



Economic and Social Council

Distr.: General
16 April 2019

Original: English

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

Working Group of the Parties

Twenty-third meeting

Geneva, 26–28 June 2019

Item 3 (c) of the provisional agenda

Substantive issues: Access to justice

Judicial Colloquium - Sustainable Development Goal 16: Role of the judiciary in promoting the rule of law in environmental matters

Chair's summary

Summary

At its sixth session (Budva, Montenegro, 11–14 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters welcomed the establishment of a network of the judiciary, judicial training institutions and other review bodies in the pan-European region under the auspices of the Task Force on Access to Justice and entrusted the secretariat to support networking in that regard (see ECE/MP.PP/2017/2/Add.1, decision VI/3), pursuant to the work programme for 2018–2021 (see ECE/MP.PP/2017/2/Add.1, decision VI/5).

Pursuant to the above mandates, the present Chair's summary of the Judicial Colloquium (Geneva, 27–28 February 2019) is being submitted for the consideration of the Working Group of the Parties at its twenty-third meeting.



Introduction

1. The Judicial Colloquium - Sustainable Development Goal 16: Role of the judiciary in promoting the rule of law in environmental matters¹ was held by the United Nations Economic Commission for Europe (ECE) in Geneva, on 27 and 28 February 2019, in cooperation with the United Nations Environment Programme (UNEP), the Office of the United Nations Special Rapporteur on Human Rights and the Environment, the Organization for Security and Cooperation in Europe, the International Union for Conservation of Nature World Commission on Environmental Law, the Global Judicial Institute on the Environment, the European Union Forum of Judges for the Environment and the Association of European Administrative Judges. The event was organized pursuant to decision VI/3 of the Meeting of the Parties to the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).
2. The Judicial Colloquium was attended by representatives of the judiciary, judicial training institutions and other review bodies from Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, the European Union, France, Georgia, Germany, Hungary, Greece, Guinea-Bissau, Iceland, Ireland, Kazakhstan, Kyrgyzstan, Mauritius, Montenegro, the Netherlands, North Macedonia, the Republic of Moldova, Serbia, Slovakia, Sweden, Tajikistan, Ukraine and the United Kingdom of Great Britain and Northern Ireland. Experts in environmental constitutionalism and environmental law also attended the meeting. The Colloquium was chaired by Luc Lavrysen, President of the European Union Forum of Judges for the Environment and Judge of the Constitutional Court of Belgium.
3. The Colloquium provided an opportunity to take stock of progress and challenges and exchange views on the effective handling of cases related to environmental matters and the application of constitutionally entrenched environmental rights in the context of sustainable development. The meeting addressed the role of the Aarhus Convention in that context, the linkages between the Aarhus Convention and other ECE multilateral environmental agreements in enforcing environmental law and the concept of environmental constitutionalism.

I. Setting the scene

4. Concerned at increasing impacts on human health and well-being caused by the adversely affected state of the environment, members of the public increasingly relied on the courts and other independent review bodies to protect their rights and legitimate interests related to the protection of the environment and the enforcement of domestic environmental laws.
5. Being mindful of the values and commitments reflected in General Assembly resolution 70/1 on transforming our world: the 2030 Agenda for Sustainable Development,² the judiciary played a pivotal role in applying and interpreting provisions of domestic law in accordance with the Aarhus Convention and other multilateral environmental agreements and in achieving the wider objective of environmental protection and sustainable development. The interpretation of international law provided by the Court of Justice of the European Union and other international courts was also of great importance.
6. Effective review mechanisms were crucial to the successful implementation of the environmental dimension of Sustainable Development Goal 16 (peace, justice and strong institutions) with its target 16.3 (promoting the rule of law and ensuring equal access to justice). Such review mechanisms could serve as enablers for sustainable development and as safeguards for other relevant Sustainable Development Goals and targets.
7. Awareness-raising, capacity-building and international cooperation among the judiciary could strengthen countries' efforts to implement the 2030 Agenda for Sustainable Development. The recently established Global Judicial Institute on the Environment provided a platform for judicial capacity-building and education programmes designed to improve the

¹ All material for the Judicial Colloquium is available at www.unece.org/index.php?id=50741.

² A/RES/70/1.

administration and resolution of environmental cases. The Global Judicial Institute on the Environment had launched a membership application procedure, established a secretariat supported by UNEP, undertaken a number of activities at the global and regional levels in cooperation with partner organizations and carried out preparatory work for the launching of a website hosting resources for the judiciary.

II. Promoting effective access to justice and the rule of law for the environment and for sustainable development

8. There was increased recognition of the rule of law in environmental matters and the right to a healthy environment.³ In total, at least 155 States were legally obliged, through treaties, constitutions and legislation, to respect, protect and fulfil that right and among them at least 20 countries where courts had ruled that the right to a healthy environment was an essential element of the constitutional right to life and was, therefore, an enforceable, constitutionally protected right. Many national courts in the pan-European region had reached decisions on the right to a healthy environment.

9. Environmental constitutionalism was recognized as a relatively recent phenomenon that lay at the confluence of constitutional law, international law, human rights and environmental law. It embodied recognition that the environment was a proper subject for protection in constitutional texts and for vindication by courts worldwide. It also reflected innovative constitutional mechanisms for advancing environmental and human rights, and achieving sustainable development.

10. The right to a healthy environment had both procedural and substantive elements. The procedural elements, which were clearly set forth in the Aarhus Convention, were: the right of access to information; the right to participate in decision-making with environmental consequences; and the right of access to the justice system and to remedies. Substantive elements could include: the right to breathe clean air; the right of access to safe drinking water and adequate sanitation; the right of access to proper waste management services and to live in a non-toxic environment; the right to a safe climate; and the right to healthy ecosystems and biodiversity.

11. An effective system of access to justice in environmental matters could be only ensured through a holistic approach, based on the following key interconnected elements: (a) standing for individuals, groups and non-governmental organizations promoting environmental protection; (b) effectiveness, including length of proceedings, scope of review, suspensive effect, injunction and enforcement of decisions; (c) costs, including court fees, lawyers' fees, experts' fees, bonds and legal aid; and (d) the possibility for members of the public to exercise their rights without penalization, persecution or harassment for their involvement.

12. Additional measures should be taken as appropriate to address existing challenges in that regard, with the aim of giving the public seeking justice in environmental matters wide access to judicial and administrative review procedures, in order to meet the relevant requirements set out by article 9 and other respective provisions of the Aarhus Convention and other relevant treaties, constitutions and legislative acts. As a part of efforts to address existing structural challenges, there was an increasing demand for the collection of the necessary quantitative data related to access to justice in environmental matters. That demand could be addressed through the work of the Task Force on Access to Justice under the Aarhus Convention, in cooperation with partner organizations.

13. It was also important to bear in mind explicit and implicit linkages between the Aarhus Convention and relevant provisions of other ECE multilateral environmental agreements,⁴ such as the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)⁵ and its Protocol on Strategic Environmental Assessment,⁶ the

³ A/73/188.

⁴ See the Aarhus Convention, twenty-third preambular paragraph and art. 10 (2) (b).

⁵ More information is available at www.unece.org/env/eia/welcome.html.

⁶ More information is available at www.unece.org/env/eia/sea_protocol.html.

Convention on Long-range Transboundary Air Pollution (Air Convention),⁷ the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)⁸ and its Protocol on Water and Health⁹ and the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention).¹⁰

14. All the above-mentioned multilateral environmental agreements aimed to strengthen environmental protection and support the implementation of a wide range of Sustainable Development Goals and targets relevant to environmental protection and human health and well-being.

15. For countries that were Parties to ECE multilateral environmental agreements, that was particularly important, as provisions of domestic environmental law also supported the implementation of those environmental agreements and their practical implementation, such as: the designation of competent public authorities; the adoption of the necessary measures; and the carrying-out of the required notification procedures that could have an influence on a particular situation that could trigger a recourse to remedy.

16. In order to address the increasing demand for the delivery of effective access to justice in environmental matters, it was crucial to: further develop expert capacity; strengthen specialization in environmental law; use independent expert opinions in environmental matters; and allocate sufficient resources to the justice system.

17. The participants shared different approaches to promoting the effective handling of environmental cases, such as: establishing environmental courts and other specialized independent and impartial bodies (for example, environmental and natural resources boards of appeal); promoting judicial awareness and competence through the activities of judicial training institutions; establishing independent bodies providing technical expertise in environmental and planning laws; and the use of e-justice initiatives.

III. Promoting judicial cooperation

18. The participants highlighted the crucial value of sharing experiences, good practices and peer-learning in environmental adjudication, welcomed the establishment of the Global Judicial Institute on the Environment and called for further support for and promotion of judicial cooperation in environmental matters at the national, regional and international levels.

⁷ More information is available at www.unece.org/env/lrtap/welcome.html.

⁸ More information is available at www.unece.org/env/water.html.

⁹ More information is available at www.unece.org/env/water/pwh_text/text_protocol.html.

¹⁰ More information is available at www.unece.org/env/teia/welcome.html.