

**STUDY ON STANDING FOR INDIVIDUALS, THEIR GROUPS AND
ENVIRONMENTAL NON-GOVERNMENTAL ORGANIZATIONS BEFORE
COURTS IN CASES IN ENVIRONMENTAL MATTERS.**

**QUESTIONNAIRE
Completed by**

Name of person that completed the questionnaire

[COUNTRY]

Address, phone, fax, e-mail of person that completed the questionnaire

The purpose of this study is to identify criteria for standing for individuals, their groups and environmental non-governmental organizations before courts or other review bodies competent to decide cases in environmental matters, best practices and challenges in implementing the relevant provisions of article 9, paragraphs 1, 2 and 3, of the Convention based on the overview of the legislation and practice in six selected countries of Eastern Europe, the Caucasus and Central Asia (EECCA countries). It also aims to provide recommendations on how the identified challenges may be overcome.

The terminology used in the questionnaire reflects the comparative nature of the legal study and may not coincide with the specific terms used in national legislation.

We ask the persons completing the questionnaire, where possible, to invoke in the responses the normative acts, indicating the name, date of adoption, the number, the official source of publication (if available) or make reference to the text of the act on the Internet, and where possible, to point to the differences in provisions of laws and enforcement practices.

Please, if possible, answer the questions in light of the need to identify criteria for standing.

Please, if possible, take into account the practical situations specified in Table 2 of the questionnaire when answering the questions.

Main concepts and terms used in the questionnaire:

actio popularis - an action brought by individuals, their groups or non-governmental organizations before courts or other review bodies in the general, public or diffuse interests, without any need to show a personal interest.

standing – right to go to court or to go for administrative appeal.

environmental non-governmental organization (ENGO) - an association, an organization or a group of members of the public promoting environmental protection as referred in article 2, paragraph 5 of the Aarhus Convention;

the concepts of "public", "public concerned", "environmental information" are used in the questionnaire in accordance with article 2, paragraphs 3, 4, 5, of the Aarhus Convention;

A. General questions

1. Are the standing rules generally applicable or are there specific standing rules for environmental cases? Please list the legislative acts setting out the standing rules.
2. If it is necessary to carry out a pre-trial procedure by a non-judicial body (administrative appeal to the authority that made the decision; a higher authority or a

specifically created independent and impartial body responsible for review of decisions), are the standing rules generally applicable from administrative appeal to judicial review?

3. What are the types of court proceedings which can be initiated when the case relating to the environment is filed by an individual and (or) an ENGO? (e.g. administrative courts, courts of general jurisdiction, commercial courts and others)
4. Do the requirements for standing change according to the type of remedy requested (e.g. actions for setting aside a decision or for compensation of damages)?
5. Does *actio popularis* exist in your legal system? (not only on environmental matters, e.g. consumer rights, others)
6. Environmental proceedings can involve a manifold of concerned individuals, other stakeholders and organisations. Does your system allow for “third party intervention” in the administrative appeal or judicial review of environmental decisions?
7. Does a court decide on standing merely as a preliminary procedural requirement for the trial? If there is a preliminary procedure for defining standing before the court, does the court consider both the standing issue and the merits (substantial and /or procedural legality) in the complaint/action?

B. Standing for individuals or groups not registered as legal entity¹

General

8. Who has the right to go to court? Give a general overview of the standing criteria for individuals that are applied in environmental cases. For example: persons declared the impairment of their rights and/or interests; persons who suffered damage, etc. Please list the legislative acts setting out the standing rules.
9. Does the individual have to show a specific interest in the decision at stake, or does it suffice that s/he lives in the vicinity of the (proposed) activity?
10. How is the interest (legal interest) for individuals or groups not registered as legal entities defined in your legal system?

Challenging the refusal of access to environmental information

11. Does the individual have the right to challenge the refusal of access to environmental information directly to the court or is it necessary to carry out a pre-trial procedure by a non-judicial body (administrative appeal to the authority that issued a decision; a higher authority or a specifically created independent and impartial body responsible for review of decisions)? What criteria should be met by the individual to go to court?

Challenging the legality of decisions, acts or omissions with regard to the activities referred to in Table 1 of the questionnaire (see below)

12. Does the individual have a right to challenge in court the substantive and/or procedural legality of the decisions, acts or omissions with regard to the procedures referred to in Table 1 of the questionnaire? If yes, what criteria should be met by the individual to go to court?
13. Does the individual have the right to challenge decisions, acts and omissions referred to in Table 1 of the questionnaire directly to the court or it is necessarily to carry out a pre-trial procedure by a non-judicial body (administrative appeal to the authority that

¹ Please describe if different from individuals

issued a decision; a higher authority or a specifically created independent and impartial body responsible for review of decisions), or it is possible to appeal either way? How will this situation influence on standing.

Challenging acts and omissions by private persons “which contravene provisions of its national law”

14. Does the individual have a right to challenge in court acts\omissions by private persons “which contravene provisions of its national law relating to the environment” (Article 9, paragraph 3, of the Aarhus Convention)? If yes, what criteria should be met by the individual to go to court?

Challenging acts and omissions by public authorities “which contravene provisions of its national law”

15. Does the individual have a right to challenge in court acts/omissions by public authorities “which contravene provisions of its national law relating to the environment” (Article 9, paragraph 3, of the Aarhus Convention)? If yes, what criteria should be met by the individual to go to court?
16. Does the individual have a right to challenge in court an omission of a supervisory authority? Is the court entitled to render a decision requiring a supervisory authority to take actions to suspend/stop the activity which contravenes the law relating to the environment?

Claims for pause/stop of the activity

17. Can the individual appeal directly to court and claim for pausing/stopping the activity which contravenes the law relating to the environment? If yes, what are the criteria for standing?

Actio popularis

18. Does the individual have a right to file a claim in the protection of “public interest” – actio popularis – in cases in environmental matters?

Claiming for damage

19. Is the individual entitled to initiate actions claiming for damage caused to the environment? If yes, to whom the damage is being compensated and what is the procedure for that?
20. Is the individual entitled to claim for pecuniary damage in the event of decisions, acts, and omissions which contravene the law relating to the environment, in cases of damage?

Practical issues

21. Describe the main practical problems associated with the standing for individuals.

Standing for groups

22. To what extent can organizations represent individuals in environmental cases?
23. Does your legal system allow for multi-party litigation in environmental cases, e.g. class or group actions on behalf of the interests of a large group of the public concerned?
24. Are there ways other than multi-party litigation available in your legal system to establish the administrative rights and duties of the public or for the defense of “diffuse interests” in the environmental area?

C. Standing for environmental NGOs or other registered groups²

General

25. Who has the right to go to court? Give a general overview of the standing criteria for ENGOs or other registered groups in environmental cases in your country (e.g. geographical representation, membership, specific provisions in the charter, other). Please list the legislative acts setting out the standing rules.
26. Is there any “objective/purpose of functioning”, “geographical scope” and/or number of members criteria applied in the standing criteria for ENGOs *or other registered groups*? Does the system favour local, regional or national organisations?
27. Does the legislation in your country provide similar standing rights to “foreign” ENGOs as to national ones?
28. How is the interest (legal interest) for environmental NGOs or other registered groups defined in your legal system?

Challenging the refusal of access to environmental information

29. Does an ENGO or an other registered group have the right to challenge the refusal of access to environmental information directly to the court or is it necessary to carry out a pre-trial procedure by a non-judicial body (administrative appeal to the authority that made the decision; a higher authority or a specifically created independent and impartial body responsible for review of decisions)? What criteria should be met by an ENGO to go to court?

Challenging the legality of decisions, acts and omissions with regard to the activities referred to in Table 1 of the questionnaire (see below)

30. Do ENGOs or other registered groups have a right to challenge the substantive and/or procedural legality of the decisions, acts or omissions with regard to the procedures referred to in Table 1 of the questionnaire in court? If yes, what criteria should be met by the ENGO to be able to go to court? To respond to this question, please complete table 1.
31. Do ENGOs or other registered groups have to show a specific interest in the decision at stake?
32. Do ENGOs or other registered groups have the right to challenge decisions, acts, omissions referred to in Table 1 of the questionnaire directly to the court or is it

² Please describe if different from NGOs

necessary to carry out a pre-trial procedure by a non-judicial body (administrative appeal to the authority that made the decision; a higher authority or a specifically created independent and impartial body responsible for review of decisions), or it is possible to appeal either way?

Challenging acts or omissions by private persons “which contravene provisions of its national law”

33. Do ENGOs or other registered groups have a right to challenge in court acts\omissions by private persons and public authorities “which contravene provisions of its national law relating to the environment” (Article 9, paragraph 3, of the Aarhus Convention)? If yes, what criteria should be met by the individual to go to court?

Challenging acts or omissions by public authorities “which contravene provisions of its national law”

34. Do ENGOs or other registered groups have a right to challenge in court acts\omissions by public authorities “which contravene provisions of its national law relating to the environment” (Article 9, paragraph 3, of the Aarhus Convention)? If yes, what criteria should be met by the ENGO to go to court?
35. Do ENGOs or other registered groups have a right to challenge in judicial procedure an omission of a supervisory authority? Is the court entitled to render a decision requiring a supervisory authority to take actions to suspend/stop the activity which contravenes the law relating to the environment?

Claim for pause/stop of the activity

36. Can ENGOs or other registered groups appeal directly to court and claim for pausing/stopping an activity which contravenes the law relating to the environment? If yes, what are the criteria for standing?

Actio popularis

37. Does ENGO or other registered group have a right to file a claim in the protection of “public interest” – *actio popularis* – in cases in environmental matters?

Claiming for damage to the environment

38. Are ENGOs or other registered groups entitled to initiate actions claiming for damage caused to the environment? If yes, to whom the damage is being compensated and what is the procedure for that?

Practical issues

39. Describe the main practical problems associated with the standing for ENGOs or other registered groups.

D. Table 1.

Explanatory intro...

Title of procedure (decision) on specific activities in relation to Article 6, paragraph 1 (a) and (c), paragraphs 10, 11 and Annex I, paragraph 22, of the Aarhus Convention	Authority responsible for carrying out the procedure (taking the decision)	Authority responsible for administrative review (if exists) of the decision/ action/ omission ³	Who can go to court to challenge the substantive and/or procedural legality of the decisions?		Can the substantive and/or procedural legality of the decisions be challenged?			
			ENGOs	Individuals	by ENGOs		by Individuals	
					Procedural (+)(-)	Substantive (+)(-)	Procedural (+)(-)	Substantive (+)(-)
Decision to build an installation or plant listed in Annex 1 to the Aarhus Convention								
Decision on the EIA or conclusion of <i>expertiza</i> concerning the installation or project (ecological, urban, complex, etc.). <i>Please specify.</i>								
Permits for the exploitation of natural resources (within the activity listed in Annex I to the Aarhus Convention), including their renewal and updating of their conditions (e.g. mining or forestry)								

³ If ENGOs or individuals have no right to appeal any of mentioned decisions, please clearly state this.

Permits for emissions/discharges of pollutants, including their renewal and updating of their conditions								
Permit concerning waste management								
Other, if there are, within the activity listed in Annex I to the Aarhus Convention. <i>Please specify.</i>								

E. Table 2.

Please describe who has the right to go to court in this case (individuals, ENGO) and what will be the specific criteria for standing in these practical situations.(E.g. NGO shall be registered within the territory of the planned or ongoing activity; individual shall reside in the affected area of the proposed activity or to prove an impact on health, or property, other)

Practical situations	Standing criteria	
	ENGO	Individuals
1. Appeal against a decision to build an installation for incineration of hazardous waste without proper environmental impact assessment and/or state environmental <i>expertiza</i> (listed in Annex I of the Aarhus Convention)		
2. Appeal against the decision on the EIA and/or conclusion of <i>expertiza</i> (ecological, urban, complex, etc.) of the construction of the cement plant		
3. Appeal against a permit of mining (as listed in Annex I of the Aarhus Convention) that might affect an area with protected species		
4. Appeal against a mining permit (as listed in Annex I of the Aarhus Convention) as indicated para. 3 of this table that also might affect a nearby village		
5. Appeal against a permit for emission of pollutants into air by a chemical plant that might impact the health of local population		
6. Appeal against a plan		

adopted by the local authorities to undertake construction of a highway (as listed in Annex I of the Aarhus Convention) that might affect the protected area		
7. An on-going waste deposit (landfill) in breach of national legislation		
8. Complaints concerning discharge of waste water into a river without a permit		
9. A clear cutting operation (forestry) which threatens a nature reserve		
10. Appeal against a decision to enlarge hunting area that might affect the habitat of the protected fauna species		