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Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Working Group of the Parties

Twentieth meeting

Geneva, 15–17 June 2016

Item 3 (c) of the provisional agenda

Substantive issues: access to justice

Report of the Task Force on Access to Justice on its eighth 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 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).¹ 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 (*ibid.*, para. 33 (i)). At its fifth session (Maastricht, the Netherlands, 30 June and 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).²

Pursuant to the above mandates, the present report of the eighth meeting of the Task Force (Geneva, 15–17 June 2015) is being submitted for the consideration of the Working Group of the Parties at its twentieth session.

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

² 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 eighth 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 from 15 to 17 June 2015 in Geneva, Switzerland.³

2. The meeting was attended by experts designated by the Governments of Armenia, Belarus, Denmark, Estonia, France, Georgia, Germany, Ireland, Italy, Latvia, Norway, Poland, the Republic of Moldova, Serbia, Slovakia, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland. 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. Also attending the meeting were a number of judges and representatives of judicial institutions and review bodies from Albania, Armenia, Azerbaijan, Croatia, the Czech Republic, France, Kazakhstan, Kyrgyzstan, Montenegro, Latvia, Serbia, Slovakia, Sweden, Tajikistan and Ukraine. Some of these participants also represented the European Union Forum of Judges for the Environment and the Association of European Administrative Judges.

4. In addition, experts from the United Nations Environment Programme (UNEP) and the United Nations Economic Commission for Europe (ECE) Statistical Division were present.

5. The following non-governmental organizations (NGOs), many of which coordinated their input within the framework of the European ECO Forum, were represented at the meeting: An Taisce — The National Trust for Ireland; the Bureau of Environmental Investigation (Ukraine); Wildlife and Countryside Link (United Kingdom); Dalma-Sona (Armenia); EarthJustice (Switzerland); Ecohome (Belarus); Environment-People-Law (Ukraine); European ECO Forum; European Environmental Bureau (Belgium); Independent Ecological Expertise (Kyrgyzstan); International Institute for Law and the Environment (Spain); TETA “Khazri” (Azerbaijan); Quaker United Nations Office (Switzerland); and Volgograd Ecopress Information Centre (Russian Federation).

6. Representatives of Aarhus Centres, the Cercle Català de Negocis (Catalan Business Circle), the Graduate Institute of International and Development Studies (Switzerland), Maastricht University (the Netherlands), Osaka University (Japan), the Regional Environmental Centre for Central and Eastern Europe and Queen Mary University of London (United Kingdom) also attended the meeting.

I. Opening of the meeting and adoption of the agenda

7. The Task Force Chair, Mr. Jan Darpö (Sweden), opened the meeting.

8. The Task Force adopted its agenda as set out in document AC/TF.AJ-8/Inf.1.

9. A keynote address was delivered by the Chief Justice of Albania, Mr. Xhezair Zaganjori, who highlighted the issue of monism and dualism in international law and the importance of the Aarhus Convention and the European Convention for the Protection of

³ Documents for the eighth meeting, including a list of participants, statements and presentations, are available online from <http://www.unece.org/env/pp/aarhus/tfaj8.html#/>.

Human Rights and Fundamental Freedoms⁴ in setting out access to justice standards in environmental matters, as well as the role of the constitutional courts in complying with those standards.

II. Measuring access to justice

10. The Chair opened the discussion on measuring access to justice, noting that a background document on the issue of data availability regarding the practical application of the provisions of Convention's article 9 was available (AC/TF.AJ-8/Inf.2).

11. A representative of the ECE Statistical Division explained the current status of negotiations on the 2030 Agenda for Sustainable Development (Agenda 2030), in particular Sustainable Development Goal (SDG) 16 and target 16.3 on access to justice. The speaker briefed participants on the process of developing SDG indicators and targets, as well as monitoring and accountability mechanisms to be used at the global, regional and national level following the adoption of Agenda 2030.⁵

12. A representative of An Taisce — The National Trust for Ireland informed participants about the launch of the Environmental Democracy Index by the Access Initiative⁶ and the development of the "Aarhus Convention Index" in cooperation with the Environmental Management and Law Association and the World Resources Institute. The project, which was supported by the Netherlands, included the creation of indicators and their testing in five pilot countries with a view to eventually covering all the Parties to the Convention.

13. In the following discussion, some participants suggested that the Aarhus Convention Index should offer the possibility for the members of the public to provide input to country performance evaluations.

14. A representative of the Supreme Court of Kazakhstan noted there had been legislative developments in Kazakhstan regarding determining and remedying environmental damage, which might have an impact on national statistics for such cases. He further highlighted a need to ensure the comparability of data concerning cases related to the Convention in civil, administrative and criminal courts. Labelling those cases as "Aarhus cases" might help to collect more accurate and comparable statistics.

15. Following the discussion, the Task Force:

(a) Took note of the information regarding the development of SDG indicators and targets related to access to justice and the Aarhus Convention Index;

(b) Noted that the information on access to justice in environmental matters in future national implementation reports could contribute to the reporting by Parties on the national implementation of the relevant SDGs and targets;

(c) Recognized the importance of accurate and comparable statistics on the practical implementation of article 9 of the Convention for monitoring the effectiveness of access to justice;

⁴ More information is available from <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>.

⁵ See document A/RES/70/1 available from http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&referer=/english/&Lang=E

⁶ More information is available from <http://www.environmentaldemocracyindex.org/>.

(d) Encouraged Parties to take further steps in collecting statistics on the practical implementation of article 9 of the Convention and to provide the data collected in the next national implementation reports.

III. Substantive issues

16. The Chair introduced the discussion on substantive issues, including the scope of review, mitigating costs, adequate and effective remedies (see AC/TF.AJ-8/Inf.3). He reminded participants that the Strategic Plan for 2015–2020 called for Parties to implement work on promoting effective access to justice (see ECE/MP.PP/2014/2/Add.1, decision V/5, annex, objective III.7),⁷ in particular by way of further information exchange, capacity-building and exchange of good practice, inter alia, on the issue of adequate and effective remedies.

17. Mr. Miroslav Gavalec, a representative of the Supreme Court of Slovakia, delivered a keynote address highlighting challenges in applying the Convention's provisions in particular court cases in Slovakia, such as the *Slovak Brown Bear* case,⁸ the *Križan* case⁹ and the *White Stream* case.¹⁰ He touched upon such issues as: the standing of NGOs in cases challenging acts and omissions that contravened provisions of national environmental law; the special procedural status of the public concerned in decision-making relating to the environment; the right to bring an action; and the issue of timeliness in the light of the Convention's requirements to ensure adequate and effective remedies as well as fair and timely procedures. It was noted that important questions remained on how to interpret some international treaties if a party had failed to adopt subsequent laws to implement them in national legislation.

A. The scope of review

18. In a discussion on the scope of review, participants shared experiences on what decisions, acts or omissions could be the subject of administrative appeal and judicial review in accordance with the Convention's article 9, what could be the grounds for their review and to what extent both procedural and substantive issues might be reviewed. Delegates also considered whether courts in their countries had only the power of "cassation" or also had "reformatory" powers in cases under article 9.¹¹

19. A representative of Germany presented a new comparative study launched to learn from models of environmental litigation in France, Italy, Poland, Sweden and the United

⁷ Available from http://www.unece.org/env/pp/aarhus/mop5_docs.html.

⁸ See case C-240/09, *Lesoochranárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, E.C.R. I-01255. Available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=c-240/09>.

⁹ See case C-416/10, *Jozef Križan and Others v. Slovenská inšpekcia životného prostredia*, 2013 O.J. (C 63). Available from <http://curia.europa.eu/juris/liste.jsf?num=C-416/10>.

¹⁰ See case C-243/15, *Lesoochranárske zoskupenie VLK v. Obvodný úrad Trenčín*. Judgment is not yet available. More information is available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-243/15>.

¹¹ 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.

Kingdom. The study would focus on the comparative analysis of the implementation of article 9, paragraphs 2 to 4, of the Convention covering issues such as standing requirements and requirements and limitations of the scope of review, and the relationship between them. The study would be finalized by the end of 2016.

20. A representative of the Land and Environment Court in Växjö, Sweden, explained the reformatory procedure in administrative cases related to environmental matters in Sweden. He described the types of cases in that area handled by the Swedish Land and Environmental courts, the distribution of the burden of proof, rules regarding the litigating parties, the absence of litigation costs and the role of courts in such cases. The Swedish Parliamentary Ombudsman also had an important role in creating standards of good governance in environmental decision-making, not least regarding administrative omissions.

21. A representative of the Bureau of Environmental Investigations presented the findings of analytical studies carried out under the auspices of the Task Force in selected countries of Eastern Europe, the Caucasus and Central Asia with regard to the scope of review. In particular there were challenges posed by the deficiencies of the decision-making procedure on specific activities in environmental matters, which impacted the effectiveness of access to justice. Also, conflicting laws in different spheres might lead to challenges in granting standing to members of the public who could be interested to challenge acts and omissions that contravened provisions of national law. In particular, an analysis was provided on whether courts had “cassation” or “reformatory” powers in various court cases in Ukraine.

22. The participants discussed the advantages of direct access of members of the public to judicial review procedures, balanced against the workload of judges and the potential of alternative dispute resolution methods in resolving cases.

23. A representative of the court of first instance in Podgorica and the Supreme Court of Montenegro also shared her experience of dealing with cases. There were constitutional grounds to challenge acts, omissions and decisions at the different levels. However, there were several challenges in evaluating environmental damage in cases brought by members of the public.

24. A representative of the Judicial Academy of Serbia explained the Serbian judiciary system. The environment was protected by both the constitutional and the criminal laws. Civil suits could also be filed in case of damage caused by pollution or a threat of such damage. Administrative decisions in environmental matters could be challenged in administrative courts. Extraordinary legal remedies could also be awarded in those proceedings. In addition, she provided a number of insights into the proceedings in access-to-information cases.

25. Some participants highlighted approaches to challenge various omissions by public authorities in different countries. They reviewed the extent to which these omissions could be challenged, for instance, whether an omission to adopt the necessary by-law or pursue an environmental damage case was subject to judicial review in different jurisdictions.

26. Following the discussion, the Task Force:

(a) Took note of new developments in legislation and practice with regard to the scope of review, as highlighted during the discussion and in the presentations, and decided to consider the matter further;

(b) Welcomed the initiative of Germany in preparing the comparative study on the scope of review in the selected countries of the European Union, and invited a representative to present the key outcomes to the Task Force at its next meeting;

(c) Recognized the need to proceed with a comprehensive analytical study on the issue of the scope of review in selected countries of Eastern and South-Eastern Europe, the Caucasus and Central Asia, following the methodology of the study being carried out in the European Union, so as to allow for comparative analysis;

(d) Mandated the secretariat to proceed with the administrative arrangements and requested the Chair to oversee the substantive preparations for the study and to report on its key outcomes to the Task Force at its next meeting in 2016.

B. Mitigating costs

27. In a session dedicated to a discussion on mitigating costs, participants shared recent developments in removing or reducing financial barriers to access to justice and identified contemporary challenges in the area. The discussion focused on expert and witness fees, bonds for injunctive relieve and the loser pays principle.

28. A representative of Latvia shared the Latvian approach to defining the litigation costs in civil and administrative proceedings in environmental matters and the application of the “objective investigation” principle. Flexible legal frameworks with regard to representation before a court in administrative proceedings in conjunction with well-established case law under the Convention had created effective synergies for defending public interests in environmental matters.

29. A representative of the NGO Wildlife and Countryside Link spoke about recent developments in the United Kingdom with regard to litigation costs. The findings and recommendations of the Convention’s Compliance Committee, judgments of the Court of Justice of the European Union and domestic actions underpinned the legislative changes in that area. Bespoke costs rules were an important step forward. Nevertheless, some gaps, limitations and administrative inconsistencies remained to be addressed. While the loser pays principle was not unlawful in itself, its cumulative effects remained prohibitively expensive. The issue of costs in private law cases, caps in the appeal procedure, the availability of legal aid, time limits in infrastructure cases and rules regarding third party funders and interveners needed further improvement. She also called for improved data collection, which could provide better background information for introducing legislative changes with regard to costs.

30. A representative of the International Institute for Law and the Environment talked about financial barriers to access to justice in Spain. Court fees varied depending on the type of proceedings. New court fees in the proceedings before administrative courts remained applicable only to legal persons, including environmental NGOs, as of 1 March 2015, unless they could apply for legal aid. At the same time, a legal aid application could be subject to different interpretation by various courts. The practice of imposing bonds for injunctive relief was also not consistent, and there were several examples of cases regarding construction sites in which the application of bonds for injunctive relief remained a barrier. In some cases, high bonds were imposed for the provisional execution of judgments that annulled construction decisions when those judgments had been appealed by respondents. Also, experts’ fees were not fixed and changed depended on the type of case. There was furthermore a lack of environmental experts designated by judicial bodies as judicial experts. She also mentioned that to remove existing barriers, public interest litigation funds should be established, guidelines setting criteria for the imposition of bonds and costs should be issued and legal aid schemes should be further developed.

31. A representative of the United Kingdom reported on the reviews of the cost regimes undertaken in England and Wales, Scotland and Northern Ireland in the light of possible amendments incorporating Court of Justice of the European Union judgments, including the

judgment in the *Edwards* case.¹² Changes in the judicial review system related to the delivery of infrastructure projects aimed at reducing delay costs and avoiding situations where judicial review would be misused or frustrate decision-making. Judicial review remained an essential means to challenge unlawful, irrational or arbitrary decisions. He also explained the changes in the costs regime of third parties who were funding judicial review above a certain threshold and the powers of courts to define environmental cases.

32. A representative of the United Kingdom from the Scottish Government Legal Directorate underscored that, while differences in costs regimes could exist, they should be in accordance with the Convention. The access to justice regime was currently being reviewed in Scotland, including the litigation costs. It was important to further involve environmental NGOs in the process to better understand their concerns. He also highlighted the benefits of using the CHARADE spatial planning system to help create a collaborative vision of future decision-making together with the public in order to reduce litigation.

33. The representative of An Taisce — The National Trust for Ireland compared the experience in the litigation of environmental cases in the United Kingdom and Ireland. He looked at the differing practices regarding the use of protective court orders, the application of cost caps and lawyers' fees. Another potential cost burden for the Supreme Court in the United Kingdom were the rules on documents and the production of electronic documents for cases that were granted appeal. Ireland had better cost regimes than the United Kingdom, but a narrower scope of review.

34. The representative of Latvia noted that in environmental cases in Latvia individuals or legal persons were supposed to bear their own costs but not the costs of other parties. In some cases, they could be released from those costs.

35. A representative of the High Administrative Court of Ukraine highlighted that, in response to the recommendations of the International Monetary Fund, the country had undertaken efforts to increase court fees and to unify the approach to court fees in various types of proceedings. Nevertheless, huge workloads persisted in the courts, especially at the appeal stage. The fees remained different for individuals and NGOs and some types of litigants could be released from these fees.

36. Following the discussion, the Task Force:

(a) Took note of the experiences shared, including existing good practices and challenges faced in removing financial barriers to access to justice;

(b) Noted that the possibilities for NGOs and members of the public to promote environmental protection continued to be constrained in a number of jurisdictions due to financial barriers to access to justice;

(c) Encouraged Parties to continue their efforts, as appropriate, to mitigate costs in environmental cases and to facilitate national dialogue to address the remaining challenges.

C. Adequate and effective remedies

37. In a discussion on adequate and effective remedies, participants shared new developments, challenges and good practices relating to remedies in environmental cases

¹² See case C-260/11, *The Queen, on the application of David Edwards and Lilian Pallikaropoulos v. Environment Agency and Others*, Reference for a preliminary ruling, 2013 EUR-LEX CELEX 62011CJ0260. Available from <http://curia.europa.eu/juris/liste.jsf?num=C-260/11&language=EN>.

within the Convention's scope, particularly in relation to acts or omissions that contravened provisions of law relating to the environment. The Chair recalled that the Strategic Plan 2015–2020 (objective I.12) called for Parties to ensure access to administrative or judicial review procedures that could provide timely and effective remedies for members of the public who considered that their rights under the Convention had not been respected.

38. In that connection, the Chair informed participants about the progress in carrying out a study on the possibilities for NGOs promoting environmental protection to claim damages on behalf of the environment in four selected countries (France, Italy, the Netherlands and Portugal).

39. A representative of the Queen Mary University of London reported on the preliminary observations from the synthesis report of the study mentioned by the Chair. She focused on the type of remedies available in cases of environmental damage caused by operators under the Environmental Liability Directive¹³ and civil law, including through joining civil actions to ongoing criminal proceedings. It was noted that in all countries environmental NGOs could submit observations and request public authorities to take actions. Unlike in other countries, in Portugal through the civil *actio popularis* environmental NGOs could bring a civil action for damages, asking for the full restoration of the environment from the operator. The speaker also compared the approach to damage compensation under civil law with regard to costs incurred by environmental NGOs, moral damage and pure ecological damage. Uncertainty of standing and high costs often precluded such cases being brought to court. To improve the effectiveness of those remedies, several measures could be taken: the costs of the civil procedures could be reduced, enabling environmental NGOs to challenge omissions of the public authorities to act in environmental damage cases; an online database containing information on investigations on cases of environmental damage could be developed; and environmental liability insurance could be put in place for operators.

40. A representative of the Cercle Català de Negocis drew attention to the situation surrounding the Castor Project for the construction of a submarine natural gas storage facility in Valencia to exemplify some of the main obstacles to the implementation of the Aarhus Convention in Spain, particularly in connection with access to justice. It was impossible to challenge decisions set out in Royal Legislative Decrees before administrative courts and there was a lack of awareness among judicial and enforcement bodies about the Convention. In that context, there was also an issue regarding the granting of immunity to international promoters or investors from national or even regional European jurisdictions.

41. A representative of Poland highlighted that in Poland NGOs could file a civil claim for the restoration of the original state of the environment, as a common good, if a violation caused damage to the environment. Nevertheless, only very few such cases had been brought to court due to difficulties in proving the plaintiffs' rights to bring such cases. Courts might experience a challenge in accepting the cases due to a lack of a clear definition of the environment as a common good, as well as difficulties in estimating the compensation. Further research on the matter could be helpful to address that challenge.

42. A representative of the United Kingdom noted that the remediation of environmental harm still remained best dealt with by the liability regime set out in the Environmental Liability Directive, due to the defence of public rather than private interests. While there had only been a few cases brought under the Directive, that might be due to the negotiations

¹³ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended, available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0035>.

and dealings between operators and public authorities that were not necessarily easy to capture and observe. The Environmental Liability Directive was still in an early stage of implementation. He also recalled incidents that had led to the application of the country's liability regime for historic contamination of land. That formal regime was rarely used. Instead, regulators often dealt directly with an operator to identify measures to remediate the damage. For cases with a low threshold of negative impact on the environment, there were other regimes that could also be used. He gave an example where an operator had breached permit conditions, but the public authorities had not filed a formal case for environmental damage and had decided instead to take action through the permitting procedure.

43. In the following discussion, many participants highlighted the following issues:

- (a) High litigation costs in environmental damage cases in spite of the public interest, which was defended by the members of the public with no compensation;
- (b) A lack of disclosure by public authorities of information about cases on environmental damage identified by them;
- (c) Challenges in defining environmental damage, damage to the environment and pure ecological damage and the assessment of the compensation for such damage;
- (d) The possibility for NGOs to bring claims against historic pollution when operators whose activities caused environmental damage disappeared;
- (e) A Lack of timeliness in judicial review related to environmental cases, and linked to it the amount of resources to be spent by the members of the public.

44. A representative of the NGO Ecohome informed participants about the practice of pursuing public interest environmental cases before the courts in Belarus. Of 21 environmental cases, the majority related to public participation and access to information in connection with public participation. Ecohome had published a case overview in 2015 summarizing the relevant case law and highlighting the existing gaps. In particular, access to courts for members of the public and the awareness of judiciary about the Convention should be further strengthened in the country.

45. The Head of the Civil Appeal Court of Armenia highlighted the recent developments in national law in accordance with the Aarhus Convention due to the constitutional reform. The role of NGOs, procedures regarding their registration and reporting and their access to courts would be improved and simplified. NGOs would be recognized as having sufficient interest to have access to a judicial review procedure if they had been active for two years and their activity corresponded to the objectives declared in their statute of association. NGOs would also have standing in cases involving violations of third-party rights relating to environmental matters, the protection of historical and cultural heritage and other areas as defined by law. The development of national environmental legislation would lead to the effectiveness of judicial review, which should also be accompanied by continuous learning by judges. He suggested that when reviewing draft national legislation related to access to justice, experts of other international organizations, such as Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe, including the Venice Commission, as well as experts from donor countries, should check it against the provisions of the Aarhus Convention. There should also be strengthened cooperation between forums dealing with access to justice in order to address that issue.

46. A representative of the Maastricht University, the Netherlands, highlighted the challenges in the review of the legality of decisions by European Union institutions and

bodies in accordance with the Aarhus Regulation.¹⁴ She explored why the compatibility of the Aarhus Regulation could not be checked by the Court of Justice of the European Union in the light of its judgments in the joined cases from C-401/12P to 403/12P,¹⁵ and C-404/12P and C-405/12P.¹⁶ While article 10, paragraph 1, in conjunction with article 2, paragraph 1 (g), of the Aarhus Regulation restricted review to a “measure of individual scope”, article 9, paragraph 3, of the Convention required access to review procedures in order to challenge any acts or omissions by public authorities which contravene provisions of its national law relating to the environment. None of the remaining legal possibilities to challenge decisions of the European Union bodies guaranteed effective access to justice. The approach to reviewing such decisions should therefore be changed in order to ensure proper implementation of article 9, paragraph 3, of the Convention.

47. In that regard, some participants noted that there were differences in the interpretation of, and a lack of a homogeneous approach to, the implementation of article 9, paragraph 3, of the Convention. They called for new legislation that would widen standing for NGOs to access a judicial review procedure.

48. Following the discussion, the Task Force:

(a) Welcomed the progress in carrying out the study on the possibility for NGOs promoting environmental protection to claim damages on behalf of the environment in France, Italy, the Netherlands and Portugal, and invited national focal points and stakeholders to provide their comments to the secretariat on the draft outline and preliminary findings of the study by 15 July 2015;

(b) Took note of the experiences, including good practices and challenges, shared by the presenters and speakers with regard to remedies applied in cases within the scope of article 9 of the Convention;

(c) Pointed out that the challenges highlighted in the discussion might impact the effective implementation of the third pillar of the Convention in the Parties concerned;

(d) Noted that the issue of adequate and effective remedies would need further consideration by the Task Force;

(e) Reiterated the pivotal role that courts played in interpreting provisions of domestic law on access to justice and the importance of interpreting such provisions in accordance with the Convention.

¹⁴ Regulation (EC) No. 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, 2006 O.J. (L 264). Available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1367>.

¹⁵ *Council of the European Union and Others v. Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, 2015 EUR-Lex CELEX 62012CJ0401. Available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-401/12%20P>.

¹⁶ *Council of the European Union and European Commission v. Stichting Natuur en Milieu and Pesticide Action Network Europe*, 2015 EUR-Lex CELEX 62012CJ0404. Available from <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-404/12%20P>.

IV. Means to share experience and develop capacities

A. National dialogues on removing barriers to access to justice

49. The Chair recalled that the Meeting of the Parties, through its decision V/3 (see ECE/MP.PP/2014/2/Add.1 and Corr.1),¹⁷ had encouraged Governments to stimulate a multi-stakeholder dialogue aiming at removing barriers to access to justice and to share those experiences within the activities of the Task Force. Delegates were invited to share lessons learned from organizing and carrying out such dialogues.

50. A representative of the Osaka University informed participants about the activities under the Green Access Project (phase II), including the possibilities of negotiating a new agreement similar to the Aarhus Convention, and highlighted the recent developments in access to justice in environmental matters in countries of the Association of Southeast Asian Nations (ASEAN), where access to justice had been significantly strengthened in recent years. Developments in the area had included the expansion of legal standing, various new types of litigation, the improvement of provisional remedies and the establishment of environmental courts or chambers known as “specialized green benches”.

51. A representative of Serbia noted that a number of round tables and trainings had been organized in the country to advance the access to justice pillar. The activities had been organized by the Ministry of Energy, Development and Environmental Protection in cooperation with the Ministry of Justice, the Magistrates’ Association, the Judicial Centre and OSCE, especially its Mission to Serbia, and the Regional Environmental Centre for Central and Eastern Europe. A number of publications on strengthening environmental compliance had also been produced in follow-up to the trainings, with the support of the OSCE Mission to Serbia. The adoption of the National Judicial Reform Strategy 2013–2018¹⁸ and the National Action Plan underpinned further positive developments in the area, such as the introduction of an automated case management system and the possibility for the public to track cases through a centralized web portal,¹⁹ the appointment of pro-active public relations officers in all courts, and the establishment of a legal aid fund.

52. The Chair reported on a subregional workshop held in Tbilisi on 19 and 20 February 2015. The event had been organized by OSCE with the support of ECE as a two-day round-table, similar to the events organized in previous years in Almaty, Tirana and Kyiv. The workshop had been attended by members of judiciary from Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. A balanced representation of judges and international experts, presenting case studies and encouraging group discussions had proved to be fruitful. It was worth highlighting that materials for such workshops should be prepared well in advance and adapted to subregional needs. The language issue remained important, and such events should be carried out in languages best known in the respective subregions.

53. A representative of Belarus reported that information on the Convention and its implementation was included in a post-graduate course for the judiciary and senior officials. Round tables on access to justice matters held in the country had also been very helpful to discuss challenges and look for solutions suitable for all the participating stakeholders. Mediation also played an important role in resolving environmental disputes

¹⁷ Available from http://www.unece.org/env/pp/aarhus/mop5_docs.html#/.

¹⁸ More information is available from <http://www.vk.sud.rs/en/national-judicial-reform-strategy-0>.

¹⁹ Available from <http://www.portal.sud.rs> (in the national language).

before they were brought to court. The Belarusian National Bar Association, in particular, had undertaken efforts to promote the use of mediation in environmental disputes.

54. A representative of the Aarhus Centre in Turkmenistan informed participants about the establishment of the Aarhus Centre and its activities, which included various seminars, consultations and participation in preparing reports and publications regarding the Convention. About 10 environment laws had been drafted by the Centre that had subsequently been adopted by the parliament. There had been positive legislative developments, including a Constitutional reform and an update of environmental law: the right to a favourable environment was now established in the Constitution and was further detailed in the Law on Environmental Protection. In accordance with the recent changes, members of the public now had the right to access administrative and judicial review to challenge acts and omissions having an adverse effect on the environment. Recent changes in the complaints procedure, criminal procedure, civil procedure and special legislation also enabled members of the public to appeal if their rights were affected.

55. Having learned about further progress regarding the implementation of Principle 10 of the Rio Declaration on Environment and Development,²⁰ the participants welcomed positive developments in relation to access to justice in environmental matters by members of the public in China, other ASEAN countries, and countries in the Latin America and the Caribbean region.

56. The participants also discussed the importance of national environmental case law for raising awareness about the Convention, the benefits of trainings for judges using a “train the trainers” approach, and the benefits and lessons learned from subregional events for members of judiciary dedicated to the implementation of the third pillar of the Convention.

57. Following the discussion, the Task Force:

(a) Welcomed the engagement of Serbia, Belarus and the Aarhus Centre of Turkmenistan in national multi-stakeholder dialogues in the countries concerned and the support of partner organizations for those dialogues;

(b) Welcomed the capacity-building initiatives taking place at the subregional and national levels, as presented by the speakers.

B. Sharing jurisprudence and promoting judicial networking

58. Participants next discussed recent developments regarding the jurisprudence database and the promotion of judicial networking at the pan-European level.

59. A representative of UNEP reported on the status of judicial cooperation at the global level. Starting with the Global Judges Symposium on Sustainable Development and the Role of Law (Johannesburg, South Africa, 18–20 August 2002),²¹ UNEP had undertaken several activities to share jurisprudence and promote judicial networking, including organizing the World Congress on Justice, Governance and Law for Environmental

²⁰ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I, Resolutions adopted by the Conference, resolution 1, annex I.

²¹ More information is available from <http://www.unep.org/delc/judgesprogramme/GlobalJudgesSymposium/tabid/106158/Default.aspx>.

Sustainability (Rio de Janeiro, 17–20 June 2012)²² and the UNEP Global Symposium on Environmental Rule of Law (Nairobi, 24 June 2014). She also presented the activities of the International Advisory Council for the Advancement of Justice, Governance and Law for Enforcement Sustainability, which had been established after the World Congress to advance the role of law, justice and good governance in achieving sustainable development. She stressed that the “environmental rule of law” was officially recognized by the UNEP Governing Council and the Global Ministerial Environment Forum through decision 27/9 on advancing justice, governance and law for environmental sustainability.²³ There had also been a number of activities carried out to promote judicial cooperation across Asia and the Americas. It was important to further strengthen international dialogue and cooperation, technical assistance and capacity-building in environmental matters. Furthermore, networking of the judiciary, judicial institutions and other review bodies in the pan-European region should be strengthened, as a regional contribution to the global judicial forum serviced by UNEP.

60. A representative of the European Union Forum of Judges for the Environment presented the results of a special session of the Forum held on 15 June 2015. Participants had discussed the role of courts in promoting effective implementation of the Aarhus Convention and perspectives for judicial networking at the global, regional and subregional levels. The participants had agreed that a judicial network could promote effective access to justice in environmental matters, and therefore contribute to the implementation of the third pillar of the Aarhus Convention. They had welcomed the idea of establishing such a network under the auspices of the Task Force, and had encouraged existing networks to participate in that process. They welcomed the possibility to elaborate the idea further, including options for working arrangements for such a network.

61. The secretariat provided an update on the development of the jurisprudence database accessible through the ECE website²⁴ and the Aarhus Clearinghouse.²⁵ The database included about 80 case summaries so far. Attention was drawn to the changed hyperlinks to the database, the request to subscribe to the Rich Site Summary (RSS) feeds to receive automated updates and the upcoming upgrade of the Aarhus Clearinghouse. In addition, the secretariat presented the outcomes of the third meeting of the Convention’s Task Force on Access to Information (Geneva, 3–5 December 2014),²⁶ including the recognition of the importance of case law in clarifying the scope of environmental information and the call for the further population of the jurisprudence database.

62. Following the discussion, the Task Force:

(a) Recognized the need for strengthening networking of judiciary and judicial institutions across the pan-European region in order to facilitate the exchange of good practices and challenges in access to justice in environmental matters, thereby promoting the implementation of the third pillar of the Convention;

(b) Welcomed the initiative to establish a network of the judiciary, judicial institutions and other review bodies under the auspices of the Task Force, which was expected to facilitate cooperation with other networks;

²² More information is available from

<http://www.unep.org/delc/worldcongress/TheWorldCongress/tabid/55695/Default.aspx/>

²³ See document UNEP/GC.27/17 available from <http://www.unep.org/gc/gc27/>.

²⁴ Available from <http://www.unece.org/env/pp/tfaj/jurisprudenceplatform.html>.

²⁵ Available from <http://aarhusclearinghouse.unece.org/resources/?c=1000094>.

²⁶ See report ECE/MP.PP/WG.1/2015/3 available from <http://www.unece.org/env/pp/aarhus/tfai3.html#/>

- (c) Encouraged other networks of the judiciary, judicial institutions and other review bodies to participate in that process, and invited partner organizations to support the initiative;
- (d) Encouraged cooperation with the networks of legal professionals within the Task Force;
- (e) Requested the Chair, with the assistance of the secretariat, to follow up on this matter and report on progress to the Task Force at its next meeting in 2016;
- (f) Welcomed the information regarding the jurisprudence databases and encouraged further population of the databases and their linkages.

V. Approval of key outcomes and closing of the meeting

63. The Task Force revised and agreed on the key outcomes of the meeting (AC/TF.AJ-8/Inf.4) and requested the secretariat, in consultation with the Chair, to finalize the report and to incorporate the agreed outcomes. The Chair thanked the speakers, the participants, the secretariat and the interpreters and closed the meeting.
