

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

Item 6 (c): Access to justice

Report by the Chair of the Task Force on Access to Justice

The mandate

Summarizing the mandates from 2005, 2008, 2011 and 2014, and also recalling the decision from 2002, the Task Force on Access to Justice shall:

- Promote the exchange of information, experiences, challenges and good practices relating to the implementation of the third pillar of the Convention;
- Develop training materials, training of trainers,
- Continue to perform strategic capacity-building activities – that is workshops – particularly for associations of judges, public interest lawyers and other legal professionals in these initiatives.

What we have done in inter-sessional period 2014-2017

Meetings

At its **eighth meeting**, the Task Force on Access to Justice (**Geneva, 15–17 June 2015**) looked at substantive issues, such as the standing, costs and remedies under the Convention. Delegates also deliberated on quantitative data provided in 2014 national implementation reports in relation to the practical application of the provisions of article 9 of the Convention (access to justice). Furthermore, delegates shared their experience in carrying out multi-stakeholder dialogues with a view to removing barriers to access to justice. The Task Force meeting was preceded by a special session for judges dedicated to the promotion of judicial networking in the pan-European region.

At its **ninth meeting** (**Geneva, 14–15 June 2016**), the Task Force considered recent developments and national efforts to remove barriers to access to justice. The meeting included a thematic session on the scope of review. The discussion took stock from a number of recent studies on how different legal systems deal with that issue; Albania, Armenia, Belarus, Serbia, Kazakhstan and Ukraine (prepared under auspices of the Task Force), Bosnia and Herzegovina, Montenegro and the former Yugoslav Republic of Macedonia (lead by REC with the support of Germany) and the study for France, Germany, Sweden and United Kingdom (led by Germany). In particular, delegates discussed what decisions, acts or omissions could be the subject of administrative appeal and judicial review in accordance with article 9 of the Convention, what could be the grounds for their review and to what extent both procedural and substantive issues might be reviewed. Following the success of the previous event, the Task Force meeting was again preceded by a special session for judges to promote judicial networking in the pan-European region.

The **tenth meeting** of the Task Force on Access to Justice (**Geneva, 27–28 February 2017**) included a thematic session on measures that could protect persons seeking justice and exercising their rights in conformity with Article 3(8) of the Convention from the possibility of persecution and harassment. The keynote on that session was held by the UNs Special Rapporteur on the situation with the Human Rights Defenders. Furthermore, delegates discussed recent developments related to standing, the scope of review, adequate and effective remedies, costs and other issues of a systemic nature that might impede the implementation of the third pillar of the Convention. They also examined tools to promote effective access to justice, including specialization of judges, courts and tribunals, mediation and other alternative dispute resolution methods, e-justice initiatives, evaluation of effectiveness and capacity-building initiatives.

On both the ninth and the tenth meetings of the Task Force, we discussed a **study** on the possibilities for environmental NGOs to claim damages on behalf of the environment. The study covered the Netherlands, France, Portugal and Italy and it was later updated by the secretariat in the light of the comments received.

Outreach activities

In close cooperation with the Organization for Security and Cooperation in Europe (OSCE), the secretariat and chair provided substantive support to the **workshop** on access to justice in environmental matters for South Caucasus and Eastern Europe, held in Tbilisi on 19 and 20 February 2015.

Beside the workshop in Tbilisi, the Chair of the Task Force has participated and made presentations of the Aarhus Convention on **international conferences** in Osaka (Japan), New York, Oslo, Wrocław, Torino and Paris.

Case-law data base

The development of the **jurisprudence database** is progressing, although the inflow of cases could be higher. The ambition to have at least a couple of cases from each Party still remains to be fulfilled. Still, the database today contains 95 cases from different national and regional courts on issues related to the third pillar of the Convention. The case law database is included in the Clearing House for Environmental Democracy website.

What we are planning

Under the condition that the MOP6 decides to continue the assignment for the Task Force on Access to Justice, I would like to – recognizing the drafts for the decision on promoting effective access to justice, the decision V/5 on the Strategic Plan for 2015–2020 and the decision VI/5 on the work programme for 2018–2021 and also recalling the need for prioritizing the activities of our work – high-light the following issues during the intersessional period 2017-2021:

- Continue to undertake analytic studies on barriers to access to justice and ways to overcome them. Several subjects have been proposed for the intersessional period 2017-2021. It is therefore very satisfactory that the mandate in the Draft decision on promoting effective access to justice is kept open, thus enabling for the Task Force meeting to prioritize the subjects to be dealt with within those frames.
- Perform one work-shop on sub-regional level, learning from the experiences we made from the ones held in Kiev 2007, Tirana 2008, Almaty 2012 and Tbilisi 2015. In addition to that, the ambition should be to actively take part in other outreach activities for the promotion of access to justice, such as national or regional public interest lawyers' conferences or similar events.
- Develop and improve the training material for workshops and education on national and regional basis. Develop and improve the training material from the workshops and make it available for others to use.
- Improve the accessibility of the case law database and to include more cases.

Some closing remarks

Normally it is said that the third pillar of the Convention is the weakest and also the one most in need of additional efforts. This may still be true, but I would also say that the picture is mixed. On the positive side, we have the on-going work within ECLAC with the creation of a regional convention in Latin-American on the application of Principle 10. Also the rapid development of Environmental Courts or Tribunal (ECT) in China is a clear step forward. Finally, the progressive attitude from many Member States' courts and the CJEU concerning access to justice in environmental matters on national level in EU is worth noticing. On the other hand, it is easy to find examples showing an opposite trend; harassments cases still seem to be usual in many Parties to the Convention, and the fact that many governments – not least within the EU – still try to raise barriers to access to justice in environmental matters.

The work of the Task Force on Access to Justice should be evaluated in this context. My impression is that we have a vital role to play in producing studies and training materials. In contrast with other bodies under the Convention, the task forces are able to deal with *systematic issues* concerning the implementation of the Convention *in all countries and regions that are Parties*. The collection of information and discussion on the outcomes of such studies is, in my view, one of the main reasons to uphold this body.

Analytical studies also have a crucial role in facilitating national dialogues on Aarhus issues, capacity-building activities and development of national policies in this area.

In this context, I would also like to emphasize the great importance of the meetings of the Task Force on access to justice. As the participants are experts who attend in their own capacity and as the ENGOs are allowed to participate on an equal basis with the national experts, the discussions can be held more freely and concern a wider scope of issues than at the official meetings of delegates from the Parties. This procedure assures the quality of the analytic studies. In a similar procedure, the Task Force is also able to develop material on access to justice, taking into consideration the outcomes of the studies and the documents that have been produced for different regional workshops. In addition, the meeting can be used to strengthen networking among different key actors on access to justice among the participants, such as the judiciary and public interest lawyers.

Finally, I would like to express my appreciation to all delegates from the Parties, ENGOs and other stakeholders for their participation in the work of the Task Force. Last but not least, my warmest thanks go to Ms Maryna Yanush and the secretariat for their wholehearted support. Without your efforts, the Task Force would be nothing!