

**Meeting of the Parties to the Convention on
Access to Information, Public Participation in
Decision-making and Access to Justice in
Environmental Matter**

Fifth session

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Item 4 (c): Substantive issues: Access to Justice

Statement of the Supreme Court Judge of the Kyrgyz Republic Dilara Arstanbaeva

The globalised contemporary world raises paramount issues in the environmental protection area, which is challenging for the mankind, for the generation to come, namely the preservation of the environment we have today. In this regard, conduct of negotiations, meetings, signing of international treaties, raising the issue internationally mean that more and more states are concerned with the preservation of the environment and take care of it in order to ensure decent life to future generations in future world. The United Nations raising such crucial issues and regulating them at the international level deserves our gratitude.

The Aarhus Convention was adopted to promote protection of rights among current and future generations to live in an environment adequate to their health and well-being.

I'd also like to note that the Aarhus Convention differs from other conventions and treaties because it is a new kind of environmental agreement. It sets forth:

First, obligations we owe to future generations;

Second, sustainable development through involvement of all stakeholders;

Third, government accountability;

Fourth, interaction between the public and public authorities in a democratic context;

Fifth, community participation in negotiations;

Sixth, implementation of international agreements.

The Aarhus Convention links environmental protection and human rights and raises environmental rights up to the rights of other persons. However, two main aspects have been defined:

- environmental rights as human rights and importance of access to information.

- public participation in decision-making and access to sustainable and environmentally sound development. The sustainability and environmental development depend on the effectiveness of governmental decision-making that takes into account both environmental concerns and public opinions.

In cases when the government does not provide the public with access to environmental information and gives it the chance to take part in the decision-making, they ensure that the society reaches the goal of sustainable and environmentally sound development.

The objective of the Aarhus convention is the rights of current and future generations to live in an environment adequate to their health and well-being. The right to live in an environment adequate to well-being is recognised more at the national level. As seen from the target group researches, this regulation is implemented into constitutions or at the national level of the members to the Convention in Central and Eastern Europe and new independent states to the right of healthy sustainable environment.

The Convention sets forth the link between public involvement and basic human rights, including the right to live in an environment adequate to their health and well-being, and the duty to protect and improve the environment for the benefit of present and future generations. Moreover, three basic elements of public participation are mentioned that form the basic structure of the Convention.

They are:

- Access to information;
- Public participation;
- Access to justice.

Basic rights and obligations relevant to the environment are closely interwoven, but both rights and obligations can remain unexercised until people have an opportunity to act in the civil society. It may imply the establishment of relevant institutions, state guarantee in terms of precise and transparent conditions for actions.

In the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.

One of the values of public participation in environmental protection lies in the enhancement of the quality of decisions made and decision-making. The implementation of decisions can be enhanced at the levels where public members taking due account of the outcome are involved in the process and can make relevant authorities aware of their concern. The right to express their concern granted to the public is the matter of self-fulfilment, which increases the level of public trust in general.

The general principles contained in the Aarhus Convention can contribute to a wider public participation in the activities of other branches of government and assist them in performing their obligations. Since the process of regulations development can imply cooperation between the legislative and executive branches, the matter of a joint legislation activity of both branches is being considered. This is one of the provisions in the preamble that goes beyond the framework of pure environmental context and means wider issues of democratisation and interrelations between the public, organisations, and the government.

In this view, I would like to emphasise the role of NGOs. Environmental NGOs play a key role in the society, contribute to and assist in the environmental and health advocacy.

The most important principle of sustainable development lies in the integration of the environment and development. One of the methods to ensure this integration is the due account of potential environmental impact during decision-making and policy development. It is obvious that to ensure due account of environmental considerations, the data should be accurate, complete, and updated. As has been said in regard to other items of the preamble, one of the functions of public participation is the provision of assistance to government bodies in collecting high quality information. Therefore, the idea that the society should work on the solution of environmental issues for the benefit of present and future generations turns into a relevant law principle determining certain obligations imposed on the authorities.

The major element of the Aarhus Convention is the access to justice. It sets compulsory tone to the implementation of access to information and provides for participation within the framework of domestic legal system and strengthens the mechanisms of observance of domestic legislation in the field of environment.

Judicial mechanisms should be effective, which means independence, fairness and professional honesty of representatives of the court system, which, in turn, provides for the necessary sound financial base of the justice system on the whole, self-regulatory ability. Moreover, they imply certain conditions in the society eventually ensuring enforcement of decisions of courts.

Judicial mechanisms rectifying the situation in the event of violation of rights and enforcing law must be available to the public. As to the duration of the process, it should be short enough to have people use this mechanism to protect their violated rights.

Analysis performed by the target group has shown that common problems of ensuring public access to justice are:

- “narrow” procedural capacity of the public (especially in the context of opportunities of public appeal in court of environmental law violations and filing general public interest lawsuits)

- nonobservance of legal investigation time, time-consuming legal investigation;
- significant legal financial expenses;
- lack of opportunity to get knowledgeable legal and expert assistance;
- the loser pays principle applied to making court decisions;
- gaps in procedural law depriving the general public of their rights to justice.

Training, maximum publicity and, above all, expansion of practice of extrajudicial and judicial settlement of disputes are required to improve the expertise of public officials and judges. In this case, it is necessary to encourage more precedents for the public and state authorities and the judiciary to have the opportunity to acquire the necessary experience in the implementation of the rights of access to justice.

Gaps in the law may be eliminated according to the following algorithm:

- Review of law and existing practice (de jure and de facto)
- Analysis of gaps preventing the public from exercising their right to access to information, participation in decision-making, access to justice
- Development of regulations eliminating gaps and contradictions in law.

Access to justice is required to protect legitimate interests of the public – i.e. the interests that have been recognised in the given society based on laws, customs or practices – to ensure enforcement of law in general. Access to justice is the prime means to enforce the Convention, generally, because it helps protect two other basic elements. The court may act only in the event of violation of other preambles of the Aarhus Convention by means of enforcement of regulations of the Convention, which is the final stage of protection of human rights. In order not to go to court to protect the rights that have been violated, there arises the need for extrajudicial settlement of disputes. It means that authorities and the general public should interact with each other; the authorities should correct the violations and provide information to applicants clearly, precisely and within a short time. If the public applies Article 9 of the Convention, regardless of administrative or judicial review procedures, it considers that its right has been violated.

And, finally, I would like to note that for the purpose of implementation of the Aarhus Convention provisions in the Kyrgyz Republic, like-minded people have initiated the establishment of a team including judges, members of parliament, NGOs, legal practitioners. As a result, this team, supported by OSCE mission to Kyrgyzstan, is planning to make legislative changes on the basis of practice existing in the republic that would ensure procedural capacity of the public.

Thank you for your attention.