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Seventh session

Geneva, 18–20 October 2021

Item 6 (c) of the provisional agenda

Substantive issues: access to justice

Draft decision VII/3 on promoting effective access to justice

Prepared by the Bureau

Summary

The present document sets out a draft decision on promoting effective access to justice prepared by the Bureau of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The Working Group of the Parties to the Convention at its twenty-fourth meeting (Geneva, 1–3 July and 28 and 29 October 2020) requested the Bureau to prepare a draft decision on access to justice for the seventh session of the Meeting of the Parties (ECE/MP.PP/WG.1/2020/2).

The present document was prepared by the Bureau on the basis of: the relevant outcomes of the twenty-fourth meeting of the Working Group of the Parties; the Note by the Chair of the Task Force on Access to Justice (AC/WGP-24/Inf.3); the outcomes of the work undertaken by the Task Force on Access to Justice in the current intersessional period; and decision VI/3 on promoting effective access to justice (ECE/MP.PP/2017/2/Add.1), adopted by the Meeting of the Parties at its sixth session (Budva, Montenegro, 11–14 September 2017).

There were opportunities for open-ended consultations among national focal points and stakeholders on the present draft document after the twenty-fourth meeting of the Working Group. The Bureau revised the draft document thereafter in the light of the comments received and submitted it to the Working Group for consideration and approval at its twenty-fifth meeting (Geneva, 3 May and 7 and 8 June 2021), with a view to its subsequent submission to the Meeting of the Parties for consideration at its seventh session.

At its twenty-fifth meeting the Working Group revised and approved, as amended at the meeting, the draft decision on promoting effective access to justice (AC/WGP-25/CRP.5) and requested the secretariat to submit it to the Meeting of the Parties for consideration at its seventh session.

The Meeting of the Parties,

Recalling the provisions of article 9 and other relevant provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,

Also recalling its decisions I/5,¹ II/2,² III/3,³ IV/2,⁴ V/3⁵ and VI/3⁶ on promoting effective access to justice, VII/11 on the strategic plan for 2022–2030⁷ and VII/5 on the work programme for 2022–2025⁸,

Affirming the importance of the rule of law and the need to further strengthen its application in environmental matters,

Reiterating the importance of public interest litigation in environmental matters for enabling effective judicial protection of the rights and legitimate interests of the public and for improving transparency and increasing accountability of decision-making,

Recognizing that effective access to justice in environmental matters is critical for the successful implementation of a number of Sustainable Development Goals, in particular Goal 16 and its targets 16.3 and 16.10,

Mindful that national implementation reports, the findings of the Compliance Committee, relevant case law of the Parties and the work carried out under the auspices of the Task Force on Access to Justice to date have collectively shown that challenges remain to the full implementation of the third pillar of the Convention,

Having reviewed the reports of the Task Force on Access to Justice and the outcomes of the relevant thematic session of the Working Group of the Parties in the period since the sixth session of the Meeting of the Parties,⁹

1. *Notes with appreciation* the work undertaken by the Task Force on Access to Justice, and expresses its gratitude to Sweden for its leadership of the Task Force;

2. *Encourages* Parties, signatories and other interested States to undertake further considerable efforts to improve the effectiveness of public access to justice in environmental matters, e.g., by removing, as the case may be, barriers with regard to standing, scope of review, costs and access to assistance mechanisms, timeliness, remedies, stimulating multi-stakeholder dialogues, increasing public accessibility to the relevant information as required by the Convention and implementing e-justice initiatives,¹⁰ and calls on international organizations and other stakeholders to support these efforts;

3. *Welcomes* capacity-building initiatives by Parties, signatories, international organizations and other stakeholders aimed at promoting more effective implementation of article 9 of the Convention, and encourages Parties, signatories, international organizations and other stakeholders, as appropriate, to undertake such initiatives in the next intersessional period;

4. *Expresses its appreciation* to Parties, signatories and other stakeholders for contributing material to the online jurisprudence database concerning the Convention, and calls on Parties, signatories and other stakeholders, including judges, legal professionals and academics, to use and promote the database and to further contribute to its improvement;

¹ See ECE/MP.PP/2/Add.6.

² See ECE/MP.PP/2005/2/Add.3.

³ See ECE/MP.PP/2008/2/Add.5.

⁴ See ECE/MP.PP/2011/2/Add.1.

⁵ See ECE/MP.PP/2014/2/Add.1.

⁶ See ECE/MP.PP/2017/2/Add.1.

⁷ Forthcoming.

⁸ Forthcoming.

⁹ ECE/MP.PP/WG.1/2018/3, ECE/MP.PP/WG.1/2019/4, ECE/MP.PP/WG.1/2020/2 and ECE/MP.PP/WG.1/2021/5.

¹⁰ E-justice initiatives include the use of information and communications technologies to improve public access to justice and other types of activities involving the resolution of disputes.

5. *Stresses* the pivotal role that courts play in interpreting provisions of domestic law on access to justice and the importance of interpreting such provisions in accordance with the Convention;

6. *Also stresses* the significant role of national and international associations of judges, prosecutors and other legal professionals, and in particular of judicial training institutions, and also the substantial role of public interest lawyers and non-governmental organizations in promoting effective public access to justice;

7. *Welcomes* the successful cooperation of the judiciary, judicial training institutions and other review bodies in the pan-European region within a network under the auspices of the Task Force;

8. *Invites* the above-mentioned review bodies to promote within the network the exchange of experiences, development of curricula and training materials, population of the online jurisprudence database concerning the Convention and organization of capacity-building events at the regional, subregional and national levels;

9. *Encourages* Parties and signatories to support the participation of representatives of the above-mentioned review bodies in the network, invites other such networks to participate in this initiative and calls on Parties and partner organizations to continue supporting these activities;

10. *Welcomes* initiatives of the Parties and signatories to strengthen judicial specialization in environmental law and the capacities of courts and other relevant bodies in improving knowledge about environmental risks and using independent environmental expertise, as appropriate;

11. *Encourages* Parties to continue the integration, to the extent possible, of the issue of access to justice in environmental matters and of the issue of environmental risks into the curricula of law faculties, public administration and judicial training institutions and other relevant institutions supporting the implementation of the Convention;

12. *Decides* to extend in time the mandate of the Task Force on Access to Justice, under the authority of the Working Group of the Parties, to carry out further work in relation to the implementation of the Convention;

13. *Welcomes* the offer of Belgium to lead the work of the Task Force;

14. *Requests* the Task Force, subject to the availability of resources, to undertake the following work:

(a) To promote the exchange of information, experiences, challenges and good practices relating to the implementation of the third pillar of the Convention, with the focus on:

(i) Overcoming the main barriers to effective access to justice with regard to standing, scope of review, costs and access to assistance mechanisms, remedies and timeliness;

(ii) Promoting public interest litigation and collective redress, and removing obstacles public interest lawyers face;

(iii) Promoting possibilities for members of the public to challenge acts or omissions that contravene permit requirements or laws relating to the environment, in particular, in relation to the following issues: climate change; projects, plans and policies related to energy matters; chemicals and waste management; air and water quality; noise; biodiversity protection; and spatial planning;

(b) To identify priority needs with respect to public access to justice in environmental matters, to take stock of capacity-building initiatives taking place in the region and beyond, and to promote the involvement of associations of judges, public interest lawyers and other legal professionals in these initiatives;

(c) As resources allow, to prepare analytical, guidance and training materials to support the work detailed in subparagraphs (a) and (b) above;

(d) To promote: (i) multi-stakeholder dialogues; (ii) dissemination of information on access to review procedures, collection of relevant data and statistics and access to relevant case law using e-justice initiatives, modern digital technologies and other tools; (iii) specialization of judiciary and other legal professionals in environmental law and access to independent environmental expertise; (iv) measures to discourage strategic lawsuits against public participation; and (v) as appropriate, alternative dispute resolution methods;

(e) To continue facilitating cooperation and networking among members of the judiciary, judicial institutions and other review bodies of countries from different subregions (e.g., Western, Eastern and South-Eastern Europe, the Caucasus and Central Asia);

15. *Entrusts* the secretariat, subject to the availability of resources, to undertake the following work:

(a) To participate in, plan and implement, as appropriate, capacity-building activities, including workshops and training sessions related to access to justice, to be organized in cooperation with relevant partner organizations;

(b) To maintain, in cooperation with the Task Force, the Aarhus Clearinghouse for Environmental Democracy and the online jurisprudence database concerning the Convention;

(c) To support the cooperation and networking of the judiciary, judicial institutions and other review bodies under the auspices of the Task Force;

16. *Invites* Parties, signatories, other interested States and international and other organizations to participate in the Convention's activities on access to justice, and to allocate funds for this matter;

17. *Encourages* Parties, signatories, other interested States and partner organizations to facilitate the involvement of representatives of ministries of justice, the judiciary, judicial training institutions, review bodies and other organizations having a high profile in access to justice issues in relevant activities under the Convention;

18. *Requests* the Working Group to hold a thematic session on promoting effective public access to justice during one of its meetings in the coming intersessional period, with a view to providing opportunities for Parties, signatories and other stakeholders to exchange experiences on those subjects that deserve particular attention.
