environmental**

According to the Code of Civil Procedure of Turkmenistan (hereinafter - CCPT) dated 1963, any interested person is entitled, in the manner prescribed by law, to apply to court for the protection of his violated or disputed rights or legally protected interest (Article 3). The court can proceed to consideration of a civil case on the basis of a lawsuit of public authorities, enterprises, institutions, organizations and associations, non-governmental organizations or individuals, if by the law they are entitled to apply to the court for the protection of the rights and interests of others (Article 4, p. 3).

The economic proceedings are carried out by the velayat courts and Ashkhabad city court, by the Economic Court of Turkmenistan and the Supreme Court of Turkmenistan that resolve disputes arising from economic relations or relations in the sphere of administration and other cases assigned to its jurisdiction by the Code of Economic Procedure and other laws. Individuals and legal entities having the status of entrepreneurs are entitled to seek protection of their violated or disputed rights and legitimate interests in the economic courts.

NGOs in accordance with Article 21 of the Law on Non-governmental Associations are entitled to represent and protect its rights, the rights and legitimate interests of its members and participants, as well as of other citizens in front of public authorities and non-governmental associations.

Individuals / NGOs can initiate criminal prosecution for crimes related to the environment, by applying to the authorized bodies. On crimes related to intentional infliction of the minor bodily injury and the negligent infliction of serious or moderate bodily injury, a victim himself or through his representative has the right to prosecute the case in court.

### **4) Other (non-judicial) methods of dispute resolution**

Turkmen National Institute for Democracy and Human Rights under the President of Turkmenistan was established and operates in Turkmenistan. According to the Regulations on the Institute, approved by the Decree of the President of Turkmenistan dated October 23, 1996, № 2827, the Institute is a scientific and methodological center for research in the field of democracy, individual rights and liberties, functioning of governmental and public institutions.

One of the main activities of the Institute is to organize the consideration of applications, complaints and appeals of citizens, their analysis and the periodic submission of proposals to the President of Turkmenistan. For these purposes, within the structure of the Institute a special department is created to consider applications and complaints, generalize them and cooperate with the relevant authorities in order to eliminate the violations of the rights of citizens, including in the field of environmental protection. Any citizen can apply for the protection of the violated rights to the Institute. Applications, complaints and letters of the citizens are considered by the Institute in accordance with the time limits and conditions of the Law on Citizens' Appeals and the Procedure of its Consideration (1999).

## **B. Procedural and other remedies in matters relating to the environment, and the issue of timing**

### **Administrative procedure**

#### **1) General overview of the remedies in administrative review procedure of decisions, actions, omissions**

Government, public and other bodies, their heads and officials are obliged to carefully consider, objectively, comprehensively and promptly resolve citizens' appeals, if necessary – to demand and obtain the necessary documents, conduct on-site inspections, and take other steps to resolve the issues raised in the appeals; if appropriate, to invite citizens to participate in the proceedings of their appeals; to cancel or modify the appealed decision in the cases stipulated by legislation of Turkmenistan, to take immediate actions to stop illegal actions, identify and eliminate the causes and conditions that contributed to the violation, to provide a real remedy and implementation of the decisions taken in connection with the appeal, to take action for compensation in accordance with the law for the material damage caused to citizens by infringement of their legitimate rights and interests, to bring the persons on whose fault the violations occurred to the responsibility.

#### **2) General overview of the remedies in appeals against on-going activities**

Article 28 of the Law of Turkmenistan on Environmental Protection (1991) grants citizens the right to make proposals to cancel decisions on allocation, design, construction, reconstruction, operation of

environmentally harmful objects, limitation, suspension or termination of activity of legal entities that have negative impact on the environment and human health.

### **3) The prohibition on the activity (temporary or/and permanent)**

Local executive authorities (khyakimlik) have the power to suspend business activities of enterprises, institutions and organizations conducted with violations of environmental requirements for up to 10 days. In case of failure to comply with the technical and metrological requirements for nature protection; emissions, discharges of pollutants or other kinds of actions harmful to the environment, activity of enterprises, institutions, organizations, and their divisions or equipment can be in the manner prescribed by law limited, suspended or terminated (including full cessation of an activity of an enterprise) by decisions of public authorities in the field of environmental protection, sanitary control, supervision over safe operations in industry and mining, and other authorized bodies or in its directions by local executive authorities, with the immediate withdrawal of funding for the prohibited operations until the violations are eliminated (Article 12 of the Law of Turkmenistan on Environmental Protection).

### **4) The time frames in case of appeal in administrative procedure**

The Law on Citizens' Appeals and the Procedure of their Consideration provides that the citizens' appeals are resolved within a period not exceeding one month from the date of its receipt, and those which do not need additional inspection - immediately, not later than in fifteen days from the date of its receipt. In cases when for resolution of an appeal it is necessary to conduct a special inspection or examine a considerable volume of materials, the head of an authority, enterprise, organization, institution, or his deputy, sets a longer period necessary for its resolution. The person who filed the appeal is informed on this fact. The overall period of consideration of an administrative appeal shall not exceed forty-five days (Article 12).

## **Judicial Procedure**

### **5) General overview of the remedies in judicial review of decisions, actions, omissions**

The public should first appeal a decision in administrative procedure. If a complaint is not properly satisfied, an applicant is entitled to appeal to the court. Thus a lawsuit shall be filed after appropriate administrative appeal of actions of a public authority or its official to a superior authority or an official who shall consider it and inform a citizen on the results of such consideration within one month (Article 241-4 CCPT).

A complaint shall be filed to the court within one month, calculated from the date of receipt of a denial on the administrative complaint by a superior authority or an official or after the expiration of one month from filing the complaint to a superior authority or an official, if the complainant did not receive any response. The deadline for filing of a complaint missed for valid reasons can be renewed by the court (Article 241-5 CCPT).

### **6) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of a decision / action / activity in case of its appeal in administrative procedure is not envisaged.

### **7) The prohibition on the activity (temporary and/or permanent)**

The applicant has the right to seek for a stay in implementation of activities / decisions, including for suspension by the court.

The legislation provides for the following types of restraints on the activity: temporary (for example, for the period of a trial, as security for a claim), temporary (up to fulfillment of certain conditions (orders) under the decision of the court or other authority. Permanent - only by a court decision.

The main criteria can be a negative conclusion of the state ecological expertise.

Injunctions can be applied to all persons, including individuals / organizations and / or public authorities / organizations.

The main obstacles in the use of court-ordered injunctions in matters relating to the environment are, above all, lack of clear standards and consistent practice in issuing injunctions.

### **8) Claim for compensation for damage / injury (including caused to the environment), compensation of non-pecuniary damage**

Under the Law on Nature Protection non-governmental associations have the right to file lawsuits to the court or to the economic court for compensation of damages caused to the environment, health, property

of citizens and non-governmental organizations, by the violations of environmental legislation, including by the public authorities in the field of nature protection (Article 30).

Compensation for damages is awarded to those entities and / or physical persons who incurred such damages.

Individuals may raise the question on compensation for non-pecuniary damage. However, such cases in practice have not happened yet.

### **9) Legal action for the protection of "the public interest» - actio popularis**

The lawsuit in the protection of the "public interest" is not provided in the legislation.

## **D. Costs**

### **1) Financial expenses associated with administrative procedure**

There are no financial expenses associated with administrative appeals against decisions, actions or omissions relating to the environment. Complaints are free of charge.

### **2) Court fees and other expenses associated with consideration of case in judicial procedure**

When one applies to the court to challenge decisions/actions/omissions relating to the environment, as well as when files a claim for damages it is required to pay the court fee. The court fees are fixed, and are set by the CCPT.

In addition, according to Article 68 of the CCPT judicial expenses associated with the consideration of cases include: 1) the amounts payable to witnesses and experts; 2) the costs associated with the performance of the on-site inspections; 3) the costs to retrieve a defendant; 4) the costs associated with the execution of court decisions; 5) remuneration of lawyers, made at the expense of the State.

Depending on the type of a case the amount of the court fee may vary. According to Article 64 of the CCPT for each statement of claim, an initial or a cross-statement, statement of claim on pre-contractual disputes, the statement of claim of a third party who states its independent claims as to the subject-matter in dispute in a trial that has already started, statements of claims (complaints) in special proceedings, the court fee shall be paid in the following amounts: 1) if the amount claimed is less than one minimum wage - 5 percent of the amount of the claim; 2) if the amount claimed is over one minimum wage - 15 percent of the amount of the claim; 3) for claims on exemption of property from seizure and for other claims of non-material nature and for the claim that can not to be assessed - 5 percent of the minimum wage; 4) for statement of claims (complaints) in special proceedings - 5 percent of the minimum wage; 5) for complaints against illegal actions of the public authorities, their officials that infringe the rights of the citizens - 5 percent of the minimum wage.

For cassation complaints on court decisions one shall pay the court fee in the amount of 50 percent of the amount payable for filing of the initial statement of claim (the complaint - in special proceedings), and for cassation complaints in material disputes - at the amounts, calculated based on the disputed amount in accordance with the paragraph listed above.

Private complaints on the court rulings are free of the court fee.

For the issuance of copies (duplicates) of judicial decisions, judgments, orders, other rulings, as well as for the copies (duplicates) of other documents on the case provided by the court at the request of the parties and others persons involved in the case one shall pay the court fee in the amount of 10 percent of the minimum wage.

Under Article 62 of the CCPT the following categories are exempt from payment of judicial expenses at the expense of the State: 1) plaintiffs - on claims for compensation for damage caused by injury or other impairment of health and by the death of a breadwinner; 2) plaintiffs - on claims for compensation for material damage caused by a crime; 3) the prosecutor's office, as well as public authorities, enterprises, institutions, organizations and associations, non-governmental organizations or individuals who in the cases stipulated by law file lawsuits to the court for the protection of the rights and interests of others; 4) citizens, public authorities, other bodies and officials - in cases arising from administrative legal relations, except for cases on complaints against illegal actions of public authorities, or their officials that infringe the rights of the citizens.

A court or a judge, based on the financial situation of a citizen is entitled to exempt him from payment of judicial expenses to the state (Article 62 of the CCPT). According to Article 63 of the CCPT a court or a judge, based on the financial situation of the parties, is entitled to delay or allow repayment by installments

of judicial expenses payable to the state budget for one or both parties, or reduce the amount of these expenses.

### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

In accordance with the Law of Turkmenistan on Advocacy and Legal Practice dated May 19, 2010 remuneration of legal assistance of attorneys is based on the agreement (Article 6, para 4). The amounts payable for legal advice are determined in accordance with the rules regulating remuneration for the legal assistance provided to the citizens by the Bar Associations.

According to Article 72-1 of the CCPT a judge during preparation of a case for trial or the court in the proceedings can, on the basis of the financial situation of a citizen, exempt him in full or in part from payment for legal assistance and have the costs of the attorney's labor to be covered at the expense of the State. A judge ruling or a court order on full or partial exemption from payment of legal assistance is immediately referred to the Bar Association and a financial authority at the location of the court for enforcement.

### **4) Costs of examination, involvement of experts and witnesses**

The amounts payable to witnesses and experts, or necessary to cover the costs of production of an on-site inspection, shall be paid in advance by the party who has made the appropriate motion. If the motion was declared by both parties, or involvement of witnesses, experts, or on-site inspection is initiated by the court, the amounts required shall be paid by the parties equally.

The amounts described in this article shall not be paid the party exempt from payment of judicial expenses (Article 70 of the CCPT).

Amounts payable to witnesses, experts and interpreters shall be paid by the court upon the performance of their duties. Witnesses and experts are paid regardless of recovery of these amounts from the parties. The procedure of payment and the amounts payable shall be determined by the Cabinet of Ministers of Turkmenistan (Article 71 CCPT).

The court awards all incurred judicial expenses of the party in whose favor the decision was rendered to be covered by the losing party, even if the winning party was exempt from payment of judicial expenses to the State. If the claim is granted in part, the said amounts are distributed between a plaintiff and a defended in proportion to the amount of the satisfied claims.

These rules also apply to the court fees paid by the parties for filing of cassation complaints.

If a higher court does not send a case for retrial, but varies the decision or makes a substitute decision, it accordingly modifies the distribution of judicial expenses (Article 72 of the CCPT).

The need for and cost of an examination or other expert services can be determined by the court or a judge in the proceedings.

### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

Legislation of Turkmenistan does not provide for the obligation of an applicant to pay a bond or provide other guarantees.

#### **E. Legal aid (state, non-state)**

State: Every week the Ministry of Justice gives legal advice to citizens, public associations, enterprises and organizations. The committee includes representatives from the Ministry of Internal Affairs (the Police), Prosecutor's Office and other law enforcing authorities. The committee gives advices on all the issues related to the violation of citizens' rights, including in matters relating to the environment. Consultations are free of charge.

There are no lawyers / legal organizations that directly specialize only in environmental matters.

Opportunity for NGOs to get free legal advice in matters relating to the environment from NGOs, lawyers, or law firms exists, if an NGO officially requests the Bar or a law firm to provide it with free legal assistance in matters relating to the environment.

# UZBEKISTAN

## A) System of regulatory, control (oversight) authorities, judiciary and environmental legislation

### 1) Legislative system<sup>134</sup>

The Constitution of the Republic of Uzbekistan, (1992), the Law of the Republic of Uzbekistan on Nature Protection (1992), the Law of the Republic of Uzbekistan on State Sanitary Oversight (1992), the Law of the Republic of Uzbekistan on Water and Water Use (1993), the Law of the Republic of Uzbekistan on the Protection and Use of Flora (1997), the Law of the Republic of Uzbekistan on the Protection and Use of Fauna (1997), the Land Code of the Republic of Uzbekistan (1998), the Law of the Republic of Uzbekistan on Forest (1999), the Law of the Republic of Uzbekistan on Environmental Expertiza (2000), the Law of the Republic of Uzbekistan on Radiation Safety (2000), the City-building Code of the Republic of Uzbekistan (2002), the Law of the Republic of Uzbekistan on Protected Natural Areas (2004), the Law of the Republic of Uzbekistan on the Protection of Air (1996), the Law of the Republic of Uzbekistan on Wastes (2002), the Law of the Republic of Uzbekistan on Minerals (2002).

### 2) Regulatory and control (supervisory) authorities

State control in the field of environmental protection is carried out by state authorities, specially authorized state bodies on the protection of the natural environment.

Specially authorized bodies on the nature protection are: the State Committee of the Republic of Uzbekistan on Nature Protection; the Ministry of Health of the Republic of Uzbekistan; the State Inspectorate on Control over Geological Studies, Safety in Industry, Mining and Municipal Sector under the Cabinet of Ministers of the Republic of Uzbekistan; the Ministry of Internal Affairs of the Republic of Uzbekistan; the Ministry of Agriculture and Water Resources of the Republic of Uzbekistan; the State Committee on Land Resources of the Republic of Uzbekistan.

The State Committee of the Republic of Uzbekistan on Nature Protection (Goscomprirody) is a specially authorized interdepartmental and coordinating central authority exercising state control and cross-sectoral administration in the field of nature conservation, sustainable use and reproduction of natural resources.

The main tasks of the State Committee on Nature Protection of the Republic of Uzbekistan (Goscomprirody) are: to carry out state control over protection of the environment, use and reproduction of natural resources; to implement cross-sectoral integrated environmental management; to develop and implement the state environment and resource use protection policy; to ensure good ecological state of the environment, to improve the environmental situation.

Goskomprirody has its 14 regional committees.

### 3) The role of the prosecutor's office

The system of the Public Prosecutor's Office consists of: General Prosecutor's Office of the Republic of Uzbekistan; Prosecutor's Office of the Republic of Karakalpakstan; Prosecutor's offices of regions; Military Prosecutor's Office of the Republic of Uzbekistan, Transport Prosecutor's Office of the Republic of Uzbekistan. The Aral Sea Environmental Prosecutor's Office exists in Uzbekistan. By its oversight activities it covers the territories of Khorezm region and the Republic of Karakalpakstan.

### 4) The judicial system

The judicial system of the Republic of Uzbekistan consists of the Constitutional Court of the Republic of Uzbekistan, the Supreme Court of the Republic of Uzbekistan, the Higher Economic Court of the Republic of Uzbekistan, supreme courts of the Republic of Karakalpakstan on civil and criminal cases, the Economic Court of the Republic of Karakalpakstan (judges of these courts are elected for five years), regional, Tashkent city courts on civil and criminal cases, inter-district and district courts on civil and criminal cases, military and economic courts (judges of these courts are appointed for the same period). It is prohibited to set up emergency courts.

The Constitutional Court considers cases on the constitutionality of legislative acts and normative acts of the executive power. The Constitutional Court of the Republic of Uzbekistan determines conformity with

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<sup>134</sup> The electronic database of the legislation of Uzbekistan in Uzbek and Russian - <http://www.lex.uz/ru/main>.

the Constitution of laws and other acts, adopted by Oliy Majlis (the Parliament), Presidential decrees, regulations of the government and local authorities, international treaties and other obligations of the Republic; provides interpretation of the Constitution and laws of the Republic; hears other cases within its competence.

The Supreme Court of the Republic of Uzbekistan is the highest judicial authority in civil, criminal and administrative proceedings. Its decisions are final and binding on the entire territory of the Republic of Uzbekistan.

Disputes arising in the economic sphere between companies, institutions, organizations of different forms of ownership as well as between entrepreneurs are adjudicated by the Supreme Economic Court, and economic courts within their competence.

### **5) The Ombudsman**

The Commissioner of the Oliy Majlis for Human Rights is an official empowered to ensure parliamentary oversight of the effectiveness of enforcement of existing legislation on human rights in Uzbekistan. He carries out its activities on the basis of the Law of the Republic of Uzbekistan on the Commissioner of the Oliy Majlis for Human Rights (Ombudsman) (1997).

The Commissioner while exercising his authority is independent from governmental agencies and officials and is accountable to the Oliy Majlis of the Republic of Uzbekistan.

The Commissioner considers complaints of citizens of the Republic of Uzbekistan, foreign citizens present on the territory of the Republic of Uzbekistan, and stateless persons regarding acts or omissions of entities or officials that violate their rights, freedoms and legitimate interests, and has the right to conduct his investigation.

The Commissioner receives for consideration complaints of the third parties, including NGOs, regarding violation of the rights, freedoms and legitimate interests of particular persons or group of people under the condition of their consent.

The Commissioner does not consider matters falling within the jurisdiction of the courts.

## **B. Procedures for making decisions in environmental matters, and opportunities to challenge them**

### **1) Decision-making system**

Decisions of state importance are made in accordance with the competence of the legislative or executive branches of the government.

The procedure for preparation and adoption of these decisions is established by the laws of the Republic of Uzbekistan on the Rules of the Senate of Oliy Majlis of the Republic of Uzbekistan (2003), on the Regulations of the Legislative Chamber of Oliy Majlis of Uzbekistan (2003), on the Preparation of Draft Laws and their Introduction into the Legislative Chamber of Oliy Majlis (2006), the Resolution of the Cabinet of Ministers on the Regulations of the Cabinet of Ministers of the Republic of Uzbekistan (2005).

Non-governmental organizations, business entities make decisions independently in accordance with their procedures (constituent documents) on the principle of freedom of decision, if there is no direct restriction or prohibition established by legislation.

### **2) Challenging of decisions in non-judicial (administrative) procedure**

Applications, proposals and complaints are submitted directly to a public authority which is vested with authority to resolve the issues raised therein, or to a superior authority.

A citizen is entitled to file an application, proposal or a complaint in person, as well as to authorize his representative to do so or to send his appeal by other means of communication. In the interests of minors and incapacitated persons their applications, proposals and complaints are submitted by their representatives.

Deadlines for submitting applications, proposals and complaints of citizens, as a rule, are not established. In some cases the deadlines for applications, proposals, and complaints to the relevant authorities can be established, if this is due to the capacity of an authority to review a application, proposal or a complaint, the need for timely exercising of the rights and freedoms of citizens, for the protection of their legitimate interests, as well as on other grounds provided for by legislative acts.

An application or a complaint can be filed to a superior authority not later than in one year from the moment when a citizen became aware of an action (or omission) or decision which violates his rights, freedoms and legitimate interests. If the deadline is missed due to a valid reason, the right to appeal is renewed by a public authority considering a notification or a complaint.

A citizen is entitled to appeal against actions (decisions) violating his\her rights and freedoms directly to the court, to a superior authority, or an official.

A superior authority or an official shall consider an appeal within a month. In practice, the requirement on time frames is not always followed. If a citizen's complaint was refused or he did not receive any response within a month from the date of its filing, he has the right to appeal to the court.

A complaint can be filed by a citizen whose rights and freedoms are violated or by his representative, as well as at a request of a citizen by an authorized representative of a non-governmental association, or a collective of employees.

### **3) Judicial procedure**

Any concerned person can apply to the court for the protection of his violated or disputed right or legally protected interest.

Court initiates civil proceedings on an action of: a person applying for the protection of his right or legally protected interest; prosecutor; public authorities, organizations and individuals in cases where by law they are entitled to apply to the court for the protection of the rights and legitimate interests of others.

Also, every citizen has the right to appeal to the court if he considers that illegal actions (decisions) of public authorities, legal entities, including associations, or officials violate his rights and freedoms.

Thus, the actions (decisions), which can be appealed in court, are collective and individual actions (decisions), which resulted in: violation of human rights and freedoms of citizens; establishment of barriers for exercising citizen's rights and liberties; illegal imposition of an obligation on a citizen.

Foreign citizens have the right to appeal to the court in the manner provided by law, unless international treaties and agreements of the Republic of Uzbekistan provide otherwise. Stateless persons are entitled to appeal to courts in accordance with the Law of the Republic of Uzbekistan on Court Appeal of Actions and Decisions, Violating Rights and Freedoms of Citizens (1995).

Complaints are filed at the discretion of a citizen to the court at his place of residence, or to the court at the location of a public authority, or an official whose actions (decision) are contested.

Complaints of citizens on actions (decisions) of public authorities, enterprises, institutions, organizations, associations, self-governing bodies, officials are considered by the court under the rules of civil proceedings.

Upon review of a complaint the court renders a decision.

Having established the validity of the complaint, the court declares a contested act (decision) to be illegal, obliges to satisfy complainant's claims, or otherwise restore his violated rights and freedoms. If the court finds a contested act (decision) to be legal, and not violating the rights and freedoms of citizens, it denies the claims.

In addition, in accordance with Article 52 of the Law of Republic of Uzbekistan on Nature Protection: legal and natural persons have the right to go to the court with lawsuits to stop environmentally hazardous activities harmful to the environment, health and property of people and national economy (See also section C 6).

### **4) Other (non-judicial) methods of dispute resolution**

Permanent and temporary arbitration courts can be established in the Republic of Uzbekistan. Arbitration courts settle disputes arising from civil legal relations, including commercial disputes arising between business entities. The arbitration courts do not settle disputes arising from administrative, family and employment legal relationships, as well as other disputes listed by the Law of the Republic of Uzbekistan on Arbitration Courts.

## **C. Procedural and other remedies in environmental matters, and the issue of timing**

### **Administrative procedure**

#### **1) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions, actions or activities that adversely impact the environment in case of their appeal is not provided by law.

#### **2) Injunctive relief (*temporary and/or permanent*)**

Activity of enterprises, organizations, and other facilities can be limited or suspended (and even terminated, if causes of an adverse effects cannot be eliminated) in cases when such activity causes an

adverse effect on health or living conditions of people, natural resources and protected areas, or creates a threat of such effects.

Decisions to restrict, suspend, terminate, and restructure the activities of such facilities with the simultaneous termination of funding are made by public authorities, including those responsible for nature protection, in accordance with their jurisdiction (Article 48 of the Law On Nature Protection).

### **Judicial Procedure**

#### **3) Automatic suspension of decisions / actions / activities in the case of their appeal**

Automatic suspension of decisions, actions or activities in the case of appeal is not provided. However, the court decides the question on suspension of the contested action (decision) at the request of a citizen or on its own initiative.

#### **4) Injunctive relief**

##### **a) temporary**

Courts (economic or civil) are entitled to take measures to secure a claim on the motion of a party involved in a case. Security of a claim is allowed at any stage of the proceedings, if failure to act can make it difficult or impossible to execute a judgment.

Measures securing a claim include: seizure of property or financial resources belonging to a defendant; prohibition to a defendant to perform certain actions; prohibition to others to perform certain actions relating to the subject-matter of dispute.

If necessary, it is allowed to impose a few measures to secure a claim.

##### **b) permanent**

Legal and natural persons have the right to go to the court with lawsuits to stop environmentally hazardous activities harmful to the environment, health and property of people and national economy.

The court's decision to stop environmentally harmful activities is a ground for termination of funding of such activities (Article 52 of the Law on Nature Protection (*See also para C (9)*).

#### **5) Claims for damage compensation (including caused to the environment), non-pecuniary damage**

Damage caused by unlawful actions (omissions) to a person or property of a citizen, as well as damage caused to a legal person shall be compensated by the person who caused the damage in full, including lost profits (Article 985 of the Civil Code of the Republic of Uzbekistan).

Risk of harm in the future may be a basis for a lawsuit to ban activities creating such a risk.

If the damage is caused due to operation of an entity, facility, or other production activity, which continues to cause damage or creates a risk of a new damage, the court can order a defendant, in addition to compensation for damage, to suspend or terminate the relevant activities.

The court can deny a claim for suspension or termination of the appropriate activities, only if its suspension or termination contradicts the public interest. Refusal to suspend or terminate such activity does not deprive victims of the right to compensation for damage caused by these activities (Article 986 of the Civil Code).

Non-pecuniary damage can be compensated by a person who caused it and in case of fault of such a person. Non-pecuniary damage is compensated regardless of fault of a wrongdoer in cases when damage is caused to life and health of a citizen by a source of increased danger, or damage is caused by dissemination of information discrediting honor, dignity and business reputation.

Non-pecuniary damage is compensated in the pecuniary form. The amount of compensation for non-pecuniary damage is determined by the court depending on the nature of the physical and moral sufferings caused to a victim, as well as on the degree of fault of the wrongdoer in cases when fault is the basis for compensation. In determining the amount of compensation for damage the requirements of reasonableness and fairness should be taken into account. The nature of physical and moral sufferings is assessed by the court, taking into account the actual circumstances under which non-pecuniary damage was caused, and the individual characteristics of a victim. Non-pecuniary damage is compensated independently of compensable material damage.

Only authorized public authorities can sue for compensation for damage caused to the environment.

#### **6) Legal action in defense of "the public interest"- actio popularis**

The procedural law stipulates that a person concerned can apply to the court for the protection of his violated or disputed rights or legally protected interest in the manner prescribed by law. Thus, as a rule, a person applying to the court has to prove the existence of an infringed right or interest.

However, court also accept claims of public authorities, organizations and individuals in cases when by law they are entitled to apply to the court for the protection of the rights and legitimate interests of others. The right of the public to apply to the court on the benefit of others is not directly established in the legislation concerning the environment. However, the provision of the Article 52 of the Law of the Republic of Uzbekistan on Nature Protection establishing that “legal and natural persons have the right to go to the court with lawsuits to stop environmentally hazardous activities harmful to the environment, health and property of people and national economy” is an exception. The court's decision to stop environmentally harmful activities is a ground for termination of funding of such activities.

Lawsuits of associations of consumers on behalf of an indefinite number of consumers are possible based on consumer's right protection legislation.

## **7) Other remedies**

For the irrational special use of nature resources, extra-limit emissions and discharges of pollutants into the environment and waste disposal, taxpayers are subject to higher taxation (compensation payments) in accordance with the laws of the Republic of Uzbekistan.

Where appropriate, the local governments and authorities in the field of nature protection by their decisions can suspend funding of economic activities of entities and individuals until the causes of such violations are eliminated. This measure applies to business entities only in the courts procedures; except for the cases of suspension of funding of economic activity for up to ten working days due to the necessity to prevent emergencies, epidemics and other real threats to life and health (Article 50 of the Law of the Republic of Uzbekistan on Nature Protection).

## **8) Timeliness**

### **Administrative procedure**

Applications and complaints are considered within one month from the date of acceptance by a public authority which is authorized to resolve the issue on the merits. Applications and complaints not requiring further exploration and examination are considered no later than in fifteen days. In practice, however, the requirements on time frames are not always followed.

In those cases when for consideration of an application or a complaint it is necessary to request additional materials or take other measures, the terms for consideration of an application or a complaint can be extended as an exception by the head of the appropriate public authority, but not more than for one month from notification of a person who submitted an application or a complaint.

### **Judicial Procedure**

The following time limits are established for filing complaints to the court: three months from the day when a citizens became aware of a violation of his rights and freedoms; one month after arrival of a written notice on rejection of a complaint by a superior authority, or an official; if a citizen did not receive a written reply within one month, he has one more month to file a claim to the court.

If the deadline is missed due to a valid reason, the term for filing a claim may be renewed by the court.

The general limitation period within which a person can protect his infringed rights by filing a claim to the court is three years. Limitation of actions does not cover the claims filed for: the protection of non-material rights and other non-material values, except for cases provided by law; compensation for damage caused to life or health. Claims brought after the expiration of the statute of limitations shall be satisfied only with regard to three years preceding the filing of the claims; compensation for damages caused by a crime; claims of owners on elimination of all violations of their rights, including violations not related to deprivation of possession.

Time limit for the proceedings in first instance is one month from the date of arrival of a claim to the court. This term is usually obeyed. A case runs for three months in one instance, if an examination is needed. It takes 10-14 months to go through all court instances.

## **D. Costs**

### **1) Financial expenses associated with administrative procedure**

Judicial and natural persons do not pay any costs for administrative review of decisions / actions / omissions / activities.

## **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

Judicial expenses consist of the court fee and the costs of the proceedings.

General Courts<sup>135</sup>

The court fee for claims in the general courts in relation to the amount claimed:

<b>Amount claimed</b>	<b>The court fee</b>
up to 20 minimal wages	5 percent of the claim;
from 20 to 40 minimal wages	10 percent of the claim;
from 40 to 80 minimal wages	15 percent of the claim;
more than 80 minimal wages	20 percent of the claim.

In the cases of a misconduct of public authorities and officials that infringes the rights of individuals 5 minimal wages is collected from a public authority, if it loses the case.

Given that the minimal wage is about 30 US dollars, the court fee for filing a claim constitutes a significant barrier in access to justice for individuals.

For the cassation and supervision complaints on judicial decisions of the lower courts - 50 percent of the rate paid when filing a claim, complaints and for material disputes - 50 percent of the rate calculated on the basis of the disputed amount.

Economic courts<sup>136</sup>

For the lawsuits of material nature filed in economic courts in relation to the amount claimed: up to 1 million sums (about 606 USD<sup>137</sup>) - 3 percent of the claim, but not less than the minimal wage; from 1 million sums to 10 million sums (approximately from 606 to 6 057 USD) - 2 percent of the claim; more than 10 million sums (or 6 057 USD) - 1 percent of the claim;

For non-material claims, including claims of enterprises and associations to declare acts of the public authorities illegal full or in part, as well as for claims of collective and individual enterprises and associations, alliances of international organizations in the Republic of Uzbekistan and other States based on different types of ownership - 10 minimal wages.

For applications for review of decisions of the economic courts - 50 percent of the rate payable when submitting applications for consideration of the dispute in a court of first instance and in disputes of material nature - 50 percent of the rates calculated on the basis of the amount in dispute.

Thus, the percentage of the court fee in material claims with the increase of the amount claimed in the economic courts decreases and, on the contrary, increases in the courts of general jurisdiction.

Costs associated with the proceedings include: 1) the amounts payable to witnesses, experts, specialists, translators; 2) the costs associated with performance of the on-site inspections; 3) the costs associated with the retrieval of the defendant; 4) the costs associated with the execution of court decisions.

## **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

Court awards the Party in whose favor the decision was made from the other party the costs of the legal representative within the reasonable limits. If in accordance with established procedure the legal aid was provided to the party in whose favor the decision was made free of charge, this amount shall be recovered from the other parties in favor of the law firm (college, company).

## **4) Costs of examination, involvement of experts and witnesses**

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<sup>135</sup> The court fee rates are approved by the Cabinet of Ministers on November 3, 1994 N 533 (as amended as of February 2011)

<sup>136</sup> The court fee rates are approved by the Cabinet of Ministers on November 3, 1994 N 533 (as amended as of February 2011)

<sup>137</sup> This report uses the operational rate of Uzbekistan sum to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 1651 sums.

Amounts payable to witnesses, experts, specialists and interpreters are paid by the court after the carrying out of their duties, regardless of its recovery from the parties.

The procedure of payment and the amounts payable are to be determined by law.

Amounts payable to witnesses, experts, specialists, interpreters, or required costs of performing on-site inspection, are pre-made by the party, who filed the appropriate motion. If this motion is submitted by both parties or involvement of witnesses, experts, specialists, interpreters, on-site inspection is initiated by the court, the amount required is to be paid by the parties equally.

These amounts shall not be paid by the party exempt from payment of judicial expenses.

#### **5) Bond in the event of suspension of activity as security for claims in environmental matters**

The court, taking measures securing a claim, may upon a motion of a defendant require a plaintiff to provide legal guarantees for the defendant's possible damages.

The plaintiff has the right to bring appropriate legal action in court and claim damages, if a defendant does not comply with the court order on measures securing a claim.

The court (judge), securing a claim, can require a plaintiff to provide legal guarantees for the possible defendant's damages.

When the decision by which a claim is denied has become effective, a defendant has the right to claim compensation for damages from a plaintiff caused to him by measures securing a claim made on the motion of a plaintiff.

#### **6) Other issues of judicial expenses**

Exemption from payment of the court fee is conducted in accordance with the law.

Based on the financial situation of a citizen, the court is entitled to exempt him from payment of judicial expenses to the state. Based on the financial situation of the parties, the court may allow repayment by installments, reduce the amount of these expenses, or postpone the payment of court costs collected to the State budget for one or both parties.

Among others the following categories are exempt from paying state fee in courts: consumers - for claims arising from violation of their rights and legitimate interests; state agencies who oversee the safety and quality of goods (works, services); consumers' NGOs - for claims in the interest of consumers (an indefinite number of consumers); plaintiffs - for the recovery of damages caused to the forest fund by unauthorized logging and other violations of procedures and terms of forest management and protection of forests; non-governmental organizations - for appealing to the court of unlawful decisions of public authorities, acts (omissions) of their officials which violated citizens' rights and interests; public associations of disabled persons and their institutions, training and production facilities and associations - for all claims (Articles 329, 330 of the Tax Code).

Recovery of compensation for loss of time is stipulated by Article 115 of the Civil Procedural Code. The court can impose the payment of compensation for actual loss of time on benefit of one party, if another filed an unfounded claim or opposed the claim not in a good faith, or systematically impeded correct and timely consideration and resolution of a case. The amount of compensation is determined by the court within the reasonable limits.

#### **E. Legal aid (state, non-governmental)**

No organized national system of legal aid for the public in cases relating to the environment exists. It is possible, in some cases, to apply to the State Committee on Nature, prosecutors, lawyers or NGOs. Some NGOs can provide legal assistance in matters relating to the environment, but there are very few of them and their practice is insignificant.

# UKRAINE

## **A. System of regulatory, control (oversight) authorities, judiciary and environmental legislation**

### **1) Legislative system<sup>138</sup>**

Article 50 of the Constitution of Ukraine (1996) proclaims the right of everyone to safe for life and health environment and to compensation for damages caused by violation of this right.

Ukraine has a developed system of laws regulating relations in the field of environmental protection and natural resources management (hereinafter - the environmental legislation).

The main regulatory act of environmental legislation is the Law on Environmental Protection (1991), which establishes the basic legal, economic and social elements of organization of environmental protection for present and future generations. In addition, the following laws are in place: on Environmental Expertiza (1995), on Environmental Audit (2004), on Waste (1998), on Nature Reserve Fund (1992), on Environmental Network (2004), on the Use of Nuclear Energy and Radiation Safety (1995), on Sanitary and Epidemiological Well-being (1994). The legal regime of protection and use of certain natural resources is set by separate legislative acts: the Land Code (2001), the Water Code (1995), the Code on Mineral Resources (1994), the Forest Code (1994), the Law on Air Protection (1992), the Law On Fauna (2001), the Law On Flora (1999), the Law on the Red Book of Ukraine (2002). Provisions of environmental law are contained in normative acts of a general nature, such as Civil Code (2003), and acts in other field, such as health protection.

### **2) Regulatory, control (supervisory) authorities**

The principal (leading) authority in the system of central governmental executive authorities in the field of environmental protection, sound use, reproduction and protection of natural resources, environmental security, waste management, natural reserves, establishment, preservation and use of environmental network (hereinafter - EP) is the Ministry of Ecology and Natural Resources of Ukraine (hereinafter - the Ministry of Ecology).

State Ecological Inspectorate (hereinafter - EkoInspectorate) starting from December 2010 is a self-standing central body of executive power which is coordinated by the Minister of Ecology and Natural Resources. It conducts state control over compliance with the rules, regulations, provisions, limits, quotas, permits and licenses and conditions in the field of environmental protection. EkoInspectorate, in particular, has the right to temporarily limit or suspend activities of enterprises, institutions and organizations, and operation of facilities (including construction, renovation and expansion of facilities), as well as to submit proposals to the Ministry of Ecology on termination of their activities in case of violation of legal requirements in the field of environmental protection. EkoInspectorate is authorized to submit lawsuits to courts for compensation for damages caused to the State by violations of law in the field of environmental protection.

The Ministry of Ecology and EkoInspectorate perform their functions through their central bodies and territorial divisions.

The Minister of Ecology and Natural Resources coordinates activities of the State Service of Geology and Mineral Resources of Ukraine, the State Water Resources Agency of Ukraine, the State Environmental Investment Agency of Ukraine.

The Minister of Agrarian Policy and Production of Ukraine directs and coordinates activities of the State Veterinary and Phytosanitary Service of Ukraine, the State Agency of Land Resources of Ukraine, the State Agency of Forest Resources of Ukraine, the State Agency of Fisheries. The Ministry of Health is vested with a substantial authority with respect to environmental security. The Minister of Health of Ukraine coordinates activities of the State Sanitary and Epidemiological Service of Ukraine; the Minister of Emergencies of Ukraine – of the State Mining Supervision Service of Ukraine, the State Agency for Exclusion Zone Management, and the State Inspectorate of Technological Security of Ukraine.

Currently, appropriate regulations that determine the powers of these authorities in the field of environment and natural resources are being redrafted in Ukraine.

### **3) Role of the Prosecutor's Office**

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<sup>138</sup> The electronic database of the legislation of Ukraine in Ukrainian – <http://zakon2.rada.gov.ua/laws>

The Prosecutor's Office conducts control over compliance with and enforcement of environmental legislation by: issuing acts of prosecutorial response, initiating criminal cases, informing competent authorities of environmental violations of officials and other persons in order to subject them to administrative or disciplinary responsibility, filing claims to the court for compensation for damage caused by environmental offenses, bringing actions to stop environmentally hazardous activities. Control over obedience with the laws is carried out in response to statements and other reports on violations of the law, as well as on prosecutor's own initiative.

Specialized environmental prosecutors operate within the structure of the Prosecutor's Office.

#### **4) The judicial system**

The judicial system of Ukraine consists of the Constitutional Court and the courts of general jurisdiction. Citizens have no right to file complaints to the Constitutional Court, but only refer to it regarding the necessity of the official interpretation of the Constitution or laws of Ukraine.

The system of the courts of general jurisdiction is based on the principles of territoriality and specialization. The highest judicial body is the Supreme Court of Ukraine. The higher courts are the corresponding higher specialized courts: the High Specialized Court for Civil and Criminal cases, the High Administrative Court and the High Economic Court. There are appellate and local courts.

One can challenge any decisions, actions and omissions of public authorities, including in matters relating to the environment, in the administrative courts. These courts consider cases relating to the protection of the right to access to environmental information and to participation in decision-making in environmental matters. Decisions in matters relating to the environment are challenged in these courts too.

The general courts consider civil and criminal cases. Claims of individuals to other private parties (natural or legal), as well as claims of private entities to individuals in environmental matters fall within the jurisdiction of the general courts.

The economic courts consider disputes between legal entities. For example, any claim of an NGO to a company-polluter falls within the jurisdiction of the economic courts.

Proceedings in courts of general jurisdiction take the form of civil, criminal, administrative and economic proceedings.

The public has no right to initiate criminal proceedings in matters relating to the environment.

Citizens have the right to initiate administrative proceedings by filing administrative claims to public authorities in the administrative courts, as well as civil proceedings by filing lawsuits against other individuals and private parties in the general courts. NGOs can submit administrative claims, as well as protect their rights and interests in the general (if a defendant is an individual) and economic (if – a private legal person) courts, initiating respectively administrative, civil or economic proceedings.

Members of the public have access to full texts of court decisions rendered in cases relating to the environment to which they were parties of the process. In other cases, access to judicial decisions is granted on the basis of the provisions of the Law on Access to Court Decisions, either through Unified State Register of Court Decisions (hereinafter - the Register), or directly in the courts that rendered the decisions. Access to the Register is provided around the clock via the Internet. However, access to the decisions contained in the Register is complicated by the fact that data about individuals (names, addresses) are deleted from the texts of the decisions in the Register. In addition, the system allows one to search the Register based only on several criteria (the main requisites of a decision - court, date, case number, type of proceedings), that makes it practically impossible to find decisions in a particular area, for example, decisions concerning the environment in the overall volume of the judicial decisions.

Judges are not always sufficiently aware of the environmental legislation, especially of international treaties. There is Resolution of the Plenum of the Supreme Court of Ukraine of 2004 devoted to issues of judicial practice in cases of crimes and other offenses against the environment. There is also Explanation of the Supreme Economic Court of Ukraine № 02-5/744 of 27 June 2001, on Some Issues of the Practice of Resolving Disputes Relating to Application of Legislation on Environmental Protection.<sup>139</sup>

#### **5) The Ombudsman**

According to the Law on the Ukrainian Parliamentary Commissioner for Human Rights (1997), Human Rights Commissioner (the Ombudsman) considers claims on human rights violations, including

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<sup>139</sup> [http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=v\\_744800-01](http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=v_744800-01)

environmental, but the Ombudsman is not endowed with the function of redress, and thus has no authority to do so.

## **B. Procedures for making decisions in environmental matters and opportunities to challenge them**

### **1) Decision-making system**

Before the administrative reform in December of 2010 considerable authority in decision-making in matters relating to the environment was vested with the Ministry of Environment and its local departments (conclusions of ecological expertiza of project documentation, including construction projects, permits for emissions of pollutants into air, permits for use of natural resources, permits for release of GMOs into the open system, permits for operations in the field of waste management, permits for use of mineral resources (through auction), permits for special use of waters (regarding water bodies of the national importance). On December 9, 2010 the President of Ukraine issued a Decree on the Optimization of the System of Central Executive Bodies, based on which a full reorganization of the entire system of executive authorities, including in the field of environmental protection, is being held at the moment. Regulations establishing competence of the reorganized and newly established authorities were not adopted by the time of the latest version of the questionnaire (February 1, 2011). Therefore, at this stage it is not possible to provide comprehensive information on the competence of these authorities in decision-making in matters relating to the environment.

One of the main decision with respect to Article 6 of the Aarhus Convention in Ukraine as of today is a conclusion of state ecological expertiza of project documentation, including construction projects. On February 17, 2010 the Law of Ukraine on Regulation of the Urban Development was adopted. The Law starting from June, 2011 abolishes a notion of a state ecological expertiza of project documentation, including projects on construction of facilities. Instead, it establishes a simplified procedure for approval of construction projects through examination of such projects by organizations (including private) that meet the criteria established by the Ministry of Regional Development and Construction, involving in some cases, certified specialists on environmental, sanitary and epidemiological, fire, technological, radiological and nuclear safety. After a positive conclusion of this examination it is needed to obtain a permit for construction works, which is issued by the State Inspectorate of Architecture and Construction Supervision. The Law of Ukraine on Regulation of the Urban Development includes no provisions on public participation neither at the stage of examination, nor at the stage of issuance of a construction permit. Whether any provisions on public participation will be incorporated in the regulations establishing procedures for examination and permit issuance, is still unknown, since these regulations are being drafted at the moment.

Information on procedures of decisions-making on specific activities relating to the environment, in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22 of the Aarhus Convention, is presented in Figure 14 (pp. 154-157).

### **2) Challenging of decisions in non-judicial (administrative) procedure**

A general procedure of administrative appeals against decisions, actions / omissions of public authorities and private parties is not established. Different laws / executive regulations establish possibilities of administrative appeal of particular decisions, actions / omissions. For example, a conclusion of ecological expertiza can be appealed only to the authority that issued it and only by legal entities (developers). Other types of permits are appealed only in court. As a general rule the public has no right to an administrative appeal of permitting decisions.

Authorities issuing the permits can cancel such their decision (permits) only in cases explicitly stipulated by law. Also, the superior authorities are generally not empowered to cancel / revoke permits issued by the subordinate authorities.

The public (individuals and NGOs) can appeal against decisions, actions / omissions of both public authorities and private persons in administrative way based on the Law on Citizens' Appeals. According to the Law citizens have the right to file notifications on violations of the law, and complaints on violations of their rights by public authorities, enterprises, institutions and organizations regardless of the ownership. The Law provides for a procedure for submission and consideration of such notifications and complaints (individual or collective), as well as for some remedies to restore violated rights of citizens in the result of such consideration. It is important to note that the notifications on violations of law can be filed without reference to one's rights and interests, and can be made in the interest of the general public, while the complaints shall relate only to the protection of the complainant's own rights.

**Figure 14**

<b>Procedure (decision) on matters relating to the environment<sup>140</sup></b>	<b>Body authorized to carry out the procedure (to make the decision)</b>	<b>Period of validity of decisions, permits or other documents issued due to the procedure</b>	<b>The possibility of public participation (PP)</b>	<b>Body to which one can appeal the decision / action / omission</b>	<b>Legal act regulating the carrying out of the procedure (making the decision)</b>
Decisions on allocation, design, and construction of nuclear installations and facilities for radioactive waste management	Verhovna Rada of Ukraine (the Parliament), the Cabinet of Ministers of Ukraine (the Government)	Does not have an expiration date unless provided in a decision itself	The right is envisaged, but a mechanism allowing to exercise this right at the level guaranteed by the Convention is not established	If a decision is approved by a law, the public has no right to appeal or challenge it. If - by an act of the Cabinet of Ministers, it is possible to appeal to the administrative court	The Law of Ukraine on the Use of Nuclear Energy and Radiation Safety <sup>141</sup>
Licenses for activities related to nuclear energy	The State Nuclear Regulation Committee of Ukraine	At least three years	No	Only judicial review	Law of Ukraine on Licensing in the Area of the Use of Nuclear Energy <sup>142</sup>
Conclusion of a comprehensive state expertiza of construction projects (Starting from June of 2011 this procedure will be abolished)	Central Service of Ukrderzbudekspertiza under the Ministry of Regional Development and Construction (and its local departments)	Conclusion is valid for the term of validity of the technical specifications and architectural plan.	No. Only if an ecological expertiza is carried out within the framework of a comprehensive expertiza, PP is conducted based on the requirements on PP in the process of ecological expertiza.	Only judicial review	Decree of the Cabinet of Ministers of Ukraine on the Procedure for approval of investment programs and construction projects and its state expertiza (2007) <sup>143</sup>

<sup>140</sup> In relation to Article 6, paragraph 1 (a), (c) and paragraphs 10, 11, and Annex I, paragraph 22 of the Aarhus Convention

<sup>141</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=39%2F95-%E2%F0>

<sup>142</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=1370-14>

<sup>143</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1269-2007-%EF>

Conclusion of the state ecological expertiza of construction projects (starting from June of 2011 this procedure will be abolished)	Ministry of Ecology or its local departments	Activities should start within 3 years from the date of the conclusion, otherwise it is required to obtain a new conclusion	Yes	Concerned legal persons (developers) interested in conciliation of conclusions can submit appropriate declarations to the authority which issued the conclusions. If the result of review is not satisfactory, such persons have the right to go to the court. The public can only appeal to the courts.	The Law of Ukraine on Ecological Expertiza. <sup>144</sup>
Conclusion of expertiza of construction projects (starting from June 12, 2011 will replace two above-mentioned procedures)	Issued by expert institutions (including privately owned), which satisfy the criteria established by the Ministry of Regional Development and Construction (so far these criteria have not been developed yet).	It is not known yet. The procedure for conducting such an expertiza has not been established yet.	The law does not provide for it. It is not clear yet, whether PP will be provided by a regulation establishing a procedure for expertiza.	It is not an act of a public authority, and thus it cannot be challenged in administrative proceedings.	Law of Ukraine on Regulation of the Urban Development <sup>145</sup>
Permit for construction work	State Architectural and Construction Inspectorate (coordinated through the Ministry of Regional Development and Construction)	Until the completion of construction	The law does not provide for it. It is not clear yet, whether PP will be provided by a regulation establishing a procedure for issuance of the permit. A normative document regulating the procedure has not yet been developed.	It will be possible to challenge the permit to the administrative court.	Law of Ukraine On Regulation of the Urban Development <sup>146</sup>
Permit for use of natural resources	Ministry of Ecology or other competent authorities, depending on the type of natural resource	It is established by the authority that issues permits based on the type of natural resource	No	The public can only appeal to the courts.	The procedure for issuing permits for special use of natural resources and setting use limits of resources

<sup>144</sup> <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=45%2F95-%E2%F0>

<sup>145</sup> <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=3038-17>

<sup>146</sup> <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=3038-17>

					of the national importance <sup>147</sup>
Permit for emission of pollutants into the air	Ministry of Ecology and its local departments	The permit is issued for a period of not less than 5 years	Is provided to some extent, but not at the level guaranteed by the Convention	Only judicial review	Law of Ukraine On Protection of Atmospheric Air, Procedure for carrying out and remuneration of works relating to issuance of permits for emission of pollutants into the air from stationary sources, approved by the Cabinet of Ministers <sup>148</sup>
Permit for special use of waters	Local departments of the Ministry of Ecology (as to water bodies of the national importance), local authorities (as to water bodies of the local importance)	From 3 to 25 years depending on the type of water use	Not provided	Only judicial review	Water Code of Ukraine (Article 49), Procedure of approval and issuance of permits for special use of waters, approved by the Cabinet of Ministers <sup>149</sup>
Permit (including licenses) for activities in the area of waste management	Ministry of Ecology and its local departments	Depending on the type of permit. Permits for waste disposal are issued every year, license for at least 5 years.	Not provided	Only judicial review	The Law of Ukraine on Waste Management <sup>150</sup>

<sup>147</sup> <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=459-92-%EF>

<sup>148</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=302-2002-%EF>

<sup>149</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=321-2002-%EF>

<sup>150</sup> <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=2&nreg=187%2F98-%E2%F0>

Permit for release of GMOs into the open system	Ministry of Ecology	Authority to issue such permits is envisaged by the law, but the procedure has not been developed by the Cabinet of Ministers yet.	The Law of Ukraine on State Security System for Creating, Testing, Transportation and Use of GMOs <sup>151</sup>
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<sup>151</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1103-16>

Decisions of non-judicial bodies on the results of appeals against decisions relating to the environment are disclosed only to the complainants. No system of public access to such decisions (e.g., registry accessible via the Internet) exists. It is problematic to obtain such documents upon requests.

Administrative review in Ukraine is not mandatory and does not preclude the possibility of judicial review.

Superior authorities, considering complaints of citizens, are established in accordance with the law, are independent of the subordinate authorities, but their impartiality in relation to decisions on the legality of decisions, actions / omissions of the subordinate authorities can be doubted.

### **3) Judicial procedure**

#### **a) Standing (of individuals, NGOs, and other legal entities) in environmental matters**

The ground for appealing to the court is a violation of one's rights or legitimate interests. The Constitutional Court of Ukraine in one of its decisions has defined "legitimate interest" as a simple legitimate permission envisaged by the general meaning of the objective law, but not directly provided by the positive law, which is an independent object of legal protection for the purpose to meet the individual and collective needs, which do not contradict the Constitution and laws of Ukraine, the public interest, fairness, good faith, rationality and other general legal principles.

In matters relating to the environment, representatives of the public, alleging violations of their right to access to environmental information, right to participation in decision-making relating to the environment, right to safe for their lives and health environment, another right relating to the environment and established by law, or interest in preserving and protecting the environment, have the right to appeal to the court for the protection of such, respectively, right or interest.

Ukrainian legislation does not define the notion of "NGOs in the public interest" and does not provide such organizations with any special rights or guarantees. At the same time, these NGOs can reach the goal of protection of the public interest by advocating in courts their interests (which are the protection of the environment in the public interest).

The public has a right to challenge in courts actions / omissions of private persons and public authorities "violating the provisions of law relating to the environment", if they allege a violation of their right to safe environment, another right, or interest in preserving the environment by contested actions / omissions.

#### **4) Other (non-judicial) methods of dispute resolution**

Other (non-judicial) methods of dispute resolution are not provided by law.

### **C. Procedural and other remedies in environmental matters, and the issue of timing**

#### **Administrative procedure**

##### **1) General overview of the remedies in administrative review procedure of decisions, actions, omissions**

The public can file administrative appeals against decisions, actions / omissions, including against omissions of supervisory authorities, to superior authorities / officials based on the Law on Citizens' Appeals.

The Law does not list the remedies available in administrative review procedure against decisions, actions, and omissions. The Law provides for the right to file a notification or a complaint on violation of one's rights as well as regulates the review procedure. As a rule, complainants filing complaints for administrative review take into account the competence of the authority to which they file complaints. For example, in a complaint to EkoInspectorate against a particular polluter one can request the Inspectorate to inspect an enterprise and, if the grounds are found, temporarily suspend or limit its activity. The prosecutor's office can be requested to inspect and issue the appropriate act of a prosecutor's response.

##### **2) General overview of the remedies in appeals against ongoing activities**

The supervisory authorities (like EkoInspectorate) have the authority to limit and suspend activities that violate laws relating to the environment. Procedure for limitation, suspension, termination of activities of enterprises, institutions, organizations and facilities in case of violation of legislation on environmental

protection (1992)<sup>152</sup> is approved by the Resolution of Verkhovna Rada of Ukraine (the Parliament of Ukraine) on the basis of Article 20 of the Law of Ukraine on Environmental Protection. In addition, according to Article 20 of the Law of Ukraine on the Cabinet of Ministers of Ukraine (2010), the Cabinet of Ministers is vested with the authority to terminate the activity of enterprises, institutions or organizations that violates the provisions of existing legislation on environmental protection.

### **3) Automatic suspension of decisions / actions / activities in case of their appeal**

Automatic suspension of decisions / actions / activities in case of their appeal is not provided by law.

### **4) The prohibition of an activity (temporary or permanent)**

In case of violation by enterprises, institutions, organizations and facilities of legislation on environmental protection the EkoInspectorate, the State Sanitary and Epidemiological Service have the right to limit and/or temporarily suspend their activity.

Such activity can be:

Limited - for a certain period until necessary environmental measures are implemented (reduced values of emissions and discharges of pollutant substances and waste disposals are set for an enterprise itself or some of its shops (sites), units and equipment);

Temporarily terminated (suspended) - until necessary environmental protection measures are performed, operation of an enterprise is stopped.

When suspension or limitation of activities of enterprises is imposed, enterprises are prohibited to release any emissions or discharges of pollutant substances as well as dispose wastes.

Activities of enterprises are limited or temporarily prohibited (suspended) in case they exceed the limits of use of natural resources, violate environmental standards, environmental requirements, as well as the requirements of environmental safety.

The ground for suspension of activities of enterprises is a systematic excess of limits of natural resources use, violation of environmental requirements and environmental standards that cannot be eliminated due to technical, economic or other reasons.

Decisions on limitation or suspension of enterprises can be appealed only in courts.

It is possible to terminate activities of enterprises, institutions and organizations that violate the environmental laws by a court decision (Article 59 of the Economic Code of Ukraine), or by a decision of the Cabinet of Ministers.

## **Judicial Procedure**

### **5) General overview of the remedies in judicial review of decisions, actions, omissions**

In administrative cases<sup>153</sup>, the following remedies could be applied: declaration of a contested decision, action / omission of a public authority to be illegal; cancellation of a contested decision, reversion of execution of a decision; establishment of a defendant's obligation to take a decision; the conducting of certain actions or refrain from action; compensation for damages caused by a defendant's illegal decision, action or omission.

In civil and economic cases, the following remedies could be applied: recognition of a right, declaration of a contract to be invalid, termination of action, which violates the law, restoration of the state that existed before the violation, enforcement of a duty in kind, modification of legal relations, compensation of losses and other means of compensation for material damages, compensation for non-pecuniary damages. The court may protect a civil right by other means, if law provides for such.

### **6) General overview of the remedies in challenging of ongoing activities violating the law relating to the environment**

In accordance with the Civil Code of Ukraine, everyone has the right to require termination of an activity of an individual or a legal entity that leads to destruction, damage, or pollution of the environment.

### **7) Automatic suspension of decisions / actions / activities in case of their appeal**

The legislation does not enshrine provisions on an unconditional obligation of a defendant to suspend implementation of decisions, actions or ongoing activities, which are being contested in court, has not been

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<sup>152</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=393%2F96-%E2%F0>

<sup>153</sup> Cases considered by the administrative courts.

provided by law. This applies both to cases of appeals against actions / omission of private parties, and decisions, actions / omissions of public authorities.

## **8) Injunctive relief**

### **a) temporary**

Court (general, administrative) can apply measures to ensure a claim - to prohibit a defendant to conduct activities / implement decisions before the judgment is rendered in the case.

In addition, the court can by its judgment oblige a defendant to take some action or refrain from action. Such an obligation may be conditional (temporary until certain conditions (requirements) set by the court are fulfilled) and absolute (permanent by a court decision).

### **b) permanent**

In the administrative courts proceeding, cancellation of a contested decision can be applied.

In civil and economic proceeding, termination of action, which violates the law, can be applied.

## **9) Claim for compensation for damages (including caused to the environment), non-pecuniary damage**

According to Article 21 of the Law on Environmental Protection, NGOs have the right to file claims for compensation for damages caused by violations of the law on environmental protection, including to health of citizens and property of associations. According to the Water Code of Ukraine, citizens and their associations can apply to the court with claims for damage compensation caused to the State and citizens as a result of pollution, contamination or depletion of waters. However, no examples of decisions on such claims or even successful initiation of the proceeding on such claims brought by the public are known. A mechanism of compensation for damages caused to the environment on initiative of the public is not established by law. Such claims are brought by the prosecutor's office, EkoInspectorate and other authorized public authorities.

According to Article 23 of the Civil Code, non-pecuniary damage is caused by: 1) a physical pain and suffering that an individual has suffered due to injury or other impairment of health, 2) a mental suffering that an individual incurred in connection with an unlawful conduct with respect to himself, his family members or close relatives; 3) a mental suffering that an individual suffered in connection with destruction or damage of his property, and 4) a humiliation of honor, dignity or business reputation.

Compensation of a non-pecuniary damage caused by a decision, action, or omission that violates legislation on the environment is only possible, if such a decision, action, omission directly relates to an individual, his family members or close relatives or in conjunction with compensation for material damage, caused to his health or property.

Individuals cannot raise the question of non-pecuniary damages caused by decisions, actions, or omissions, violating the legislation on the environment, or by damage caused to the environmental, if such decisions / actions did not relate personally to him or did not lead to a material damage for such an individual.

## **10) Legal action for the public interest - actio popularis**

The term itself is not enshrined in the legislation, but the concept is used in the Law of Ukraine on Protection of Consumers' Rights. Article 25 of the law provides that non-governmental organizations of consumers have the right to file claims on behalf of an indefinite number of consumers asking a court to declare actions of a seller, manufacturer (enterprises that perform these functions) to be illegal and to stop these actions. The law also empowers these organizations to defend in courts the rights of consumers who are not members of these or other consumer organizations. In the field of environmental protection in Ukraine, this concept of an action in public interest does not apply.

## **11) Timeliness**

An administrative appeal on a decision shall be submitted within one year from the date of its adoption, but not later than one month since a citizen found out about the decision. A person has the right to appeal from the moment when he became aware or should have become aware of the violation of his rights by the contested decision / action / omission.

Complaints filed after the deadlines are not considered. However, if the reasons for missing the deadline were valid, a public authority considering a complaint can restore the right to file an administrative appeal.

When decisions, actions / omissions are challenged in the courts (Article 99 of the Code of Administrative Procedure), the administrative court action can be filed only within six month period which begins from the day when a person became aware or should have become aware of the violation of his rights, freedoms or interests.

If the law provides for the possibility of a pre-trial dispute resolution and a plaintiff followed this procedure, the deadline for going to the court is one month, and is calculated from the date when a plaintiff learned about the decision of a public authority on review of his administrative complaint against a decision, action / omission.

An administrative lawsuit filed after the above mentioned periods is left without consideration, unless the court at the motion of the person who filed it, will find reasons for renewal of such periods. The reasons for missing the deadlines shall be valid.

A general limitation period is applicable for filing claims relating to the environment in civil and economic proceedings. It is three years, and is calculated from the date when a person became aware or should have become aware of the violation of his rights or of a person who has violated it. The Civil Code provides that a lawsuit for the protection of a civil right or interest shall be admitted for consideration by the court regardless of expiration of the period of limitations. Limitation of actions is applied by the court only at a motion of a party in dispute made prior the judgment. Expiration of a period of limitations is a ground for denial of a claim. If the court finds the reasons for missing the period to be valid, the period is restored, and the violated right shall be a subject-matter of judicial protection.

The period for consideration of disputes in administrative review procedure is one month, if the issue is complicated - not more than 45 days from arrival of a complaint to an appropriate authority. However, in practice the requirements on the time limits of review are not always met.

According to the law, the periods for consideration of disputes in courts are as follows - in the administrative courts - 1 month, in the general and economic courts - 2 months. In practice: in the administrative courts from 3 to 6 months, in general - up to a year, in economic - usually in the terms established by law. Appellate review and review of decisions in force takes from 6 to 12 months each.

	<b>Administrative review</b>	<b>Administrative proceedings</b>	<b>Civil proceedings</b>	<b>Economic proceedings</b>
<b>First instance according to the law</b>	1 month, under extraordinary circumstances - no more than 45 days	1 month	2 month, on a party's motion the deadline may be extended for 1 month	2 month on a party's motion the deadline may be extended for 15 days
<b>in practice</b>	As a rule, within the prescribed periods	within 3-6 months	In some cases, up to a year	As a rule, within the prescribed periods
<b>Second instance / appeal according to the law</b>	--	within 1 month, on a party's motion the deadline may be extended for 15 days	Not established	2 month
		The law sets the time frames for consideration of appeals starting from the moment of initiation of appellate proceeding by the court. However, the law does not limit the period between the moment when a decision of the court of first instance is rendered and the opening of the appellate proceeding. In most cases delays happen at this stage.		
<b>in practice</b>		In some cases, up to 3-6 months	In some cases, up to 6-12 months	As a rule, within the prescribed periods

<b>Third instance / review by a high court according to the law</b>		1 month	Not established	1 month
<b>in practice</b>		In some cases, up to 3-6 months	In some cases, up to 6-12 months	As a rule, within the prescribed periods

#### **D. Costs**

##### **1) Financial expenses associated with administrative procedure**

According to the Law on Citizens' Appeals, no fees are charged for filing, reviewing and taking actions on complaints filed for administrative review. However, the costs of any studies and expert assessments sustaining the administrative complaints are borne by complainants.

Participation of a lawyer (attorney) is not necessary, but is possible and highly advisable in order to prepare a qualified complaint, which greatly increases the chances of its due consideration.

##### **2) Court fees and other expenses associated with consideration of cases in judicial procedure**

The court fee and the costs of information and technical support are paid before filing a claim to the court. The amount of these costs depends on the type of proceedings and is determined by Decree of the Cabinet of Ministers of Ukraine 'On State Duties and Procedure of paying the cost of information and technical support of consideration of civil and economic cases'. In civil and economic cases the court fees and the costs of information and technical support depend on the type of lawsuits. The costs are listed in the table below.

<b>Type of lawsuit</b>	<b>Court fee</b>	<b>Costs of information and technical support</b>
<b>Administrative proceedings</b>		
Administrative lawsuit	3.40 UAH <sup>154</sup> (0.43 U.S. dollar <sup>155</sup> )	Not charged
<b>Civil proceedings</b>		
Claims of material nature	1% of the amount of the claim, but not less than 51 (6.42 USD) and no more than 1700 UAH (214 USD)	120 UAH (around 15 USD)
Claims on material damage caused by an injury, other health impairment or by the death of an individual	Not charged	15 UAH (around 2 USD)
Claims of non-material nature	7.50 UAH (0.94 USD)	37 UAH (4.66 USD)
<b>Economic proceedings</b>		

<sup>154</sup> <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2751-12>.

<sup>155</sup> This report uses the operational rate of Ukraine Hryvnia (UAH) to the U.S. dollar (USD), applied by the United Nations in February 2011, where 1 USD equals 7.94 UAH.

Claims of material nature	1% of the amount of the claim, but not less than 102 (around 13 USD) and no more than 25500 UAH (around 3 212 USD)	236 UAH (around 30 USD)
Claims of non-material nature	85 UAH (10.7 USD)	236 UAH (around 30 USD)
For the review of decisions on cases of all types the court fee is 50% of fees charged for a hearing at the court of the first instance, and the cost of information and technical support in civil cases - 100% of the costs paid in first instance, in economic matters - is not charged. (Paid once when filing a claim in the court of first instance).		

At the same time, the minimum wage as of November 2010 was 907 UAH (around 114 USD), the minimum pension - 709 UAH (around 89 USD).

Decree of the Cabinet of Ministers of Ukraine, establishing rates of the court fee, provides benefits (exempts from payment of court fee) to certain categories of persons in some cases: to some categories of disabled persons and persons injured in the result of the Chernobyl disaster, to plaintiffs in claims for damages caused by injury, other health impairment or by the death of a breadwinner, including, in cases when such damage is caused by a decision, action or omission that violates the norms of environmental law. Also some plaintiffs – the Ministry of Ecology, the Ministry of Forestry and their local departments, enterprises of Ukrainian railway, which protect forests near railways, fish protection authorities - in cases of compensation for damage caused to the State by pollution, violation of forest laws and unsustainable use of natural resources and fish stocks are exempt from payment of the court fees.

There are also the following, not related to the environment, but noteworthy exceptions: public bodies, organizations and citizens who have, in the cases stipulated by law, applied to courts with lawsuits for the protection of the rights and interests of others (e.g. consumer organizations have the right to sue for an indefinite number of consumers) are exempt from payment of the court fees. The benefits are also provided to some public organizations specifically enumerated, namely, Ukrainian and international associations of citizens who suffered due to the Chernobyl disaster, Ukrainian Union of Veterans of Afghanistan (international soldiers), organizations of disabled persons, the Republican Voluntary Civil Union "Organization of Soldiers' Mothers of Ukraine."

Environmental NGOs are not exempt from payment of the court fee.

In administrative and civil proceedings, the law provides that the court taking into account the financial situation of a party has the right to reduce the amount or waive the court fee in full or in part, or to delay payment, or to allow repayment of the court fee by installments over a specified period. The court fee for an administrative claim is so small that as of the time being there is no practical necessity of the legal provisions on a possibility to reduce the amount of the court fee, exempt from, or postpone its payment. For civil proceedings, these provisions are more relevant. For economic proceedings, such exceptions are not envisaged.

### **3) Costs of legal assistance associated with judicial consideration of cases relating to the environment**

There are no mandatory requirements on involvement of attorneys / legal experts. Some citizens and NGOs successfully defend their rights in courts by themselves. However, it often requires consultation with legal experts, and in more complicated cases, their direct involvement.

In the cases of the studied category attorneys' fee is determined by agreement between an attorney and a client. The fee may be determined based on the amount claimed (percentage of a claim), on the number of working hours spent by an attorney, or on the outcome of the trial (win / loss). Usually, legal services are not cheap. Attorney's fee does not depend on whether a plaintiff is a citizen or an NGO.

### **4) Costs of examination, involvement of experts and witnesses**

As a general rule, expenses associated with involvement of witnesses, experts, interpreters, and carrying out of examinations, are borne by the party who filed a motion for witnesses, specialists, translators or examinations. If the appropriate motions were submitted by both parties, the costs are paid equally. As a rule, such costs are paid while a case is under consideration. Nevertheless, based on the financial situation of a party, the administrative or general court can by its ruling postpone the payment or allow repayment by

installments over certain period, as well as reduce the amount of payment or exempt from paying these court costs in full or in part. In such cases, as well as in cases of initiation of examination, bringing witnesses, experts and etc. on the initiative of the court, the costs are reimbursed from the state budget, but within the limited amounts established by the relevant legislation.

The costs of examinations are determined either by expert institutions, if they are private, or by the relevant regulatory acts for state owned expert institutions (e.g. created within the Ministry of Justice or the Ministry of Health).

#### **5) Bond and compensation for damage in the event of suspension of activity as security for claims in environmental matters**

Administrative and economic proceedings do not provide for a bond / or other financial guarantees to ensure the integrity of the motion for a preliminary injunctive relief.

In civil proceedings such provisions exist. Considering plaintiff's motion for interim measures (preliminary injunction), the court may order a plaintiff to pay a bond. The amount of the bond is determined by the court based on the facts of a civil case, but should not be larger than the amount claimed. The questions on whether to impose the bond and on the amount of such bond are decided at the discretion of the court.

Plaintiff's duty to compensate for damage caused to a defendant due to injunctive relief as a measure of a security for a claim is established only in civil proceedings. It can be established only by the court decision on the case on damage compensation caused by an injunction. Such a lawsuit can be filed by a defendant, if he won the case, and the ruling on a preliminary injunction in that case was lifted, or proceedings in the case were closed or plaintiff's claims were left unconsidered (Article 155 of the Civil Procedure Code).

The amount of the bond / damages associated with injunctive relief, as well as a threat to be held liable for damages caused in relation to injunctive relief often are the deterrent factors for individuals / NGOs in their considerations on initiation of preliminary injunctive relief.

#### **6) Other issues of judicial expenses**

Giving a judgment, a court decides on allocation of costs that parties incurred due to litigation. The rule states that all judicial expenses incurred by the winning party shall be borne by the losing party. Thus, as a general rule, the "loser pays" principle applies.

In civil and economic proceedings losing party shall reimburse judicial expenses to the winning party. If claim is granted in part, the costs are allocated in a proportion to the amount of satisfied claims.

If a party, which should compensate for the costs to the other party, is exempt from payment thereof, such compensation is paid from the state budget, but within the limits established by law.

Administrative proceeding is an exception. The law sets the rule that natural or legal person that lost a case against a public authority pays only the costs associated with the involvement of witnesses, experts, and the examination invited / conducted on his motion. If a decision is made in favor of a plaintiff who paid the expenses referred to above, the administrative court in its decision awards compensation for all incurred and documented expenses from the state (or local) budget.

If a legal entity, such as NGOs, challenges an action / omission of another private entity, the economic court has no authority to reduce the amount of the court fee, to exempt from payment of them, allow repayment by installments or postpone their payment. A general court, when such a lawsuit is filed by an individual, can ease the burden of judicial costs. In addition, the rates of the court fee and costs of information and technical support in the economic courts are much higher than rates in the general and administrative courts.

#### **E. Legal aid (state and non-state)**

There is no organized national system of legal aid for the public in cases relating to the environment. Individual private lawyers and NGOs provide legal services to the public in matters relating to the environment.

Opportunities for individuals/NGOs to get free legal aid in environmental matters from NGOs, lawyers, or law firms are very limited. These services are provided only by the NGOs working on these issues.