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ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Working Group of the Parties to the Convention

Eleventh meeting
Geneva, 8–10 July 2009
Item 8 of the provisional agenda

ACCESS TO JUSTICE

**REPORT OF A WORKSHOP ON ACCESS TO JUSTICE IN ENVIRONMENTAL
MATTERS FOR HIGH-LEVEL MEMBERS OF THE JUDICIARY FROM
SOUTH-EASTERN EUROPE**

Report by the secretariat

Summary

A workshop for senior members of the judiciary from Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia and from Kosovo was carried out in framework of the Task Force on Access to Justice in accordance with its mandate set out in decisions II/2 and III/3 of the Meeting of the Parties to the Convention. The workshop was held on 17 and 18 November 2008 in Tirana and was organized by the United Nations Economic Commission for Europe in cooperation with the Organization for Security and Co-operation in Europe. The workshop was attended by judges and representatives of the Judicial Training Centres from South-Eastern Europe as well as by international experts. At its twenty-first meeting (30 March 2009), the Bureau of the Meeting of the Parties to the Convention requested the secretariat to prepare a report on the outcome of the workshop for submission to the eleventh meeting of the Working Group of the Parties, to assist the Working Group in fulfilling its mandate to oversee and direct the activities of subsidiary bodies established by the Meeting of the Parties (ECE/MP.PP/2/Add.15, para. 2 (b)).

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I. BACKGROUND AND OBJECTIVES

1. In accordance with its mandate set out in decision II/2 of the Meeting of the Parties to the Convention, the Task Force on Access to Justice at its first meeting (Geneva, 16–17 February 2006) discussed the issue of capacity-building for the judiciary. It invited its Chairperson, inter alia, to further explore the possibilities and develop a proposal for organizing capacity-building activities, in particular for the higher levels of the judiciary and initially focusing primarily on the subregional level, which could be organized under the auspices of the Task Force and/or in cooperation with other actors.
2. The first in the series of subregional seminars, a workshop (“Access to Justice in Environmental Matters in the Eastern Europe and South Caucasus Region”) was held on 4 and 5 June 2007 in Kyiv (ECE/MP.PP/WG.1/2007/L.11). At its third session, the Meeting of the Parties noted with appreciation the outcome of that workshop and welcomed the progress in preparation of a similar workshop for South-Eastern Europe (SEE).
3. The second workshop was held on 17 and 18 November 2008 in Tirana for members of the judiciary of the SEE (see programme at: <http://www.unece.org/env/pp/a.to.j/Tirana%20Workshop%202008/Agenda.doc>). Closely followed the successful model of the Kyiv workshop, it also aimed to raise awareness of access to justice matters among the senior judiciary and provided an opportunity for the judges to discuss existing obstacles in access to justice and ways to overcome them.
4. Members of the judiciary as well as other legal professionals from Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia and from Kosovo attended the workshop. Participants also included representatives of Judicial Training Centres (JTCs) in Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and also Kosovo.
5. Following up on the successful cooperation regarding organization of the 2007 Kyiv workshop, the event was organized by the Convention secretariat under the auspices of the United Nations Economic Commission for Europe (UNECE) in cooperation with the Organization for Security and Cooperation in Europe (OSCE)¹.
6. The workshop was primarily funded by the Government of France and supplemented by OSCE.
7. As with the Kyiv workshop for Eastern Europe and South Caucasus, it was decided to invite representatives of the national JTCs from the subregion to attend the workshop. The JTCs, which run courses in various areas of law for new and experienced judges, were identified as important partners for the promotion and implementation of the Convention, in particular its article 9, among the judiciary at the national level.

¹ More specifically, the Office of the Co-ordinator of Economic and Environmental Activities (OCEEA), together with the OSCE Presence in Albania.

8. Experts with experience in the implementation of the Convention in Central, Eastern and South-Eastern Europe contributed to the discussions. The European Union Forum of Judges for the Environment (EUFJE), which has continued to play an important role in capacity-building activities under the Task Force, was represented by its President, a senior judge from Belgium, who participated in an expert capacity.

9. In addition to allocation of financial support for the seminar, the Government of France ensured participation of a senior judge from the Court of Cassation and a judicial officer from the Ministry of Justice of France, both of whom provided expert inputs.

10. The workshop was attended by 38 participants, including 25 from the subregion, six experts, the Chairperson of the Task Force, the Secretary to the Convention, four OSCE experts and several observers. A list of the workshop participants is available online at: www.unece.org/env/pp/a.to.j.htm.

II. METHODOLOGY

11. As originally envisaged by the Task Force and applied in the 2007 Kyiv event, the workshop was organized in the form of a dialogue between judges and several other legal professionals from the subregion, revolving around the Convention issues in a context of substantive environmental law and emphasizing the Convention's third pillar.

12. The methodology, agenda and background case studies developed in preparation for the first workshop in 2007 were updated and adjusted to reflect subregional specificities. The workshop materials are available on the Convention's website (www.unece.org/env/pp/a.to.j.htm#Workshops).

13. As in Kyiv, the plenary sessions, which included expert presentations and discussions among the participants, were alternated with breakout sessions that focused on the issues raised in the case studies. For practical reasons, the breakout sessions involved working in small groups, each containing participants from one or two countries/territories. These provided the opportunity to discuss the application of the Convention's principles in the context of domestic legislation, and ensured a more in-depth exchange of experience between participants. The main conclusions of the breakout sessions were then discussed in the plenary.

14. Background information for the participants included copies of the Convention, the relevant national implementation reports, *The Aarhus Convention: an Implementation Guide*, and the *Handbook on Access to Justice under the Aarhus Convention* as well as copies of the expert presentations, excerpts from the considerations of the Compliance Committee, and case studies.

15. More information on the methodology applied in individual sessions can be found in the report of the 2007 Kyiv workshop (ECE/MP.PP/WG.1/2007/L.11, paras. 10–16).

III. OUTCOMES

16. The most important achievement of the workshop was the raised awareness and better knowledge of the application of the provisions of the Convention at the national level among the 25 participants from the judiciary and judicial training institutions from the subregion. Other outcomes included networking among judges and judicial training institutions, exchanges of views on the implementation of the Convention and/or the relevant national legislation, and discussions on challenges and obstacles and exchanges of views on ways to address these. One specific outcome was a set of recommendations, which was adopted by consensus by the participants (see annex).

17. Most countries in the subregion appeared to have recently adopted environmental legislation that reflected the principles of the Convention. While the Convention itself was not necessarily widely known, in general there was sufficient knowledge of the relevant domestic legislation.

18. A majority of the participants indicated that very few environmental cases or cases related to the Convention had been brought before the courts in SEE so far. Participants, however, agreed that generally the countries and territories in SEE, regardless of whether or not they were Parties, had good legal frameworks for implementing the Convention and for granting access to justice. On the other hand, they considered that there was a need to examine the administration of justice to see whether it was effective and efficient.

19. As in the previous workshop in Kyiv for Eastern Europe and South Caucasus, lack of awareness was identified as among the major obstacles to effective implementation and application of the Convention.

IV. EVALUATION AND FOLLOW-UP

20. Participants provided feedback on the workshop through an evaluation sheet circulated towards the end of the event. Participants and experts generally evaluated the workshop as a success, with a majority of participants deeming it “very good” and the remainder as “good”.

21. The applied methodology was generally considered to have been effective in reaching the workshop’s goals of raising awareness of the Convention overall and in particular with regard to the specifics of access to justice provisions among the judiciary.

22. The participants evaluated highly the various expert presentations, which covered a range of issues related to the implementation of article 9 of the Convention.

23. The breakout sessions enabled more in-depth discussions between participants with reference to legislation and practices specific to a particular country or territory.

24. Several comments received from participants indicated that, while the agenda was interesting and comprehensive, it was also somewhat too full for a two-day workshop, and that in the future more time should be allocated to discussion.

25. As regards follow-up activities, a number of suggestions agreed upon by the participants are included in the recommendations contained in annex II. Most of these are in line with those put forward by the participants in the Kyiv workshop, including the need for networking by judges in the field of environmental law, exchanging information on jurisprudence and practice, and enhancing the role that judicial training institutions play in promoting environmental law and the Convention's principles among judges at the national and local levels.

26. The participants considered that similar workshops should be organized in the future, addressing judges, prosecutors, attorneys and other legal professionals. Such initiatives would be useful at subregional as well as national level.

27. Should any similar workshops be organized in the context of the Task Force, these could continue to use the current methodology, as this had proved cost-effective and easily adaptable to the subregional needs. Because some participants showed particular interest in the considerations and findings of the Compliance Committee, it might be useful to have available a special compilation of the Committee's considerations and findings for participants' use.² For the same reason, it could also be useful to review the case studies at some point in the future, to take account of the developing practice of the Committee.

28. The Parties might also wish to encourage governments or organizations implementing similar initiatives for the judiciary and other legal professionals, both on the subregional and national levels, to make use of the materials and the methodology developed under the Task Force.

29. Development of environmental law materials and introduction of environmental law components in the curricula of judicial training institutions was emphasized in the context of possible future activities.

30. The participants also considered that closer cooperation between Aarhus Centres/Public Environmental Information Centres – where they exist – and the JTCs could be productive in terms of mainstreaming access to information, public participation and access to justice in the context of judicial trainings.

² A regularly updated version of the publication, *Case law of the Aarhus Convention Compliance Committee (2004–2008)*, published jointly by European ECO-Forum, Oekoburo (Coordination Office of Austrian Environmental Organizations) and the Resource and Analysis Centre, "Society and Environment", could largely serve this purpose.

Annex

RECOMMENDATIONS BY THE PARTICIPANTS¹

The participants,

Welcoming the opportunity to participate in the subregional workshop on access to justice for the higher levels of the judiciary and expressing gratitude to UNECE and OSCE for having organized the workshop, as well as to the Government of France for its financial contribution,

Recognizing that the Convention is a unique legal framework contributing to the protection of the rights of each person to live in an environment adequate to his or her health and well-being,

Recalling the Johannesburg Principles on the Role of Law and Sustainable Development,

Emphasizing the principle that an independent judiciary is vital for the implementation, development and enforcement of environmental law in general and the Convention in particular,

Noting the findings in the national implementation reports and of the Compliance Committee that the implementation of the access to justice pillar is the most challenging to the Parties and recognizing that the judiciary has a important role in furthering the implementation of the Convention in general, and in particular the access to justice pillar,

Recognizing that sufficient knowledge of environmental law, including with respect to the Convention, amongst the members of the judiciary is a prerequisite for the judiciary to be able to fulfill its important role, as mentioned above,

Recognizing also the need for training in environmental law, including with respect to the Convention, for judges, public prosecutors, lawyers, advocates and public authorities,

Underlining the important role of the public in decision-making relating to environmental issues, and therefore stressing the importance of the awareness raising about the Convention, and noting the role of Aarhus Centres/Public Environmental Information Centres in this respect,

Noting the need for closer cooperation between judicial training centres and public environmental information centres/Aarhus Centres to better promote synergies between the three pillars of the Convention,

¹ As adopted by participants at the Access to Justice Subregional Workshop for High-Level members of the Judiciary, (South-East European subregion), Tirana, 17–18 November 2008.

Acknowledging the important contribution that individual citizens and non-governmental organizations can make in environmental protection and in triggering better implementation, and in this regard recognizing the important role of lawyers providing pro bono legal counsel,

1. *Invite* the Task Force on Access to Justice, and other relevant bodies and organizations to consider organizing further workshops and other capacity-building activities related to the Convention at the subregional and national levels;

2. *Also invite* potential donors to support such capacity-building activities, including the organization of training of trainers to enable the relevant judicial training institutes to provide national level trainings, inter alia with the involvement of international experts;

3. *Encourage* the judicial training centres and similar institutions to further include environmental law modules as appropriate, including Convention-related issues, in their training curricula, and invite the Task Force on Access to Justice and other appropriate institutions to consider ways to support them in doing so;

4. *Also encourage* the further cooperation and networking among judges in the field of environmental law in general and in relation to the Convention in particular, e.g. through sharing of experience and jurisprudence, and invite the Task Force on Access to Justice and other appropriate institutions and organizations to facilitate this process.
