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## Economic Commission for Europe

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

#### Sixth session

Budva, Montenegro, 11–13 September 2017

Item 6 (c) of the provisional agenda

**Substantive issues: access to justice**

### Report of the Task Force on Access to Justice on its tenth meeting

#### *Summary*

At its second session (Almaty, Kazakhstan, 25–27 May 2005), by its decision II/2, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters established the Task Force on Access to Justice to undertake a number of tasks related to promoting access to justice in environmental matters, including analytical work on the financial and other barriers to access and the sharing of relevant experience and examples of good practice (ECE/MP.PP/2005/2/Add.3, paras. 30–33).<sup>1</sup> By that same decision, the Task Force was requested to present the results of its work for consideration and appropriate action by the Working Group of the Parties. At its fifth session (Maastricht, the Netherlands, 30 June–1 July 2014), the Meeting of the Parties renewed the mandate of the Task Force to carry out further work (see ECE/MP.PP/2014/2/Add.1, decision V/3).<sup>2</sup>

Pursuant to the above mandates, the present report of the Task Force on its tenth meeting (Geneva, 27–28 February 2017) is being submitted for the consideration of the Meeting of the Parties at its sixth session.

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<sup>1</sup> Available from <http://www.unece.org/env/pp/mop2/mop2.doc.html>.

<sup>2</sup> Available from [http://www.unece.org/env/pp/aarhus/mop5\\_docs.html#](http://www.unece.org/env/pp/aarhus/mop5_docs.html#/).

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## Introduction

1. The tenth meeting of the Task Force on Access to Justice under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held on 27 and 28 February 2017 in Geneva, Switzerland.<sup>3</sup>
2. The meeting was attended by experts designated by the Governments of Albania, Armenia, Austria, Azerbaijan, Denmark, France, Georgia, Italy, Latvia, Malta, the Netherlands, the Republic of Moldova, Romania, Serbia, Slovakia, Sweden and Switzerland. A representative of the European Commission was present on behalf of the European Union. A representative of the European Investment Bank was also present.
3. Delegates from Guinea-Bissau and Uzbekistan attended the meeting.
4. Also attending the meeting were a number of judges and representatives of judicial institutions and review bodies from Belgium, Iceland, Kazakhstan, Kyrgyzstan, Slovakia, and Ukraine. Some of these participants also represented the European Union Forum of Judges for the Environment.
5. The representatives of the Office of the United Nations High Commissioner for Human Rights and the Regional Environmental Centre for Central and Eastern Europe were also present.
6. The following non-governmental organizations (NGOs) were represented at the meeting: Armenian Constitutional Right-Protective Centre (Armenia); Article 19 (United Kingdom of Great Britain and Northern Ireland); Belarusian Republican Union of Lawyers (Belarus); Bluelink Foundation (Estonia); the Bureau of Environmental Investigation (Ukraine); ClientEarth (Belgium); the Consultation Institute (United Kingdom); Earthjustice (Switzerland); EcoContact (Republic of Moldova); Ecohome (Belarus); European Environmental Bureau (Belgium); Frank Bold Society (Czechia); the Forest Trust (Switzerland); “Green Cross Kaliningrad” (Russian Federation); Green Liberty (Latvia); and Libyan Transparency Association (Libya).
7. Representatives of the Belarusian National Bar Association (Belarus), Masaryk University (Czechia), Leuphana University (Germany), the Graduate Institute of International and Development Studies (Switzerland) and experts from other organizations also attended the meeting.

## I. Opening of the meeting and adoption of the agenda

8. The Task Force Chair, Mr. Jan Darpö (Sweden), opened the meeting.
9. The Task Force adopted its agenda as set out in document AC/TF.AJ-10/Inf.1.

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<sup>3</sup> Documents for the tenth meeting, including background documents, a list of participants, statements and presentations, are available online from <http://www.unece.org/env/pp/aarhus/tfaj10.html>.

## II. Thematic focus: enabling effective access to justice without persecution and harassment

10. In a thematic session on enabling effective access to justice without persecution and harassment, participants discussed measures that could protect persons seeking justice and exercising their rights in conformity with the Aarhus Convention from the possibility of persecution and harassment and advance the implementation of article 3, paragraph 8, of the Convention.

11. The Chair opened the discussion by drawing attention to two background documents: an overview of the implementation of article 3, paragraph 8, of the Convention (AC/TF.AJ-10/Inf.2) prepared on the basis of national implementation reports; and a table listing selected deliberations, findings and recommendations of a systemic nature adopted by the Compliance Committee with regard to the implementation of article 3, paragraph 8 (AC/TF.AJ-10/Inf.3).

12. The Chair drew attention to the report of Mr. Michel Forst, Special Rapporteur on the situation of environmental human rights defenders (A/71/281), and invited the Special Rapporteur to deliver an opening statement.

13. Mr. Forst stressed that effective justice for all without persecution and harassment had become an important and urgent topic, with the unprecedented killing of 185 environmental human rights defenders across 16 countries recorded in 2015 (especially in Latin America and Asia), and called for that global crisis to be addressed. Environmental human rights defenders could be defined as individuals or groups who, in their professional or personal capacity and in a peaceful manner, strove to protect and promote human rights relating to the environment, including water, land, air, flora and fauna (e.g., depending on a particular situation, they could include NGO representatives, community representatives, academics or even civil servants). Such activists increasingly faced serious challenges to their legitimate work, despite the protection afforded to them under international human rights law. Particularly vulnerable were those who opposed land grabbing, extractive industries, the industrial timber trade and large-scale development projects.

14. The Special Rapporteur called for strengthening a conducive legal and institutional framework to ensure a safe and enabling environment for human rights defenders and adopting preventive approaches that could support their work. That could include litigation against perpetrators of violations, legal assistance, legal representation and trial monitoring and removing financial barriers to access to justice. The Aarhus Convention's rights-based approach should be put to good use in order to empower the work of environmental human rights defenders and further the objectives of the Convention. The Special Rapporteur stated his support for the work of the Task Force on this critical and urgent matter.

15. In the following discussion, the participants discussed the root causes of increasing threats towards environmental human rights defenders, how to identify environmental human rights defenders and how to strengthen the mechanisms under the Convention to protect them and introduce possible prevention measures to ensure a safe and enabling environment for the public to exercise their rights.

16. A representative of the European Investment Bank reported on the efforts made by the independent accountability mechanisms of the international financial institutions to protect complainants against retaliation. Environmental activists and human rights defenders performed a public interest function and were at risk of retaliation. In response to that risk, rules and standards had been or were in the process of being developed by three independent accountability mechanisms: (a) the European Investment Bank Group's Complaints Mechanism; (b) the World Bank's Inspection Panel; and (c) the Compliance Advisor Ombudsman of the International Finance Corporation and the Multilateral

Investment Guarantee Agency. He also highlighted the European Union approach against retaliation and pointed out the European Union mechanisms and guidelines that were available to ensure protection of environmental activists and human rights defenders. Nevertheless, challenges, such as the harmonization of approaches among the different independent accountability mechanisms, remained.

17. Furthermore, the Task Force considered to what extent the advancing of whistle-blower protection and pursuing of anti-corruption policies in environmental matters could contribute to the implementation of article 3, paragraph 8, of the Convention.

18. A representative of the Netherlands presented the Whistle-blower Authority recently established in accordance with the Whistle-blower Centre Act. The Authority was designated to provide advice and support to employees in the public and private sector reporting wrongdoings and to investigate such cases affecting the public interest (e.g., threats to the environment or public health or constituting fraud or corruption). Investigations could concern cases exceeding limits of individual cases and should have a serious and structural character, of a certain scale. The confidentiality and legal protection of whistle-blowers were guaranteed. Furthermore, the Whistle-blowers Centre Act also obliged employers with 50 or more employees to adopt a reporting procedure to deal with suspected wrongdoings. The Whistle-blower Authority also established an advisory mechanism for employers on ethics and integrity issues.

19. A representative of Serbia gave a presentation highlighting the importance of combatting corruption in the field of environmental protection and how the protection of whistle-blowers could contribute to that. Serbia had adopted a comprehensive strategic and legislative framework on the relevant international agreements related to human rights, environment and corruption. That framework included the recently adopted law on the protection of whistle-blowers, covering internal whistleblowing to the employer, external whistle-blowing to the competent authorities or alerting the public through the public disclosure of information on wrongdoings. In whistle-blower cases the burden of proof was shifted to employers. As the legal and institutional framework set out, the current efforts were focused on raising awareness and building capacities in using such a framework.

20. In the subsequent discussion, participants noted that organized crime had become one of the most important aspects of corruption in the field of the environment and was closely linked with the retaliation practices against environmental activists. They reiterated the importance of bringing environmental legislation into line with anti-corruption laws and raising awareness about the framework addressing the protection of environmental activists and the need to address the root causes of corruption. It was also highlighted that ensuring the independence of the judiciary and establishing effective monitoring of administrative and judicial review procedures could be beneficial in that regard.

21. To bring together the various aspects of the discussion, a representative of the organization Article 19 provided an overview of laws and best practices with regard to the protection of environmental human rights defenders and other environmental activists against retribution of any kind. Across the region and beyond, environmental activists faced different kinds of pressures, including physical attacks and threats, limits to association and protest, surveillance and restrictions on freedom of expression and access to information. He described the comprehensive international framework addressing the issue as adopted and elaborated by the United Nations General Assembly, the Human Rights Council and its special procedures mechanism. Several European initiatives had also been launched by the Council of Europe, the European Union and the Organization for Security and Cooperation in Europe. It was important to consider the specific pressures faced by whistle-blowers. He called on countries to adopt national measures to protect environmental human rights defenders and encouraged the adoption of commitments by international financial

institutions and business on the matter and the further development of the international framework with regard to whistle-blower protection.

22. Following the presentation, the participants raised concerns that legal actions taken against NGOs in order to incur unreasonable costs for them in judicial proceedings or delaying the adoption of a decision on cases brought by the environmental activists, could be observed in a number of countries. Consequently, in such situations members of the public lost trust in the judicial system and that could constitute a clear barrier to access to justice in environmental matters that should be addressed.

23. Following the discussion, the Task Force:

(a) Highlighted the crucial importance of establishing and maintaining a safe and enabling environment that empowered members of the public to exercise their rights in conformity with the Convention;

(b) Noted that the protection of whistle-blowers, environmental human rights defenders and other environmental activists against penalization, persecution, harassment or any kind of retaliation for their involvement contributed to increasing transparency, combatting corruption, preventing exclusion, improving the quality of decision-making and, ultimately, to promoting sustainable development;

(c) Called on Parties to review their legal systems, as appropriate, in order to ensure that their domestic framework was consistent with the obligation of the Convention and to provide for appropriate recognition of and support to associations, organizations and groups promoting environmental protection;

(d) Welcomed initiatives of the Parties, international financial institutions and other stakeholders to take measures to protect and empower whistle-blowers, environmental human rights defenders and other environmental activists as reported by the speakers;

(e) Encouraged Parties, partner organizations and other stakeholders to raise awareness among their respective public authorities and members of the public about the obligations under article 3, paragraph 8, of the Aarhus Convention, the status of its implementation and new initiatives as reported by the speakers;

(f) Called on Parties, partner organizations and other stakeholders to undertake similar initiatives, further develop domestic frameworks and build the capacities of the public authorities to prevent harassment or any kind of retaliation against members of the public for exercising their rights in environmental matters, in order to protect the whistle-blowers, environmental human rights defenders and other environmental activists at risk, ensure safe reporting of such cases and the due, independent and impartial investigation of such cases in the countries.

### **III. Taking stock of recent developments**

24. In a discussion on recent developments, the participants shared their experience with issues related to: (a) the scope of review; (b) adequate and effective remedies; (c) costs; legal aid and other measures to reduce financial barriers; and (d) any other emerging issues that might impede the implementation of the third pillar of the Convention (i.e., access to justice).

25. A representative of the Supreme Court of Kazakhstan presented the progress in the implementation of the access to justice pillar of the Convention in the country. To promote uniform understanding and application of the environmental law in adjudicating civil cases across the court system, the Supreme Court of Kazakhstan had adopted a respective Normative Resolution in November 2016. The Resolution clarified, *inter alia*, the

application of legislation and the Convention with regard to the administrative procedures for obtaining certain environmental permits and public participation in such procedures and also public access to environmental information.

26. In accordance with the above-mentioned Resolution of the Supreme Court, disputes related to environmental protection, including on issues of restricting, suspending and terminating the activities of individuals or legal entities that had negative impact on the environment, life and human health, could be brought not only by the competent public authorities, but also by individuals and/or legal entities. Public associations could act in defence of the rights, freedoms and legitimate interests of both affected persons and the public at large (*actio popularis*). Claimants were exempted from the payment of a State duty for filing disputes on environmental protection and use of natural resources in court. Also, the Resolution clarified the rights of individuals and legal entities to challenge the conclusion of the state ecological *expertiza*<sup>4</sup> in court. Furthermore, the speaker concluded that the adoption of the Resolution of the Supreme Court would contribute to the promotion of effective access to justice in environmental matters in Kazakhstan and further development of case law on the matter.

27. In the subsequent discussion, the participants underscored that access to statistics and data on environmental cases and investigations would make it possible to better monitor, analyse and draw effective conclusions on the practical application of environmental law. The specialization of judges, the improvement of case classification for reporting purposes and the use of modern electronic court services, such as an individual case management system, could underpin such statistics and data collection and analysis.

28. Furthermore, the participants took stock of developments with regard to access to justice in the European Union and its member States.

29. A representative of the Supreme Court of Slovakia presented the main findings of the preliminary ruling in a recent case<sup>5</sup> decided by the Court of Justice of the European Union relevant to the interpretation of article 9, paragraphs 2 and 4, of the Aarhus Convention. The request for a preliminary ruling had been made in proceedings between an environmental NGO and a district public authority. The NGO had requested to be accorded the status of party to an administrative procedure relating to an application for the authorization of a project to construct an enclosure for the purpose of extending a game park on a protected Natura 2000 site. The denial of the request had been subject to different stages of judicial review procedures over several years while the administrative procedure had been already concluded and the project had been implemented. The preliminary ruling explained that, as long as there was no definitive judicial decision on whether or not the organization had the status of party to the proceedings, the administrative procedure could not be concluded. Otherwise, NGOs would not be ensured effective judicial protection of the various specific rights inherent in the right of public participation, within the meaning of article 6 of the Convention. As a result, the public authorities should accept the standing of the NGO in the concluded administrative procedure and the practical implications of that situation in Slovakia remained to be seen.

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<sup>4</sup> *Editor's note:* The OVOS/*expertiza* system is a development control mechanism followed in many countries of Eastern Europe, the Caucasus and Central Asia. The Committee has held that the OVOS and the *expertiza* should be considered jointly as the decision-making process constituting a form of environmental impact assessment procedure (see ECE/MP.PP/C.1/2013/9, para. 44).

<sup>5</sup> Case C-243/15, *Lesoochránárske zoskupenie VLK v. Obvodný úrad Trenčín*, Request for a preliminary ruling, 2017 O.J. (C 6), pp. 16–17. Available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62015CA0243>.

30. A representative of the European Commission reported on further developments of the case law of the Court of Justice of the European Union. In essence, access to justice provisions were reflected in some acts of the secondary environmental law of the European Union, but gaps remained. The Court's cases outside the scope of access to justice provisions concerned hunting derogations, omissions to adopt air quality plans and decision-making with regard to certain projects relating to Natura 2000 sites. Following up on the discussion of the preliminary ruling presented by the representative of the Supreme Court of Slovakia, the representative of the European Commission highlighted that environmental NGOs were also entitled to challenge both a decision not to carry out an appropriate assessment for projects relating to Natura 2000 sites and a carried out assessment. He highlighted the findings in the recent judgments of the European Court of Justice with regard to legal standing, scope of review and costs. To promote further effective access to justice in environmental matters, the European Commission had initiated the preparation of a guidance document<sup>6</sup> based on the existing legal principles under European Union law and the case law of the Court of Justice of the European Union. The document could be useful for legal practitioners, administrations and civil society.

31. A representative from Leuphana University informed participants about the ongoing reform of the legislation on access to justice in environmental matters in Germany to address the findings of the Convention's Compliance Committee and the judgment of the Court of Justice of the European Union. The reform would not only introduce changes to the Environmental Appeal Act, but would also cover a broad range of access to justice provisions in the sectoral legislation. The criteria for standing, the types of acts to be challenged and the introduction of the abuse clause remained broadly debated among different public authorities and stakeholders. At the same time, he highlighted several cases recently decided by administrative courts where the preclusion clause, linked with the participation in administrative procedure as a mandatory precondition before the court proceedings in accordance with the Environmental Appeal Act, had not been applied by courts given the supremacy of the European Union law.

32. A representative of ClientEarth provided an update on access to justice matters in the United Kingdom on the basis of the written statement by the NGO "Environment Links UK" submitted prior to the meeting. She raised a concern that ongoing reforms to judicial review in England and Wales could bring significant adverse changes to the costs rules for environmental cases. That would concern, among other things, the possibility of judges to vary either party's cost cap at any time during the proceedings, establishing separate cost caps to apply for each claimant if there could be more than one, and the requirement to disclose personal financial information to the court when making an application for judicial review (including disclosing any third party support provided). At the same time, Northern Ireland had made a number of positive amendments to their cost regime for environmental cases and the Scottish Government had amended its judicial review regime in respect of costs and standing. In the context of Brexit, there was concern about an access-to-justice and enforcement deficit arising from the loss of the Court of Justice of the European Union and the European Union complaints mechanism after the United Kingdom left the European Union. She also pointed out issues related to access to justice at the European Union level and drew attention to the pending findings of the Convention's Compliance Committee in case ACCC/C/2008/32.<sup>7</sup>

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<sup>6</sup> See Commission Notice on Access to Justice in Environmental Matters, C(2017) 2616 final. Available from <http://ec.europa.eu/environment/aarhus/legislation.htm>.

<sup>7</sup> ECE/MP.PP/C.1/2017/7 (part II); see also ECE/MP.PP/C.1/2011/4/Add.1 (part I). Available from <http://www.unece.org/env/pp/cc/com.html>.

33. In further dialogue, the participants discussed possible remedies available at the national level to address the preliminary ruling of the Court of Justice of the European Union presented during the session. They also took stock of developments with regard to the standing rights of environmental NGOs across the countries and the best ways to make use of the findings of the Aarhus Convention Compliance Committee on access to justice matters.

34. The Chair reiterated that administrative and judicial review procedures should provide adequate and effective remedies in accordance with article 9, paragraph 4, of the Convention. To facilitate the information exchange, a number of analytic studies covering all subregions had been undertaken under the auspices of the Task Force. In the period 2014-2015, a study on the possibilities for environmental NGOs to claim damages in relation to the environment in France, Italy, the Netherlands and Portugal had been carried out under the auspices of the Task Force. Since then, some countries had further introduced relevant legislative proposals, especially with regard to class actions in environmental matters.

35. A representative of the Netherlands outlined different possibilities for NGOs to submit claims for environmental damage under public law, civil law and within the scope of criminal proceedings in the country. The concept of environmental damage included material harm to the environment or moral damage caused by an unlawful act or omission, and was not limited to the financial compensation only. In the context of article 9 of the Convention, claims for damages might consist of claims for financial compensation for losses suffered; injunctions; court orders to restore or prevent specific damage on pain of penalties; claims for specific actions; and declaratory judgments that could be used by other parties for claiming specific financial (or other) compensation. In accordance with the legislative provisions on class actions for collective damages, NGOs and parties liable for environmental damage could agree upon a settlement for financial compensation of collective damage which could be further declared by the Amsterdam Court of Appeal mandatory for all other parties involved.

36. The speaker further explained the developments with regard to article 3:305a of the Dutch Civil Code. Under that article, NGOs established as legal foundations or legal associations to protect environmental interests could submit different types of claims remedying environmental damage, but were not entitled to submit financial claims on behalf of individual persons whose interests were protected by the NGOs. The legislative proposal to the Dutch Parliament to allow NGOs meeting certain criteria to claim financial damages had been introduced in November 2016 and would lift the existing restrictions. Such cases would be brought to the District Court of Amsterdam, which should decide on the collective settlement. Parties represented in such cases would be also given the opportunity to opt out from the settlement upon advance notification.

37. A representative of France highlighted the potential of class actions to promote environmental protection and facilitate access to justice of the most affected groups and the recent developments in French law in that regard. The possibility to bring action in joint representation had existed for a long time under article L.142-2 of the French Environmental Code, but had not been successfully applied. The European Commission's Recommendation of 11 June 2013<sup>8</sup> further outlined the minimum eligibility conditions to bring representative actions. Further improvements had been made in the area through Law

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<sup>8</sup> See Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, 2013 O.J. (L 201), pp. 60–65. Available online from <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32013H0396>.

No. 2016-1547 of 18 November 2016 on the modernization of justice in the twenty-first century. That law established the procedural base for all class actions within its scope, including those related to the environment. A class environmental action could be brought when any physical or legal persons were harmed as a result of damage caused to the environment by the same person. In addition, further legislative initiatives also granted the possibility to claim compensation for pure environmental damage. The remediation of such damage should take place primarily in kind, the award of other damages and interest could be possible only in cases when such restorative action was not possible.

38. With regard to the scope of review, the Chair recalled that at the previous meeting the Task Force had considered preliminary findings of the study in Albania, Armenia, Belarus, Kazakhstan, Serbia and Ukraine and welcomed the initiative of the Regional Environmental Centre for Central and Eastern Europe for carrying out a similar study in the remaining countries of South-Eastern Europe.

39. A representative of the Regional Environmental Centre for Central and Eastern Europe presented key findings of an analytical study carried out in Bosnia and Herzegovina, Montenegro and the former Yugoslav Republic of Macedonia with regard to the scope of administrative and judicial review to challenge the substantive and procedural legality of decisions, acts and omissions by public authorities. In particular, in cases of judicial review members of the public would have standing before a court to protect their impaired rights or legitimate interests regardless of their participation in the decision-making procedures in question (with certain limitations in Bosnia and Herzegovina). When reviewing administrative decisions, courts could review their procedural and substantive legality. However, in practice, courts often focused on reviewing procedural legality and rarely ruled on the merits of the case. Administrative courts in the selected countries had some “reformatory” powers.<sup>9</sup> If according to a court judgment the public authority should adopt a new decision, the legal opinion and remarks of the court regarding the procedure should be considered in the further decision-making procedure. In addition, the court could make a conformity check of the subsequently adopted decision. If the responsible public authority did not act in accordance with the court judgment, or if the public authority adopted a new decision that contradicted the reasoning of the court, the court could pass a judgment in full replacing such a decision.

40. A representative of the Bureau of Environmental Investigation briefed participants on the progress in finalizing the similar analytical study carried out under the auspices of the Task Force in Albania, Armenia, Belarus, Kazakhstan, Serbia and Ukraine. The draft study had been revised in the light of the comments received at the previous Task Force meeting and made available in English and Russian. At the same time, some legislative changes relevant to the scope of the study had been introduced in Armenia, Belarus and Kazakhstan and they would be highlighted in the footnotes of the study.

41. Addressing opportunities for judicial review in public participation-related matters, a representative of the NGO EcoHome described recent legislative developments in Belarus. The new Law on State Ecological *Expertiza*, Strategic Environmental Assessment and Environmental Impact had expanded the list of activities to which public participation requirements would apply. The Law set out the rights of the members of the public to

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<sup>9</sup> Depending on the legal system, a court of law or another independent and impartial body established by law responsible for the review of administrative decisions may have: (a) power of “cassation” only, meaning that it is restricted to a review of the cases on points of law; or (b) both power of “cassation” and “reformatory” powers, meaning that it can also exercise a merits review and can effectively amend aspects of the original administrative decision or even replace it with an entirely new decision.

challenge in court the State environmental *expertiza* conclusions and environmental impact assessment or strategic environmental assessment reports. Nevertheless, the practical applicability of new provisions would depend on whether such documents would be considered as final or any kind of decisions or as an expert opinion, and whether the available remedies would be effective in that regard. That could mean the Law alone would not be sufficient for effective protection of environmental public interests. The representative renewed the organization's commitment in promoting effective public access to justice in environmental matters.

42. A representative of Armenia reported on new developments regarding the standing of environmental NGOs before national courts. The Armenian Government had carried out several legislative reforms which, for instance, allowed NGOs to defend the legitimate interest of their beneficiaries in the field of environmental protection at court. That could be considered as another important step towards the reduction or elimination of barriers to access to justice in the country.

43. Furthermore, participants discussed the current trends in the specialization of judges, courts and tribunals in environmental matters and learned about some national initiatives in that regard.

44. Addressing the potential for mediation in the implementation of the Convention, a representative of the Belarusian Republican Union of Lawyers underscored that, while mediation could not replace the role of courts in solving conflicts over the protection of the environment, it could complement it well. He pointed out the advantages of mediation in resolving environmental cases with regard to timeliness and execution as compared with the framework of judicial review procedure where the time frames could not be governed by parties, the procedures could be lengthy and the execution of judgment could be challenging. In Belarus, mediation was applicable to various types of disputes and the Governmental National Action Plan on the Transition to a Green Economy indicated the activities with regard to the use of mediation in disputes related to that particular area.

45. In further discussion, the representative of the High Administrative Court of Ukraine noted an ongoing initiative in Ukraine to reform all procedural legislation. Some reform proposals included the possibility to limit the right to legal representation before courts to professional bar members, which could impact the possibilities of NGOs to participate in legal proceedings. There were furthermore discussions on improvements regarding the scope of review and on the use of out-of-court mediation. The representative of the Supreme Court of Kazakhstan said that there had recently been proposals to increasingly use mediation in the Kazakh legal system, but the cases involving public authorities currently remained outside of the scope of mediation. The representative of Austria stressed that mediation had been successfully applied in the context of environmental impact assessment in the country.

46. Following the discussion, the Task Force:

(a) Took note of the recent developments, challenges and good practices related to public access to justice as presented by the speakers;

(b) Welcomed the progress in carrying out the study on the scope of review in Bosnia and Herzegovina, Montenegro and the former Yugoslav Republic of Macedonia led by the Regional Environmental Centre for Central and Eastern Europe and the study on the same matter in Albania, Armenia, Belarus, Kazakhstan, Serbia and Ukraine launched under the auspices of the Task Force;

(c) Noted that relevant case law of the Parties had shown that challenges remained with regard to the full implementation of the access to justice pillar of the Convention across the region;

(d) Reiterated that courts played a crucial role in interpreting provisions of domestic law on access to justice, and underlined the importance that such provisions should be interpreted in accordance with the Aarhus Convention;

(e) Welcomed initiatives of the Parties to improve public access to justice in environmental matters, such as providing access to adequate and effective remedies, widening the range of members of the public having access to review procedures in environmental matters and promoting specialization of the judiciary and mediation in environmental cases, and called on the Parties to undertake similar initiatives and on partner organizations to support those efforts.

#### **IV. Tools to promote effective access to justice**

47. In a discussion on tools to promote effective access to justice, participants shared experiences and lessons learned from the initiatives related to: (a) evaluating the effectiveness of domestic administrative and judicial review procedures in environmental matters; (b) promoting e-justice initiatives and other measures to ensure effective public access to review procedures; and (c) capacity-building.

48. Opening the discussion, the Chair recalled that the work on access to justice was implemented in accordance with decision V/3 of the Meeting of the Parties in the light of the relevant objectives of the Convention's Strategic Plan for 2015-2020 and Sustainable Development Goal 16, especially target 16.3 on access to justice for all. He highlighted the importance of the availability of quantitative data for monitoring the implementation of the access to justice pillar under the Convention and the relevant Sustainable Development Goal and target. An overview on the availability of quantitative data relevant to the practical application of the provisions of article 9 of the Convention had been prepared to facilitate the discussion (AC/TF.AJ-10/Inf. 4).

49. A representative of Masaryk University, Czechia, presented some preliminary results of a research project which focused on the analysis of the available statistics and data related to access to justice in environmental matters in Czechia. The research was guided by questions such as how often members of the public could get access to courts, what kind of legal action they brought, whether they asked for injunctive relief and whether they were successful. To date, around 300 court cases brought mainly by NGOs from 2012 to 2016 had been analysed, but data gaps posed a challenge in implementing the project. The analysis had identified factors that could impact the geographical distribution of cases across the country, pointed out the risks of retaliation against environmental activists, identified the types of environmental cases most often triggered in courts, highlighted the most affected phases of development and construction in that regard, and described types of NGOs bringing the cases and the success rate of cases. He highlighted the potential of such an analysis to improve the effectiveness of decision-making process, the benefits of using the selective approach, focusing on certain sectors or types of proceedings, and providing guidance and assistance to decision makers on the basis of the existing relevant case law.

50. The Chair further stressed that decision V/3 of the Meeting of the Parties to the Convention called for an increase in public accessibility to the relevant information as required by the Convention in relation to justice matters and the implementation of relevant e-justice initiatives.

51. In that regard, a representative of Malta presented e-justice initiatives in the country in relation to the Aarhus Convention. She outlined the role of the Environmental and Planning Review Tribunal, the Information and Data Protection Commissioner, the Appeals Tribunal and civil courts in implementing the Convention and outlined the electronic tools and services they provided to the public. In particular, the Environmental and Planning

Review Tribunal provided information on registered appeals and its daily agenda and made its decisions publicly accessible. The Information and Data Protection Commissioner and the Appeals Tribunal provided the possibility for anyone to file an online complaint and make general enquiries. A judgments online portal developed under the e-Government initiative provided public access to decisions, judgments, statistics and other services of civil courts free of charge. Members of the public were also granted access to a personal online case management system.<sup>10</sup> Public access to information in the context of article 9, paragraph 5, of the Convention was also supported through the legislation portal and the European Union e-justice portal, which provided information on judicial systems of all member States.

52. In the subsequent discussion, the participants highlighted the importance of and challenges in keeping the information up-to-date on e-justice portals to ensure effective public access to environmental information.

53. Furthermore, the Chair recalled that building capacities of judges, prosecutors, attorneys and other legal professionals remained crucially important for promoting effective public access to justice and suggested sharing lessons learned from capacity-building initiatives and identifying further needs in that area.

54. A representative of the Supreme Court of Kyrgyzstan presented the national framework for public access to justice in environmental matters. She explained the existing rights of the members of the public and stated that a multi-stakeholder group had been established to work on better implementation of the Convention. Furthermore, a one-day training had been developed for various courts on the provisions of the Convention and national environmental legislation. Further improvements could include changes to the statistical reporting in order to keep account of environmental cases, the preparation of court practice analysis of such cases and an update of the relevant resolution of the Supreme Court on the application of environmental law in court cases.

55. The representative of the Bluelink Foundation presented the project, “Extracting and Energy Industry Watch”, which aimed to develop good legal and journalistic practice to support NGOs, local communities and informal groups in monitoring the activities of the energy and extractive industries in Bulgaria. The project had so far provided support to civil society groups and local communities in bringing 15 cases before courts and administrative authorities with regard to access to information, public participation and appeal of adopted decisions. The project had revealed a strong interest among civil society in monitoring the activities of energy and extractive industry, lack of easy access to legal and technical expertise for the members of the public and a need to work with local leaders, NGOs and local media in order to address concrete needs. The project provided the necessary support and resources for NGOs, local communities, journalists and lawyers to build up the capacity, mutual trust and share experience that had led to success in arguing cases before the court.

56. The representative of the Regional Environmental Centre for Central and Eastern Europe outlined the main capacity-building activities on access to justice implemented in the current intersessional period and highlighted future activities under a new project to be implementing in the countries of South-Eastern Europe.

57. A representative of the Aarhus Convention secretariat drew attention to the progress made with regard to the further development of the Aarhus Clearinghouse and its

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<sup>10</sup> More information is available from <https://ecourts.gov.mt/onlineservices>.

jurisprudence database,<sup>11</sup> in particular the introduction of keywords and better search possibilities.

58. Following the discussion, the Task Force:

(a) Took note of the information related to measuring access to justice in environmental matters in the context of relevant Sustainable Developments Goals and targets, as reported by the speakers;

(b) Welcomed initiatives of the Parties and other stakeholders aimed at monitoring the effectiveness of access to justice in environmental matters and collecting the relevant quantitative data on the practical implementation of article 9 of the Convention, and called on partner organizations to support and promote such initiatives;

(c) Encouraged Parties to continue developing specific statistical arrangements to collect, coordinate, aggregate and process the information from various statistic providers needed for monitoring the implementation of article 9 of the Convention (question XXX of national implementation report template) and therefore contributing to achieving Sustainable Development Goal 16 and its target 16.3;

(d) Welcomed e-justice initiatives implemented in Malta and the European Union and called on other Parties to implement similar initiatives;

(e) Welcomed capacity-building initiatives reported by the speakers and called for the promotion of further capacity-building of judges, prosecutors, attorneys and other legal professionals and also public interest lawyers and non-governmental organizations;

(f) Encouraged the wide dissemination and use of analytical studies<sup>12</sup> and material collected under auspices of the Task Force, the Aarhus Clearinghouse and the jurisprudence database<sup>13</sup> for capacity-building activities promoting effective access to justice.

## V. Approval of key outcomes and closing of the meeting

59. The Task Force agreed the key outcomes of the meeting (AC/TF.AJ-10/Inf.5) and requested the secretariat, in consultation with the Chair, to finalize the report and to incorporate those outcomes therein. The Chair thanked the speakers, the participants, the secretariat and the interpreters and closed the meeting.

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<sup>11</sup> Both tools are available online from <https://aarhusclearinghouse.unece.org/>.

<sup>12</sup> Available from [http://www.unece.org/env/pp/tfaj/analytical\\_studies.html](http://www.unece.org/env/pp/tfaj/analytical_studies.html).

<sup>13</sup> Available from <http://www.unece.org/env/pp/tfaj/jurisprudenceplatform.html> and <https://aarhusclearinghouse.unece.org/jurisprudence>.