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

Task Force on Access to Justice

Fourteenth meeting
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Item 3 of the provisional agenda
Stocktaking of recent and upcoming developments

Information paper N2

Overview of the status of and obstacles encountered in the implementation of article 9 of the Convention

At its seventh session[1], the Meeting of the Parties to the Aarhus Convention adopted decision VII/3 on promoting effective access to justice and requested the Task Force on Access to Justice to promote the exchange of information, experiences, challenges and good practices relating to the implementation of the third pillar of the Convention. Through this decision, the Meeting of the Parties also encouraged Parties 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 costs, access to assistance mechanisms and timeliness.

This document, prepared by the secretariat, comprised of a "cut and paste" compilation of the relevant extracts from the latest synthesis report (ECE/MP.PP/2021/6) and national implementation reports submitted by the Parties to the Convention in the 2021 reporting cycle (question XXIX of the reporting format)[2] with regard the status of implementation of article 9 of the Convention and obstacles encountered in the implementation of article 9 of the Aarhus Convention.

Delegates are invited to consult this document in advance of the meeting in order to support the discussion on stocktaking of recent and upcoming developments under item 3 of the provisional agenda.

I. EXCERPTS FROM 2021 SYNTHESIS REPORT

General provisions

183. As in the previous reporting cycle, all of the reporting Parties noted that the public has a constitutional right to seek protection of its rights and freedoms including before a court of law. All Parties stated that everyone has the right to equal legal protection without discrimination, direct or indirect. In the majority of Parties, an application for administrative review is not obligatory before applying to the administrative courts, but this option is still considered inexpensive and rather quick.

184. Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom subregion describe advanced frameworks of non-judicial and judicial mechanisms available to citizens and environmental NGOs for the implementation of the Convention's access to justice provisions. Administrative review is available and accessible to the public in cases of access to information violations or for the review of decisions of public authorities affecting participatory rights. Judicial review, in general, is available to both the public and environmental NGOs in all three types of cases dealt with by the Convention.

[1] See para. 14(a) (i) of decision VII/3 of the Meeting of the Parties adopted at its seventh session (Geneva, 18–21 October 2021) available from: https://unece.org/environment/documents/2022/02/aj-decision-excerpts-vii3
[2] Available from https://aarhusclearinghouse.unece.org/national-reports/reports

185. One of the main issues related to access to justice reported by the Parties in the subregion was the issue of standing of environmental NGOs. Following the Meeting of the Parties' decisions on compliance and the European Court of Justice jurisprudence on the issue, in the current reporting period many Parties focused on the refinement of standing criteria for environmental NGOs. Austria reported the introduction of new recognition criteria for environmental NGOs. Germany reported removing a restricting criterion of the entitlement to file an appeal that was found by the Compliance Committee to not be in line with the Aarhus Convention. Czechia also noted a widening of interpretation of standing criteria for members of the public in response to the Committee's finding on the Party concerned's compliance. In his input to the current implementation report, the representative of the Supreme Court of Estonia cited relevant national case law and noted that courts have interpreted the concept of environmental organisation in the context of the right of appeal broadly and in the spirit of the Aarhus Convention. Poland reported draft amendments enabling NGOs to appeal against decisions on investments that have a significant impact on the environment within the scope of the environmental impact assessment, and to file complaints with the court. Legislation of Slovenia provides procedures for obtaining the status of an NGO operating in the public interest in the field of environmental protection and/or nature conservation. This status grants a special position in respective administrative and judicial procedures, in which they can represent the public interest in the protection of the environment or nature. Conditions for acquiring these statuses, however, slightly tightened in 2020.

186. Legislative improvements in other areas were also noted. For example, Austria reported on the amendments to the Environmental Impact Assessment Act on the issues of administrative review procedure in 2017-2018 to follow jurisprudence of the European Court of Justice on the legal institute of "preclusion". The United Kingdom referred to a series of amendments implementing the requirement under the Convention for the costs not to be prohibitively expensive.

187. Many reporting Parties from the Eastern Europe, the Caucasus and Central Asia subregion also reported some progress in implementing article 9 in the current reporting cycle. Georgia referred to a newly adopted Environmental Assessment Code (2017) providing for everyone's right to appeal administrative decisions, if believed that his/her participation in decision-making was not ensured, or the national legislation was otherwise violated. Turkmenistan referred to a newly adopted Law on Administrative Procedures (2017) that establishes a legal framework for administrative decision-making including the review of administrative decisions. The Party reported that with this addition, national legislation ensures the right of certain member of the public to challenge the legality from a legal and procedural point of view of any decision, action, or inaction.

188. Non-judicial remedies are reported to be available to the public in cases of the violation of the right to information and to public participation in the subregion, yet their practical implementation and effectiveness remain weak.

189. Parties from South-Eastern Europe reported no significant legislative changes in the area of access to justice over the current reporting cycle. Nevertheless, some reporting Parties noted a tangible increase in the number of environmental cases filed by NGOs (e.g., Albania, Montenegro). Albania, however, recognizes a need for further attention towards proper implementation of the access to justice pillar and mentions the issue of costs as an obstacle for NGOs and the public in access to justice.

190. Wide use of administrative review procedures was reported in the subregion (e.g., Albania, Montenegro, Serbia). The possibility to have recourse to an ombudsman in cases involving the violation of environmental rights was also mentioned by Parties.

191. Some Parties mentioned recent case law elaborating on different aspects of access to justice in environmental cases, the issue of costs and standing (e.g., Croatia, Czechia, Finland and Latvia). Other Parties, however, noted that the Convention is not being applied by their courts (e.g., Kyrgyzstan).

Obstacles encountered in the implementation of article 9

192. Obstacles in implementing the access to justice provisions of the Convention reported by the Parties from the European Union region, Iceland Norway, Switzerland and United Kingdom subregion include an inability to challenge negative screening decisions (e.g., Austria), limitations in the scope and effectiveness of remedies in administrative review procedures (e.g., Belgium), legal professionals' low level of knowledge on environmental laws (e.g., Bosnia and Herzegovina, Bulgaria, North Macedonia and Slovakia), a lack of clear rules on standing, as well as a lack of consistent caselaw in matters of environmental protection and access to justice (e.g., Czechia), recent legislative shrinking of standing criteria for NGOs (e.g., Slovakia), proved subjective interest of the

applicant in a case being the only ground to bring an action before the courts (e.g., Lithuania), and length of court and administrative proceedings (e.g., Spain).

193. On the newly introduced standing criteria for NGOs in Austria, national NGOs noted that the amendments pose a severe burden on NGOs and lead to a setback of access to justice in relation to article 9, paragraphs 2 and 3 of the Convention.

194. Financial barriers for NGOs and other members of the public are reported by some Parties, namely high costs of experts and lawyers, high court fees and risk to face compensation of the opposite party costs (e.g., Albania, Estonia, France, Norway, Switzerland (on canton level)). NGOs from Poland mentioned financial barriers due to the obligation of the applicant to be represented by an attorney or a legal adviser when submitting the cassation appeal to the Supreme Administrative Court.

195. In Belgium and Norway, enforcing decisions of the authorities performing administrative reviews of decisions or actions related to the environment, such as the ombudsman or appeal commissions, is reported to be an issue.

196. Parties from the Eastern Europe, the Caucasus and Central Asia subregion referred to inadmissibility of environmental claims and issues of court competence (e.g., Armenia), and a lack of knowledge on the part of the public as to the possibilities to protect their environmental rights (e.g., Turkmenistan).

197. As for the South-Eastern Europe subregion, Albania, Bosnia and Herzegovina, and Serbia mentioned the issue of costs associated with judicial expertise and legal representation. Montenegro outlined the difficulties of enforcing criminal penalties in cases related to environmental crimes.

Ensuring access to a review procedure regarding requests for information (article 9, paragraph 1)

198. All Parties mentioned the legal norms specifying the procedures for redress for violations of the right to access to environmental information. Parties reported that at least two options are available to the public seeking information: administrative appeal and judicial review (usually by administrative courts). While some Parties consider judicial appeal of the denial to provide information to be long, expensive and sometimes an ineffective remedy for the applicant in the end (e.g., Czechia, Slovakia), others created a legal framework for affordable and swift resolution of access to environmental information cases in courts (e.g., Luxembourg). Administrative review in most cases is free of charge and considered to be a prompt remedy, yet its effectiveness and independency is questioned by some Parties.

199. Many Parties also mentioned other bodies specially established to deal with violations of the legislation concerning access to information by public authorities. For instance, a review of decisions concerning non-provision of information by public authorities could be directed to an ombudsman in Albania, Armenia, Bosnia and Herzegovina, Denmark, the European Union, Greece, Kazakhstan, Kyrgyzstan, Lithuania, Luxembourg, North Macedonia and Portugal. A possibility to appeal to other special agencies or bodies tasked with the review of cases involving the violation of the right to public or environmental information is available in Albania, Belgium, Croatia, Denmark, Estonia, France, Greece, Ireland, North Macedonia, Norway, Portugal, Serbia, Slovenia, Switzerland and the United Kingdom. In the United Kingdom for example, the Information Commissioner in England, Wales and Northern Ireland, established by law as an independent and impartial body, examines complaints from members of the public who feel that their request for information has not been dealt with properly by the public authority. In general, review by such bodies is also free of charge, prompt and effective. In Greece, the Regional and Municipal Mediator handling complaints against regional authorities, issuing recommendations, initiating disciplinary proceedings or referring cases to a public prosecutor is considered an even more efficient venue of redress than the ombudsman.

Challenging decisions, acts or omissions not complying with article 6 provisions (article 9, paragraph 2)

200. With respect to article 9, paragraph 2, all Parties reported that they have a basic framework to guarantee the right to appeal decisions, acts or omissions related to public participation procedures. They claim that these decisions can be reviewed on procedural grounds and on the merits. In general, Parties mentioned that decisions of public authorities could be appealed to administrative courts. A few Parties, however, also reported the possibility of appealing such decisions to a special body with supervisory powers over public authorities or special bodies to review the decisions of public authorities related to the environment. For example, Ireland allows members of the public to appeal certain decisions taken pursuant to the Planning and Development Act to an administrative board, including on the basis of any alleged breaches of national environmental law in respect of such decisions.

201. In the European Union, Iceland, Norway, Switzerland and United Kingdom subregion, the right to judicial review is vested in physical and legal persons whose rights and legitimate interests were violated or affected by the act, decision or omission of a public authority. At the same time, in many Parties special procedural norms and case law exist, allowing associations and NGOs that promote environmental protection to have standing before the court to challenge decisions, acts and omissions of public authorities during environmental impact assessment, environmental permitting and licensing and spatial planning decision-making, regardless of their role in such decision-making (e.g., Bulgaria, Czechia, Estonia, Finland, Germany, Hungary, Ireland, Lithuania, Luxembourg and Slovenia). A few Parties reported on further progress in establishing such rules and case law for the purpose of broadening access to justice and for allowing the review of certain decisions affecting the environment, nature management and planning decisions, etc. For example, Slovenia reported further furnishing on standing criteria for environmental NGOs in cases related to nature conservation. In Latvia, the public has the right to participate and the corresponding right to access to justice in cases related to environmental impact assessment procedure and pollution permits.

202. In disputes relating to emissions, consumption of resources, use of areas of unspoiled nature, Austria referred to mechanisms of environmental mediation: a voluntary and structured procedure in the framework of which all those affected by a project relevant for the environment are striving for a joint and durable solution. The public authority is entitled to interrupt the approval procedures upon the request of the project applicant in order to enable a mediation procedure. The results of the mediation are considered by authorities in the further stages of the approval procedure as well as in the decision.

203. Reporting Parties from Eastern Europe, the Caucasus and Central Asia subregion provided some information on legal rules on the standing of NGOs to initiate judicial review of decisions, acts and omissions of public authorities relating to the environment in cases involving the violation of their rights and legitimate interests, including several recent developments on the issue (e.g., Georgia). In Kazakhstan, environmental NGOs are allowed to go to court in public interests in cases relating to environmental protection and the use of natural resources.

204. Among Parties from the South-Eastern Europe subregion, Montenegro mentioned provisions of special laws on environmental impact assessments, GMOs, waste and pollution permits that foresee the right to administrative complaint against the respective decisions. An application to the administrative court could be lodged after the administrative review. Serbia specified in its national implementation report the judicial and non-judicial forums which might be approached by the public concerned for the review of decisions taken during environmental impact assessment procedure. Albania mentioned that administrative courts are available to interest groups in cases involving the violation of their legitimate public interest.

Challenging acts and omissions by private persons and public authorities that contravene environmental legislation (article 9, paragraph 3)

205. With regard to article 9, paragraph 3, many reports included detailed information on the rights of environmental NGOs to challenge acts and omissions by private persons and public authorities that contravene national environmental law.

206. The challenging of acts and omissions of public authorities could be pursued in at least two ways: through administrative appeal and through judicial review. Standing in court for environmental NGOs, as many Parties indicated, is granted in cases involving violations of rights or a legitimate interest of such organisations. A few Parties mentioned broad standing for environmental NGOs asking for judicial review of certain decisions, acts or omissions of public authorities or private entities contravening the environmental norms foreseen in the procedural legislation or established by court practice (e.g., Estonia, Germany, Hungary, Ireland, Kyrgyzstan, Serbia and Spain). The European Union cited a number of cases brought by environmental NGOs against the European Commission to the European Court of Justice, and, in light of the "European Green Deal", highlighted its intent to improve access to administrative and judicial review at the European Union level for citizens and NGOs who have concerns about the legality of decisions with effects on the environment.

207. France reported on allowing environmental class actions, granting any natural or legal person that has sustained losses resulting from damage to the environment caused by the failure of a legal entity or natural person to fulfil *ex lege* or contractual obligations to file such a suit. Associations may bring such class actions if they are officially recognized associations with the objective of defending interests of their members, or officially recognized environmental NGOs. A similar mechanism exists in Luxembourg.

208. In Slovenia, the so-called *actio popularis* concept allows individuals and NGOs to access courts to challenge the activities of private entities affecting the environment. Similarly, in Portugal, regardless of having a personal interest in the claim, any person association or foundation defending the interests in question may file lawsuits in administrative courts in defence of the environment.

209. Some Parties provided details on the possibility of judicial review of actions of private entities contravening environmental legislation, in particular when the issue of standing of NGOs was involved. Denmark, however, indicated that to a certain extent, private individuals can have an injunction imposed against the acts of other private parties that are in conflict with regulations of a public law nature. In Austria, private entities in violation of environmental laws may be sued by competitors and special interest groups, since producing goods in violation of such laws is regarded by courts to be unfair business practice. In Poland, environmental NGOs are entitled to bring civil actions demanding the restoration of the original state of affairs and preventive measures, in particular by installing installations or equipment to prevent the threat or infringement. They also may demand the cessation of the activity causing the threat or infringement if the damage or danger concerns the environment as a common good. Slovakia reported that it has not yet sufficiently reflected this issue in its legislation.

Providing effective and not prohibitively expensive remedies (article 9, paragraph 4)

210. Concerning the implementation of article 9, paragraph 4, on adequate and effective remedies including injunctive relief, many countries provided varied and incomplete explanations covering the issues of injunctive relief, court fees and costs of administrative appeals and judicial review, the procedures for the pronouncement of court decisions and access to them and options for appeal.

211. While the majority of the Parties from the European Union, Iceland, Norway, Switzerland and United Kingdom, and the South-Eastern European subregions reported on the availability of a wide range of effective remedies in environmental cases including injunctive relief in the form of abrogation of the challenged decision or an order to halt activity damaging the environment. Other Parties reported on the availability of only certain types of remedies such as compensation of damages (e.g., Belarus). In Austria, for example, anybody who is or fears to be endangered by pollution is entitled to file a lawsuit against the polluter and to seek an injunction, neither requiring participation in administrative proceedings nor ownership of private property in the proximity of the polluter. In Bulgaria, legislation expressly provides that the injured person can bring an action against the violator for an injunction to remove the effects of pollution.

212. Some Parties also reported on the possibility to apply for an interim injunctive relief pending consideration of the case (e.g., Austria, Bulgaria, Czechia, Norway, Slovakia, Switzerland and United Kingdom). Interim relief could be ordered by the court in situations where there is a risk of serious damage to the environment, or the implementation of the final decision would otherwise be impossible. Switzerland reported that an appeal before the Federal Administrative Court has suspensive effect on the decision of an administrative authority. In Luxembourg, it is possible to obtain an interim injunction before the ordinary civil courts for protective or restorative measures in order to prevent imminent damage or to halt clearly illicit activities.

213. Application of an injunction relief upon the applicant's submission of a security deposit for the investor's claims relating to the suspension of the decision's execution was mentioned by Poland. On the contrary, in Norway in cases relating to the environment the claimant cannot be ordered to provide security to cover his possible liability for damages if interim measures are granted. Furthermore, in this category of cases a claimant may only be ordered to pay damages if he knew or should have known that his claim was not valid when his application for interim measures was granted.

214. Administrative appeal was reported to be free of charge in the majority of Parties. Court costs for the review of decisions or actions of the public authorities in administrative courts, however, varied. Some legislative exemptions exist, and judges are vested with the discretion to waive or exempt an applicant from the court fees in cases where the applicant is facing material difficulties, taking into account the essence of the case, etc. For example, in Greece, there are no exemptions from procedural costs in environmental matters, but legal aid is available to low-income citizens. In Kyrgyzstan, the procedural rules allow judges to waive court fees for parties to the proceedings suing in public interest, however in practice judges do not always consider violations of environmental laws to be a matter of public interest. Bulgaria submitted that after recent reconsideration of court fees for cassation proceedings, the said fees remain low and ensure that appealing judicial procedures in environmental cases are not "prohibitively expensive".

215. A few Parties also mentioned the "loser pays" principle, which is foreseen in procedural norms. In contrast, in Greece, the law contains concrete provisions that limit the losing party's liability for costs. In

administrative courts in Poland, the principle that the party that lost incurs the costs of the party that won applies only when the winner is the party questioning the decision. Thus, if the person challenging the decision loses the case, no costs are incurred.

216. Bulgaria reported on the amendments introduced in the current reporting cycle related to the timeliness of court procedures related to large-scale projects with potential significant environmental impact prescribing for consideration of a case within six months with the purpose to prevent potential environmental damage in the event of unlawful actions or lack of actions by administrative authorities in breach of environmental law.

217. A few Parties described different forms of assistance mechanisms available to citizens, such as free legal aid systems. Spain reported on resolving legislative contradictions related to eligibility criteria for NGOs to apply for free legal aid in environmental cases. In Kazakhstan, legislation allows physical and legal persons to be exempt from court fees in environmental cases of a non-material character. Czechia mentioned that the practice of exempting NGOs from court fees has been discontinued. In Switzerland, the court can waive procedural and legal fees for applicants that cannot afford to pay them on a case-by-case basis. As reported, the United Kingdom intends to further remove any unnecessary financial and other barriers to access to justice or to consider how they could be removed in the next reporting period.

218. The majority of Parties from all subregions indicated that full texts of court decisions, including those in matters relating to the environment, are publicly accessible through the significantly increasing use of electronic tools. In Bosnia and Herzegovina access to the court decisions is provided upon request.

Ensuring information is provided to the public on access to administrative and judicial review procedures (article 9, paragraph 5)

219. With respect to the implementation of article 9, paragraph 5, many Parties reported on legal and practical measures taken to ensure that information is provided to the public on access to administrative and judicial review. This has been particularly facilitated by the use of electronic tools (e.g., Austria, Estonia).

220. Parties from all subregions mentioned legal norms obliging public authorities to include the appeal options in their administrative or judicial decisions and their further development. For example, Bulgaria reported an amendment (2018) to the law on assessment of the impacts on the environment of certain projects, which requires the environmental authority to ensure that practical information on the procedures for administrative and judicial review is communicated to the public through notices in the daily press and the internet. In Bosnia and Herzegovina and Serbia, legislation requires a public authority refusing access to information to notify the applicant of the available relief against such decision. If such notifications are absent, certain Parties provide the appellant with additional time for appeal (one year instead of one month in Germany and Latvia; four months instead of 30 days in Belgium).

Eastern Europe, the Caucasus and Central Asia

44. No significant legislative changes on access to justice have been reported by most of the Parties from the subregion in the current reporting cycle. Georgia reported that the newly adopted Environmental Assessment Code (2017) enshrined everyone's right to appeal decisions made by administrative bodies pursuant to that Code, if he/she believes that his/her participation in decision-making was not ensured, or national legislation was otherwise violated. Armenia reported the adoption of a new Judicial Code in 2018.

45. Some Parties submitted that judges routinely apply the Convention (e.g., Kazakhstan), while others reported that the case law on the Convention is still missing (e.g., Kyrgyzstan). Non-judicial remedies in cases of violation of the rights to information and to public participation are reported to be available to the public (e.g., Georgia, Kazakhstan, Kyrgyzstan, Turkmenistan).

46. Use of electronic tools in access to justice is increasing in the subregion. Kyrgyzstan reported on amendments to procedural rules allowing for the possibility to fill out an online form and sign with an electronic signature when submitting administrative and civil lawsuits. An electronic submission of administrative appeals is organised via dedicated web portals.

47. Kyrgyzstan reported the introduction of administrative and criminal liability for concealment or distortion of information about events, facts or phenomena that may endanger life or health of people, or the environment, committed by a public official.

48. Some Parties reported on systematic trainings for judges on issues related to the application of the Convention (e.g., Belarus, Kazakhstan). Yet inadequate training of judges and lawyers is still reported to be a significant obstacle in access to justice in the region (e.g., Armenia).

European Union, Iceland, Norway, Switzerland and United Kingdom

58. Similar to the previous reporting cycles, reports of the Parties on the implementation of the access to justice pillar in the subregion described an advanced framework of non-judicial and judicial bodies and mechanisms available to individuals and NGOs. Administrative review is reported to be available and accessible to the public, while some Parties continue to improve effectiveness of the operation of special bodies tasked with the review of access to information or decisions of public authorities. Judicial review and its accessibility and effectiveness remains the major challenge in the subregion, yet some progress is reported by the Parties. The main focus of Parties in their reports was on the standing of NGOs in environmental cases and the presence of financial barriers and tools to mitigate them. Progress on the issue of standing was mentioned by many Parties (e.g., Austria, Czechia, Estonia, Germany and Slovenia). Fees associated with litigation still might have a deterrent effect in a few countries as they are considered to be prohibitively expensive on occasion, although some progress was reported in this regard too (e.g., Spain, United Kingdom).

South-Eastern Europe

64. Unlike during the previous reporting period, when Parties introduced a series of legislative and institutional arrangements for significant improvement of the access to justice pillar in the subregion, the sixth reporting period was less eventful. Albania noted no legislative changes in comparison with the previous report, yet observed that more attention to proper implementation of the access to justice pillar is needed. At the same time, Albania reported a significant increase in the number of environmental cases filed by NGOs. Montenegro reported that its ombudsman considered a number of cases concerning the violation of the right to a healthy environment, primarily related to industrial production, noise and disposal of municipal waste. Albania and Serbia mentioned the issue of costs, which is regarded as an obstacle for NGOs and the public in access to justice. While Albania and North Macedonia noted lack of proper training of judges as an obstacle in access to justice, Montenegro reported a number of seminars for judiciary on European Union Environmental Law carried out over the reporting period. Bosnia and Herzegovina reported that the Aarhus Convention is not directly applied by the courts.

II. EXCERPTS FROM 2021 NATIONAL IMPLEMENTATION REPORTS

Albania

The costs are one of the concerns for environmental issues, not referring to filing a lawsuit, as it is worth 1-1.5 Euros, but for the expertise (mainly in the case of EIA and Environmental Permit, where a detailed expertise act is needed to reject it). The difficulty consists also for the legal representative in the process (if one will be needed).

The lack of knowledge at the proper quality level of the environmental legal framework by the trial panel continues to be a problem during various court hearings on environmental issues.

Armenia

- Failure to admit cases by the court for consideration

- Insufficient training of judges, lawyers and NGO representatives

Austria

On the first implementation report certain members of the general public have criticized the existing implementation of Article 9, paragraph 3, for being not comprehensive enough. Public consultation on the updates of the implementation report has shown similar results. In the past, NGOs as well as the Federal Chamber of Labour articulated critique on the slow pace of development on full implementation

of Art. 9 (3). In an environmental liability case, an NGO complained that they had to bear the costs for an officially appointed expert because they were applicant in the said procedure. An NGO raised that practical experience shows that further training, e.g. regarding the right to access to environmental information, would be well-needed.

On the newly introduced recognition criteria for environmental NGOs it has been criticized that this poses a severe burden on NGOs which leads to a setback of access to justice according to Article 9 (2) and (3). Other obstacles that been claimed by an NGO include the lack of a right to induce an EIA screening decision/procedure or nature impact assessments. According to certain provincial nature protection acts NGOs do not have a right to participate in screening procedures nor to challenge negative screening decisions.

Belgium

Federal authority:

a) Concerning the federal appeal Commission

Four remarks should be made :

1) Some public authorities still refuse to transmit to the Federal Appeals Commission information subject to an access to information request when an appeal is introduced against one of their decisions. This hinders the Commission in its work and forces it to adopt intermediary decisions. Consequently, it becomes impossible to take decisions within the deadline set out by the law of 5 August 2006.

2) Improved coherence between the regional and federal legislation on access to environmental information is required since, due to the complexity of the environmental competence division, it is not always clear for the public to which Commission it should appeal. This might cause members of the public to introduce an appeal first before the wrong body and might consequently cause them to not be able to submit their appeal to the correct body within the correct delay.

3) Some public authorities refuse to execute decisions of the Federal Appeals Commission even though those decisions should be executed immediately as administrative decisions.

4) Introducing an appeal before the Council of State is sometimes ineffective as the Council of State can only annul an administrative decision and is not allowed to rule on the substance. This means that in the case of an annulment, the administrative procedure of deciding whether access to certain information is granted should recommence. Accordingly, this can cause serious delays before certain information can be obtained.

b) Concerning 9.2 and 9.3

See answer to question XXVIII, c).

Bosnia and Herzegovina

In most cases, the relevant institutions have not issued the guidelines specified by Article 20 of FoIA. NGO sector regards that the present procedure is too complex and complicated, and find the costs of retaining lawyers to work on these cases too high to afford, which is evident in the replies submitted by the NGOs showing that very few of them use legal services (by lawyers not necessarily specialized for this area of expertise). Currently, there are no judges or prosecutors in BiH specialised in the environmental law. However, in the past two years considerable efforts have been invested in their training, with further activities planned for the future.

BHAS notes that statistics on environmental law has not yet been initiated as a statistical activity.

Also, one has to take into account that the BHAS Department of Environment, Energy and Regional Statistics started working in 2008 and that it is at a stage of intense development and efforts to fulfil requirements of international environmental statistics. In a very short period of time, this Department has established and developed key environmental statistics according to international and EU standards, and it is still intensely working towards the development of the existing statistics, as well as on the establishment of new environmental statistics. There is a problem of a lack of human resources at Entity-level statistical institutions (RSSI, FSI), who have major difficulties in keeping abreast with activities of BiH Agency for Statistics Department of Environment, Energy and Regional Statistics.

Bulgaria

Challenges:

1. Necessity to increase the capacity of legal professionals on issues related to environmental law.
2. Need of serious research and publications on environmental law.
3. Still insufficient case law - relatively few judicial decisions and rulings on issues related to the environment.

Czechia

The implementation of Article 9 of the Convention is hindered by unclear conditions for standing to bring an action in them case law, as well as by the unclear continuity of decisions in matters of environmental protection and access to justice. While the courts infer the possibility that an action may also be brought by a person who was not a participant but whose rights the decision infringed, procedural rules do not correspond to this (e.g. the need to contest a decision given at first instance if no one appeals against it, the absence of clearly defined time limits for bringing an action in such a case, etc.). In addition, the burden of resolving objections is shifted to the courts in this way.

Estonia

NGOs have pointed out the following problems in the implementation of article 9:

- A possible ruling of the court regarding payment of the legal costs of the other party or a third party involved in the proceeding may prove to be an obstacle to filing the claim;
- It is suggested that establishment of specific provisions in the proceedings of environmental cases regarding coverage of legal costs should be considered;
- Complainants need legal counselling, because in complicated environmental matters, it is difficult without legal counselling to have recourse to court and participate equally in court proceedings with other parties to proceeding, but the relevant mechanisms for help have not been determined.

In 2020, one NGO stated that the challenge procedure was not effective because the reviewer of the challenge was not sufficiently impartial, as it was difficult for the administrative body to distance itself from the original decision. One NGO pointed out the deadlines for appeal procedures as problematic and found that the Environmental Board interprets the law in this respect to the detriment of the appellant. Dispute setters who have provided input to the administrative area of the Ministry of the Environment do not agree with these statements; the challenge procedure is still considered to be lawful, expedient, and effective.

European Union

Pending compliance cases against the EU in the ambit of Article 9 are published on the UNECE website.

As regards the implementation of Article 9(2) and (4) from the perspective of transposition and implementation of EU law, the Commission examined Member States' systems, in particular on standing, costs and scope of review. As a result, the Commission brought infringement actions, based on Article 258 TFEU, against some Member States. Assessment of implementation of Article 9(3) by Member States is ongoing.

Finland

The Supreme Administrative Court ruled on the right of environmental NGOs to lodge an appeal in case KHO:2019:97. In the case, the essential ruling was whether the foundation promoting environmental protection had the right to lodge an appeal against the Regional State Administrative Agency's decision, by which a permit had been issued under the Water Act for placing two natural gas pipelines on the seabed and for their use in Finland's exclusive economic zone. According to the wording of chapter 15, section 2, subsection 2 of the Water Act and preliminary work, the area of operation of the organisation referred to in the provision should be assessed according to its rules. According to the provision, the environmental impacts in question in the matter under appeal must manifest themselves in the said area of operation of the organisation. According to the rules of the foundation having lodged the appeal against the permit decision, its area of operation was Poland and other countries. The Administrative Court had not considered the appeal as it found that the area of operation of the foundation according to its rules only considered the area of Poland. According to the Supreme Administrative Court, there was no reason to interpret the wording of the provision of the Water Act in a narrow sense, taking into consideration aspects including the broad right of appeal that was the objective of the Aarhus Convention in the ways referred to in article 9, paragraph 2 of the Convention. The decision of the Administrative Court, by which the appeal of the foundation was dismissed, was annulled. The Supreme Administrative Court immediately accepted the appeal lodged with the Administrative Court for consideration and then rejected it.

France

1. According to some associations, access to justice remains costly for some people who do not benefit from legal aid, particularly when appealing before the Council of State.

2. The associations consulted regret the numerous closures of misdemenour crime cases linked to the environment by the public prosecutor's offices, due to a lack of human resources.

3. Finally, some associations consider that the possibilities of appeal in terms of town planning and the authorization of commercial developments have been reduced by recent reforms.

Georgia

Several cases of failure to meet deadlines for consideration of claims filed to the court with regard to violation of access to environmental information right were registered.

Germany

The amendment to German law as a result of Decision V/9h of the 5th Meeting of the Parties to the Aarhus Convention, and prompted by the ECJ ruling of 2015 set out above, has led to substantial changes in the German system of judicial remedy. The debates noted in the 2017 implementation report are ongoing.

As reported in 2017, the amendment to German law as a result of Decision V/9h of the 5th Meeting of the Parties to the Aarhus Convention, set out above, leads to substantial changes in the German system of judicial remedy. The amendment has thus generated some debate in Germany, both in expert circles and among many stakeholders. During the hearing on the amendment to the UmwRG, many industry federations voiced their fear that the significant expansion of the scope of the Act and the abolishment of provisions precluding challenges in court could cause procedural delays and would thus impair planning certainty and legal certainty for infrastructure projects. Furthermore, the industry federations fear that the abolishment of provisions precluding challenges in court may lead to a reduction in the participation of environmental associations in administrative procedures and that this may cause inquiries into facts being shifted increasingly to court proceedings. The environmental associations do not share these fears; on the contrary, they have demanded even more far-reaching options to take legal action.

Iceland

Environmental NGOs have been of the opinion that the implementation of the Aarhus Convention is not functioning well enough as they are not granted standing in all environmental cases. The NGOs are of the opinion that they should, as a main rule, be given standing in all environmental cases and that the current legislation defines too narrowly which cases NGOs can have standing in.

As explained above the third pillar of the Aarhus Convention was legally implemented in Iceland by Act No. 130/2011 establishing the Environmental and Natural Resources Board of Appeal. The Act states that environmental NGOs shall be considered to always have legal interests, that is the right to stand, in cases regarding

(a) The National Planning Authority's decisions on whether projects shall be subject to an environmental impact assessment, such as if the applicant considers that certain acts or omissions are in breach of the puclics right to participate.

(b) Decisions on permits for projects that are subject to environmental impact assessment, such as if the applicant considers that certain acts or omissions are in breach of the puclic´s right to participate.

(c) Decisions on permits according to Act No. 18/1996 on genetically modified organisms.

It has been the opinion of the Ministry for the Environment and Natural Resources that this satisfies the requirements of Article 9 of the Aarhus Convention. This understanding has been confirmed by The Supreme Court of Iceland in rulings in cases No. 119/2014 and 677/2013 where it was stated that the Aarhus Convention is correctly implemented in Iceland since the Government has chosen to implement an administrative procedure to ensure the public access to justice in environmental matters. The Ministry points in particular to the fact that Article 9 of the Convention must be read in conformity with Article 6, which refers to the activities that are covered by Annex I (which are the activities mentioned in Directive 2011/92/EU and in Act No. 106/2000).

The aforementioned Action Plan from 2018 specifies certain actions (Action 11 and 12) to further ensure that the Icelandic legislation is in full consistency with Article 9, paragraph 2-4 of the Aarhus Convention. According to actions 11 and 12 detailed analysis on the Icelandic legislation is to be performed in connection with the implementation of Article 9, paragraph 2-4 of the Convention. Currently the Ministry has been following research work in the University of Iceland on this matter, which is expected to be completed this year. Subsequently, a decision will be made on further actions on this matter.

Comments were received regarding a complaint before the Compliance Committee, cf. Communication ACCC/C/2019/168, concerning alleged breach of the Aarhus Convention, and Icelandic legislation for intensive fish farming, Article 21(2)c of Act No 71/2008 on Fish Farming. In connection with that case,

Case No 82787 before the EFTA surveillance Authority (ESA) was also mentioned, regarding complaint against Iceland concerning the application of Directive 2011/92/EC. Both cases are still pending.

In the case before the Compliance Committee the communicant alleged i.e. that Article 21(2)c of the Fish Farming Act violates Article 9 of the Aarhus Convention since operation licenses granted under that article cannot be brought before a review procedure. The Icelandic Government explained i.a. to the Compliance Committee that the purpose of licenses issued under Article 21(2)c is to prevent unnecessary loss of value and is only valid for a limited period of time. The temporary operation license was an interim measure, with limited durability, subject to strict conditions to either rectify the procedural error or bring the matter before a domestic court and scaled down operation.

In its observations to the Compliance Committee the Icelandic Government further stated its full commitment to meeting the obligations under the Aarhus Convention and welcomed the review and findings of the Compliance Committee in the matter and declared itself ready to propose adjustments in the legislation as needed.

According to a preliminary assessment of the Internal Market Affairs Directorate at ESA, dated 14 April 2020 (Case No 82787), Iceland has failed to fulfil its obligations under Article 2, 4 to 9 and article 11 of the EIA Directive 2011/92/EC on the assessment of the effects of certain public and private projects on the environment.

In a response letter to ESA this year the Icelandic Government provided an explanation of the Icelandic legislation and informed ESA of the Governments intentions to propose amendments to national law to minimize the risk of any discrepancies between national law and the Directive 2011/92/EC. Also that the Government had introduced a bill to Parliament where the first adjustment to national law was proposed taking into account the views of the Directorate, cf. the aforementioned Act No 111/2021.The Government informed ESA of the ongoing preparation to propose further amendments to the legislation during the next session of the Parliament to address the views of the Directorate.

Further discussion of those cases can be found above in Chapter XVI of the report.

Comments were further received concerning Action 14 of the Governments Action Plan from 2018. According to Action 14 analysis is to be performed on the authorisation of the Appellate Committee for Environment and Natural Resources to seek advisory opinion from the EFTA Court. A question was also raised on whether it wouldn´t be better if NGO´s had such an authority instead of the Committee.

Action 14 of the Action Plan is under way in the Prime Minister´s office. The Ministry is currently working on a draft bill to amend the Administrative Procedure Act No. 37/1993. According to the draft bill which was published in samradsgatt.is earlier this year for public consultation (https://samradsgatt.island.is/oll-mal/$Cases/Details/?id=2876) independent administrative committees are authorised to decide whether to seek an advisory opinion from the EFTA Court.

Ireland

Issues relating to costs, complexity, duration and obscure and arcane legal rules for running cases plus lack of education for the public on accessing courts were raised as an obstacle during the public consultation process. The Courts Service and the judiciary have been and continue to be proactive in seeking the modernising and improvement of the courts system, court practices procedures and court forms. The adoption of digital technologies is an integral part of the Courts Service modernisation plan which is set out in its Long Term Strategic Plan to 2030: Supporting Access to Justice in a modern, digital Ireland. The Courts Service is seeking to deliver a single civil case management system to provide a common platform for the civil processes of all jurisdictions to incorporate the facility to make applications and payments online, collect orders and file certain documents electronically. Online

services are available in a number of areas and this was accelerated in 2020 due to the measures introduced in response to the Covid 19 restrictions. In excess of 2,250 virtual court sessions have been delivered since March 2020. Remote courts continue to operate across all jurisdictions and it is envisaged that this will become part of the way courts services are delivered in the future.

One of the functions of the Courts Service under the Courts Service Act 1998 is to provide information on the courts system to the public. It does this through the courts.ie website, various publications and tours of the courts for members of the public amongst other activities. The courts.ie website was revised and relaunched in 2020.

The Courts Service lists outstanding court judgments pursuant to the Courts and Court Officers Act 2002 (as amended). While specific statistics are not kept for environmental cases, the average length of judicial review cases in 2019 was 392 days from issue to disposal in the High Court. However, in circumstances where an appeal is lodged or a case awaits the outcome of an appeal on a related issue, the time taken for disposal of a case can be longer. In 2019 civil cases in the Court of Appeal took an average of 20 months from the date they first appeared in the court list to the date of hearing and 9 months for fast-tracked short appeals.

A number of submissions raised concerns at challenges posed by Ireland's special cost rules (SCR) leading to high costs for public authorities, developers and delays in developments.

Submissions also referred to difficulties with the requirement to submit forestry appeals by post and lack of electronic systems. The Forestry Appeal Committee is working with their IT team to develop an online facility to receive appeals and the associated fee electronically.

Italy

Access to justice in Italy is guaranteed according to the criteria established by legislation and case law. With regard to acts/omissions of individuals that violate environmental laws, the inspection mechanism is quite expansive, providing for the involvement of several public authorities in the process

Kazakhstan

There are no obstacles to the implementation of any of the paragraphs of Article 9 of the AC.

It should be noted that according to paragraph 1 of Article 9 of the AC, the review procedure must be carried out in a court or other “independent and impartial body established in accordance with the law”. The concept of an “independent and impartial body” is well developed under the Convention for the Protection of Human Rights and Fundamental Freedoms. “Independent and impartial” bodies do not have to be courts, but they must fulfill a quasi-judicial function, have due process guarantees, be immune to the influence of any branch of government, and not be associated with any private actor.

In Kazakhstan, disputes related to environmental protection are considered mainly in courts. However, this does not exclude out-of-court settlement of the dispute, which is provided for in Article 323 of the EC. For example, according to the rules established by Article 126 of this Code, in order to apply to the court with a complaint about decisions, actions (inaction) of an official authorized to exercise environmental control, a preliminary appeal of the interested person to this official or to a higher state body is required.

The normative resolution of the Supreme Court "On some issues of the application by courts of environmental legislation in civil cases" dated November 25, 2016 No. 8 "On some issues of the application of environmental legislation of the Republic of Kazakhstan in civil cases" explains the practice of application of environmental legislation by the courts. These norms relate to the

implementation and protection of the rights of citizens and public organizations to receive environmental information, access to justice in accordance with the AC, restriction and / or suspension, termination of economic and other activities that damage the environment and public health.

Kyrgyzstan

There is a delay in processing the cases related to violation of environmental legislation. The Code of Civil Procedure provides for the possibility of an exemption from the state fees to persons acting in defense of public interests, however, the court does not always adequately consider the issue of recognizing a violation of environmental legislation as of public interest.

According to the new version of the Code of Civil Procedure, the district court (district court in the city, city court) has jurisdiction over all civil cases, except for cases within the jurisdiction of the administrative court.

Law "On Amendments to Certain Legislative Acts of the Kyrgyz Republic" dated 11 April 2020 No. 39 inter-district courts were transformed into administrative ones.

According to the amendments to the Code of Civil Procedure, in connection with the transfer of economic cases to a civil court and the renaming of the civil chamber into the chamber for civil and economic cases, certain problems with jurisdiction were resolved. There is no practice of applying the norms of the Aarhus Convention by the courts.

The abolition of the Constitutional Court as a separate institution of the judiciary and the creation of a constitutional chamber under the Supreme Court of the Kyrgyz Republic calls into question the independence and objectivity of this body in making decisions, since in a number of cases there may be a conflict of interest when one or another normative legal act is declared unconstitutional, on the basis of which a decision has already been made by the Supreme Court of the Kyrgyz Republic.

Latvia

245. One of the obstacles to the timely hearing of cases is that of overloaded courts. If the process is relatively fast in the authority (depending on the nature of case, two weeks to one month), the court process can be considerably longer. Various projects are being developed and implemented to increase capacity of the courts. For example, on 4 July 2013 the law “Amendments to the Law “On Judicial Power”” was promulgated, providing for management of deadlines for case adjudications. This responsibility rests on the Chief Judge of the court. Amendments to the Law also provide for broader responsibility of the Chief Judges of district (city) courts and regional courts by requiring, *inter alia*, to ensure transparency of the court work, to check the observance of procedural terms in cases handled by judges, to issue orders to judges relating to organization of their work. The Chief Judge may instruct a judge to set an appropriate term for making a procedural activity, considering circumstances of the case, as well as may redistribute cases among judges in accordance with the division of cases plan.

246. Sometimes a private person and an institution have different views on whether a particular decision can be challenged. Namely, whether the relevant decision is only an interim decision before adoption of the final decision and does not create direct legal consequences for the addressee, or it is an administrative act that can be challenged.

Lithuania

214. The NGO SOS Šilutės Medžiai considers that the competent authorities unreasonably refuse to protect the public interest in the field of the environment. NGOs has encountered the cases where their complaints have been treated narrowly, regardless of the provisions of the Aarhus Convention.

215. The NGO SOS Šilutės Medžiai considers that their right to apply to the courts on environmental matters was restricted when the court asked for clarification of the complaint and to indicate which subjective right of the association was infringed in a particular case, i.e. asked to substantiate that SOS Šilutės Medžiai is a suitable applicant in the case.

216. Representatives of NGOs indicate that they believe that case law that is unfavourable to the society concerned is being formed. The state that the Lithuanian courts do not recognise the right of the public concerned to bring an action before the courts unless the subjective interest of the applicants is proved.

Malta

During the initial consultation phase, NGOs reported that legal aid in Malta is only available to natural persons.

Montenegro

In the implementation of efficient penal policy in the field of environment, Montenegro shares problems faced by countries in the region, and similar problems occur, in a lower extent, in a lot less developed countries,

The reasons for having only a few legally binding decisions in the field of environment are mostly due to the fact that certain norms pertaining to these criminal acts have not been precisely defined, and therefore the following norms are interpreted differently:

-“pollution to a large extent and in a broad area”;

-“hazard for the life and health of people”;

-“extensive destruction of plant and animal life”.

In this sense, the provisions in this area were harmonized with the European Union - 2008/99/EC Directive on the protection of the environment through criminal law by Amendments to the Criminal Code of 2013. The most important novelties include the introduction of new offenses (environmental pollution by waste and ozone depletion - Article 303a and 303b), and for the purpose of this study it is particularly important that the legal standard "on a large scale or a more extensive, i.e. wider area" is maintained only for two offenses (Article 307 and 308), while the corresponding norms are now clearer and more precise (using the legal standard, "substantial damage", and a number of standards were significantly amended). Also, qualified forms of the most serious crimes were threatened by long-term legal penalties. An illustrative example is the new Article 303 which now in paragraph 1 regulates in a different manner the basic form of criminal act of environmental pollution specifying that any person shall be punished with imprisonment up to three years, "who violates the regulations on the protection, preservation and enhancement of the environment by dropping, placing or disposing of certain amount of substances or ionizing radiation in air, water or land which endangers the life, body or health of human beings, or causes the risk of occurrence of significant damage in relation to the quality of air, water or soil, or animal or plant life." The qualified forms of the offense are also prescribed, if serious bodily injury or serious damage is caused to the health of one or more persons, and if the death of one or more persons is caused, which is threatened with imprisonment for a term of two to ten, or three to twelve years.

It is expected that the standardization of offenses under Chapter XXV in a way that is not abstract, and the precise specification of the nature of criminal offenses and significantly stricter sanctions will contribute to the growing number of criminal charges, as well as a greater number of convictions for these crimes.

The hope remains that, in the long run, these amendments to the criminal legislation will be in addition reflected on the reduction of environmental crime using the principle of prevention.

Having this in mind, a several recommendations may be given, which would contribute to higher efficiency in minor criminal and criminal proceedings for environmental protection in relation to:

- closer cooperation between competent inspection authorities, State Prosecution, Police Directorate and the court, based on a signed Memorandum of Cooperation;
- organizing of seminars and round tables to provide training to both inspection authorities and prosecutors and judiciary in the field of environment and for their better awareness of material regulations in this field, with inclusion of experts from the region;
- preventive actions of inspection authorities and raising awareness of citizens about importance of environmental protection in order to prevent criminal offences and minor criminal offences;
- developing manuals on legal protection of the environment, which would contain comparative legal and court practice as well;
- establishing databases on criminal offences in the field of environmental protection.

North Macedonia

Insufficient capacities of the competent authorities to implement the right of access to justice, especially of the authorities of the executive and judicial power. Special training is required, especially for the third pillar so that its proper implementation can be performed.

Norway

8 of the organisations that have submitted comments in the public hearing of the draft report raise doubt about whether Article 9 has been sufficiently implemented (Advokatforeningen, Foreningen Grunnloven § 112, International Commission of Jurists Norge, Norges institusjon for menneskerettigheter, Norsk Friluftsliv, Norsk Presseforbund, Norsk Redaktørforening, Norsk Journalistlag NOAH – for dyrs rettigheter and Sabima). Seven of them refer to legal costs and the risk of being sentenced to cover the legal costs of the opponent as the main reason, and some of them call for a more accurate description of the real legal costs, including attorney's fees and the total amount of court fees in cases lasting more than one day, which often is the case for environmental cases. Several of them refer to the fact that few environmental cases are brought to court and that the legal costs may be a contributing factor. One of them suggests that the authorities should consider the relationship between the rules applicable to legal costs in cases concerning climate and the environment and the obligations of the Aarhus Convention. Four of them opines that the establishment of an independent appeals board or a tribunal for cases concerning the environment should be considered. The UN Special Rapporteur on human rights and the environment recommended to consider this in the report from his country visit to Norway in 2019. Two of them refer to the processing time for court cases as a challenge, and one of them calls for statistics concerning the processing time and number of cases concerning the environment in the courts of first instance, the appelate courts and the Supreme Court. Three of them raise doubts about whether the Parliamentary Ombudsman satisfy the requirements of Article 9. One of them calls for similar statistics for cases brought to the Parliamentary Ombudsman and for information about whether the opinion of the Ombudsman are being followed in all cases concerning the environment. In three of the comments doubt is being raised as to whether the system of administrative complaints ensures that the administrative body handling an appeal is sufficiently independent from the administrative body that has taken the decision subject to the appeal.

One of them claims that the Ministry of Climate and Environment regularly declines requests for postponement of decisions to licensed hunting of wolves, and that this makes it impossible to request an interim court order, which in their opinion breaches the obligations in Article 9.

One of the comments points to the risk of having to pay legal costs if a decision of the Appeals Board for environmental cases, which handles complaints against rejection of requests for information from an enterprise, are challenged in court. It has previously been suggested that the Regulations on the Appeals Board for environmental information § 10 should be changed to avoid that legal expenses hampers justice. It is proposed to make the Appeals Board for environmental information the legal counterpart in cases where an undertaking contests a decision finding for the claimant's right of access to information.

The level of legal costs in Norwegian courts is high and has increased quite significantly in the last years. This is a development that the Ministry of Justice and Public Security is following, and that was considered in the report from the commission appointed by the Government to consider the status and development of the courts in Norway (Domstolskommisjonen; NOU 2020:11 Den tredje statsmakt – Domstolene i endring). The commission points out that the high level of legal costs is particularly worrisome with regard to access to court. It recommends that a commission is being appointed to consider measures to reduce the increase of legal costs (see point 24.4 of the report). It has not yet been decided how to address the findings and recommendations in the report. Should a commission be appointed, it is presumed that the impact of legal costs on cases concerning the environment and the relationship to the Aarhus Convention will also be considered. There are nevertheless not sufficient basis for concluding that the level of costs in cases concerning the environment is prohibitively expensive and hinders the implementation of Article 9. Even though the main rule in the first paragraph of Section 20-2 of the Act relating to mediation and procedure in civil disputes (the Dispute Act) is that the loosing party pays the legal costs of the succesful party, the court can make exeptions in whole or in part if it finds that compelling grounds justify exemption. This follows from the third paragraph of Section 20-2, which also contains a non-exhaustive lists factors that the court shall take into account in this regard. Environmental cases may concern fundamental questions of general interest. In some cases it may also be in the interest of the government to have it decided by a court. These are distinctive features of environmental cases that are relevant to the consideration of whether there are compelling grounds for exempting a loosing party from the obligation to pay the legal costs of the succesful party. The importance of courts controlling the administration is also a relevant factor in environmental cases. The judgement of Borgarting Court of Appeals in the so-called climate case is one example of the application of the exception in the third paragraph of Section 20-2 of the Dispute Act (LB-2018-60499). The provision provides the courts with a flexible and appropriate legal framework for reasonable decisions on legal costs in environmental cases. It follows from Section 1-2 of the Dispute Act that Article 9 of the Aarhus Convention would prevail if a court – contrary to expectations – should reach the conclusion that the provisions of the Dispute Act are not in conformity with the obligations under the Convention.

Proposals to consider the establishment of an Environment Appeals board or tribunal have been considered by Stortinget (the Parliament) in 2016 and 2019. Stortinget supported the Government's opinion, as expressed by the Minister of Climate and Environment in his letter to Stortinget 13 May 2019, that the system of administrative appeal within the authorities and the access for individuals and organisations to regular courts is sufficient also in cases concerning climate and environment.

The parliament received a report from the Ombudsman recently concerning a case where a ministry did not follow its opinion (Dokument 4:2 (2015-2016) – not available in).

Poland

200. NGOs point out that in Polish law there is a lack of interim measures in proceedings requiring public participation. This causes, in their opinion, that access to justice is often illusory in practice. This is due to the fact that if a non-governmental organisation is not allowed to participate in proceedings, even if it appeals against such a refusal, the proceedings in question will continue and may end with a final decision. Even if an NGO will obtain a favourable judgment from the administrative court on its participation in the proceedings, and then will challenge the decision in the original proceedings and

the administrative court will agree with it, the administrative court will be able to issue only a judgment stating that the decision has been issued in violation of the law. At the time of the report's preparation, work was underway to amend the Act on Provision of Information about the Environment to introduce amendments to the use of interim measures.

201. According to NGOs, access to justice is sometimes obstructed by the costs of court-administrative proceedings. In their opinion, the costs of appeal proceedings in cases related to the building law or spatial development (PLN 500) are too high. They are also constrained by the obligation to have a lawyer when filing a cassation complaint to the Supreme Administrative Court. They claim that many non-governmental organisations are not able to afford the fees for an advocate or a legal advisor, and only a few have appropriate specialists in their staff. At the same time, the courts rarely grant them financial assistance, although this legal possibility exists.

202. Moreover, the NGOs argue that neither the provisions of the Act on Provision of Information about the Environment nor the provisions of the Regulation of the Minister of the Environment on fees, issued on the basis of Article 28 of the Act on Provision of Information about the Environment, regulate the mechanism of appealing against improperly calculated fee for providing access to environmental information. Pursuant to Article 9(1) of the Convention and Article 6 of Directive 2003/4, an appeal procedure must be available whenever an application is improperly considered or otherwise treated in a manner inconsistent with the regulations (and thus also by improperly charging a fee).

203. NGOs indicate that in their opinion the number of parties in some administrative proceedings is too limited. This applies in particular to the so-called emission permits, including integrated permits. Article 185(1) of the EPL states that parties are not e.g., neighbours of the installation in a situation where the so-called limited use area has not been established. According to non-governmental organisations, such a provision does not meet the requirement of Article 9(2) of the Convention.

204. NGOs claim that, in their opinion, the circle of parties defined in Article 74(3a) of the Act on Provision of Information about the Environment is too limited. This article concerns proceedings aimed at issuing an environmental decision. According to its provisions, a party to the proceedings is the entity who has the property right to the real estate located in the area which will be affected by the project, and by this area are understood the plots located within the range of such a significant impact of the project, that may introduce limitations to the current development of the real estate. According to NGOs, this definition of the circle of parties is narrower than that provided for in the Aarhus Convention and in Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

205. Another problem reported by NGOs with regard to the implementation of Article 9(2) of the Convention is the lack of access to court in the case of follow-up decisions for projects for which an environmental impact assessment has been carried out. This mainly concerns the following follow-up decisions:

- building permit (for projects for which an environmental decision had been previously issued). The circle of parties in such proceedings under Article 28(2) of the Building Law is extremely limited, while the participation of ecological organisations is excluded at all, as Article 28(3) of the Building Law disclaims the possibility of applying Article 31 of the CAP,
- water permits issued for projects for which an environmental decision had been previously issued and an environmental impact assessment had been carried out. The participation of ecological organisations is excluded under Article 402 of the Water Law, which disclaims the application of Article 31 of the CAP,
- geological and mining licence (issued for projects for which an environmental decision had been previously issued), during the issuance of which the participation of environmental organisations is excluded (Article 33 of the Geological and Mining Law disclaims the application of Article 31 of the CAP).

206. In the opinion of NGOs, the above-mentioned regulations violate Article 9(2) of the Convention, as the entitled members of the public concerned do not have the right to appeal against the final decision approving the execution of a project in relation to which a public participation procedure was required. It should be assumed that the non-governmental organisations believe that the above-mentioned decisions may set out environmental conditions for carrying out the investment which are inconsistent with the environmental decision preceding it.

207. The social organisations also point out that, in their view, social control of the Air Protection Programmes is impossible. Despite the importance of these plans for individual areas as well as for investments and health of people in the whole country, the necessity to prove the legal interest results in the fact that the only entities that can complain about the Air Protection Programmes, according to the jurisprudence of the administrative courts, are the entrepreneurs who produce pollution. As a result, the courts only accept complaints concerning the "restrictiveness" of the plans from the polluter's point of view - there are no legal means, in the NGOs' opinion, to complain about air plans that do not protect citizens' health sufficiently and do not comply with environmental goals and obligations binding on Poland.
208. On the basis of Article 9(2) in conjunction with Article 9(4) of the Convention, NGOs point to problems with the implementation of the Convention's provisions and the lack of possibility to appeal against the decision on the absence of the need to carry out an environmental impact assessment.
209. NGOs argue that there should be an appeal route in case the competent authority decides not to carry out an environmental impact assessment.
210. According to NGOs, the problem in access to justice in the case of the development of environmentally relevant plans and programmes is the need to demonstrate a violation of a legal interest. NGOs claim that they are unable to demonstrate this, which is also due to the narrow interpretation of legal interest applied by administrative courts. They also argue that the understanding of the concept of violation of a legal interest is too narrow in relation to non-governmental organisations, as it is reduced to the protection of ownership or other property right to real estate that will be affected by the implementation of an environmental plan or programme.
211. The NGOs point out that with regard to the implementation of Article 9(3) of the Convention, it is important to note the limited access to review procedures for certain individual decisions (other than those covered by Article 9(2) of the Convention). Among the decisions on which access to justice has been narrowed, NGOs include water permits, concerning projects other than those for which an environmental impact assessment has been carried out. Article 402 of the Water Law excludes the possibility of participation of social organisations, by eliminating the application of Article 31 of the CAP. Thus, no organisation, including ecological organisations, has the right to join the pending proceedings on the water permit as a party, including appeal against already issued permit.
212. NGOs claim that they have problems in obtaining information on the initiation and conduct of certain types of proceedings. For some environmental decisions, authorities are not obliged to make public information on the initiation of proceedings. Such decisions include, in particular, water-law assessments as referred to in the Water Law, permits for the removal of trees issued under the Nature Conservation Act or decisions revoking prohibitions on the protection of plant, animal and fungi species issued under the Nature Conservation Act. NGOs postulate, in this respect, the introduction of a legal obligation to notify the public of the commencement of proceedings on decisions concerning the environment, even if the issuance of this decision does not require public participation.

Portugal

Nothing to report on this item. Portugal identifies with the objectives of the Aarhus Convention. The Portuguese Constitution, which has enshrined this right since 1976, pioneered the treatment of the environment as a fundamental right, and even inspired other framework laws in European and Portuguese-speaking countries. Therefore, Portugal has sought to implement legislation that supplements and fosters access to justice in environmental matters and practices that make this effective.

Republic of Moldova

Insufficient staff with legal background in environmental field;

Reorganization of courts and other effective efforts will have to strengthen and not endanger the access to justice services for the local population, especially in environmental matters.

Reduction of mobility among the rural population, in tandem with longer travel distances and poor transport conditions, may raise concerns about the access to services in the justice sector. This is particularly relevant in remote and rural areas, where 57 percent of the citizens of the Republic of Moldova live – and which represents 84 percent of the poor of the Republic of Moldova.

Romania

Insufficient legally trained personnel in the environmental authorities.

Serbia

- There are differences in the understanding of the essence of judicial procedures between the general public and members of the legal profession, which results in complaints about the functioning of courts. Moreover, there is a false perception that the Ministry of Justice is responsible for the state of affairs in all the bodies that make up the legal system. Many people do not understand fully the functioning of the judiciary in a democratic society. This leads to a situation where citizens do not use courts as much as they should to achieve legal protection in the cases of violation of fundamental rights and freedoms.

-The Government of the Republic of Serbia adopted the National Judicial Reform Strategy for the period 2020-2025 on 10 July 2020. The strategy envisages, inter alia, further raising the level of efficiency of the judicial system through the analysis and adjustment of the judicial network, reduction of the total number of unresolved cases with the emphasis on old cases, establishment of mechanisms for the harmonisation and publication of judicial and public prosecutor's practice, improvement of the free legal aid system by monitoring the application of the Law on Free Legal Aid by lawyers, improvement of the management and administration system in the judicial administration, improvement of alternative dispute resolution methods and development of IT systems in the judiciary with the aim of achieving modern e-Justice. The strategy also envisages raising the level of public trust in the work of the judiciary through the availability of judicial institutions and continuous transparency of their work. This means better operation of judicial institutions' websites, consistent implementation of communication strategies of judicial institutions and establishment of the practice of regular press conferences where the work of courts and public prosecutors' offices is presented, as well as the work of the High Court Council, the State Prosecutorial Council and the Judicial Academy.

- Associations in RS believe there is a clear lack of trained staff in RS in the field of access to justice in environmental issues.

- Associations in RS states that the costs of the proceedings for access to justice in environmental matters are high and a deterrent to organisations and individuals in trying to protect their rights.

- Associations Young Researchers of Serbia is with support of the previous ministry in charge of the environment held the Conference "Aarhus Mirror", in Belgrade 2016. The Conference was attended by the representatives of the competent state and provincial authorities, local self-governments, CSOs, commercial sector, academic community. The objective of the national conference was to give incentive to a constructuve dialogue on all three pillars of the Aarhus Convention in order to identify the obstacles in the implementation of the Aarhus Convention and to propose measures for overcoming those obstacles. Some of the outcomes of the Conference are as follows:

-EU accession implies harmonisation of numerous domestic laws with the EU acquis. This is frequently used as an excuse for high number of regulations whereof adoption is subject to the so colled urgent procedure. This means lack of public participation in the preparation process, which, in part, affects the quality of the regulation, difficulties in thereof proper implementation, frequent amendments etc;

-Initiate, in cooperation with the Ministry of Justice, the collaboration of organisations of judges, prosecutors and civil society organisations, in order to ensure attendance, at meetings covering the issue

of Aarhus Convention, of the representatives of court and prosecutor's office, which would, through experience sharing, significantly improve the work of the civil sector in the field of access to justice in environmental matters.

- In the judiciary field, initiate forming, within some future judiciary reorganisation, of a special judiciary department to deal with environmental protection.

-Amend penal policy and make it stricter in respect of infringement of rights in the field of environmental protection.

-Capacity of environmental inspectorates at central and local levels need to be strengthened in the next period. Draft Action Plan on Administrative Capacity development, which is currently being developed, will present the needs for hiring new inspectors, but also the needs for additional trainings and equipment.

- CSOs very rarely initiate court proceedings due to lack of funds and fear that the process will jeopardize their survival.

-Certain associations consider that there is a lack of appropriate mechanisms to remove or reduce financial or other barriers to the access to justice for citizens and activists involved in environmental decision-making processes.

-Certain associations believe that, in practice, the public authorities, despite the fact that the Aarhus Convention, the Law on General Administrative Procedure and regulations in the field of environmental protection provide for the status of a party in administrative proceedings to representatives of wider public interests, often reject the requests of civil society organisations representing public interests for participating in administrative procedures and administrative disputes. Public authorities have interpreted the concept of the interests of public interest representatives which may be affected by the proceedings very narrowly, and requested proof of a specific legal interest.

- Certain associations have provided examples regarding the above statement to prove the legal interest:

-The RERI Association presented a case related to the decision of the Provincial Secretariat for Energy, Construction and Transport dated 20 May 2020 rejecting the complaint filed against the construction permit - the decision of the City Administration of the City of Zrenjanin, which approved the construction of the first phase as part of the construction of the planned factory complex of the investor Linglong International Europe doo. RERI stated that in the complaint it explained its active legitimacy and submitted evidence that it achieves its goals in the field of environmental protection and that it was registered in accordance with the regulations, whereas the complaint of the association was rejected as filed by an unauthorized person and stating that: as the appellant was not a party in the procedure that preceded the issuance of the appealed decision, nor did he enclose with the appeal any evidence from which it would follow that he belongs to the circle of persons who meet the condition provided by Article 44 in conjunction with Article 151 para. 6 and 7 of the LGAP and Article 135 para. 1 and 2 and Article 136 of the Law on Planning and Construction, i.e. that it is an entity whose rights, obligations or legal interests may be affected by the outcome of this administrative procedure, or whose rights or legal interest would be in the process of issuing, i.e. by the content of the building permits could be violated ". In connection with the above, the association RERI on 24 June 2020, through a proxy, filed a lawsuit with the Administrative Court to annul the decision of the Provincial Secretariat for Energy, Construction and Transport.

-Also, the RERI Association presented an example related to the request for recognition of party status which it submitted on 2 April 2019 pursuant to Article 44 paragraph 3 of the LGAP, to the competent authority - Ministry of Construction, Transport and Infrastructure (MCTI), in the administrative procedure ROP- MCTI -1317-CPI-2/2019, which is related to the issuance of a construction permit for

the construction of the Gondola Lift in the Kalemegdan park. Upon the submitted request, MCTI passed a decision on 10 May 2019 rejecting the request of RERI for recognition of the status of a party, with reference to Article 81 of the Law on Environmental Protection which lists the procedures in which the public concerned has the right to participate. MCTI stated in the decision that, as the specific procedure for issuing a construction permit does not belong to the mentioned procedures, it considers that there is no legal basis to recognize RERI as a party in the administrative procedure. Based on the above, the RERI association filed a lawsuit to initiate an administrative dispute before the Administrative Court in Belgrade, and proposed to the competent court to annul it and return it for a new decision. In the lawsuit, the association referred to Article 44 paragraph 3 of the LGAP which stipulates that "representatives of collective interests and representatives of the general public, organised in accordance with regulations, may have the status of a party to administrative proceedings, if the outcome of the proceedings may affect interests they represent", as well as that the RERI association was founded to achieve goals in the field of promotion and improvement of the right to a healthy and preserved environment and considers that, since the specific procedure for issuing a building permit for the construction of the Gondola Lift includes the (planned) works, which can undoubtedly endanger the environment, as well as the protected cultural property, as part of the environment, it is indisputable that the interests represented by RERI are in question, and he believes that the status of a party to RERI should be recognized. This is due to the fact that the Administrative Court in Belgrade, having previously acted, passed a decision on 19 April 2019 which adopted the request of RERI (as the plaintiff), to postpone the execution of the decision MCTI - ROP-MGSI-1317-CPI-2/2019 from 1 April 2019 which issued a building permit for the construction of the Gondola Lift, until the final court decision.

-At the Second Session of all Misdemeanour Appellate Court Judges, held on 1 July 2019, a legal opinion was adopted that an association of citizens and, in general, a legal entity, as an information seeker, is always authorised to submit a request for the initiation of misdemeanour proceedings under the Law on Free Access to Information of Public Importance (LFAIPI) due to the denial of the right to access information, and is not conditioned by proving the capacity of an injured party in terms of Article 126(1) of the Law on Misdemeanour (Article 126: An injured party, within the meaning of this Law, shall be the person any personal or property right of whom has been violated or threatened by a misdemeanour). This position is important because, in situations when the authorities do not respond to applicants' requests, in addition to filing an appeal to the Commissioner, applicants may use this additional means of pressure on the authorities to submit the requested information. The practice of misdemeanour courts in this filed has been uneven so far. The law authorises the injured party to initiate misdemeanour proceedings. However, a dilemma has occurred in practice whether the injured party may also be a legal entity and whether the injured party must prove that their property right has been violated or threatened by denying them information of public importance. By setting this condition, certain misdemeanour courts rejected the right of civil society organisations to initiate misdemeanour proceedings. The associations "Let's Save Vojvodina", "Ecological Movement of Odžaci" and the "Centre for the Rule of Law" from Belgrade were the initiators of this positive authoritative interpretation of the Law after dozens of requests were rejected for the initiation of misdemeanour proceedings submitted against responsible persons in public authorities with an explanation that the request was submitted by an unauthorised applicant.

-In 2009, the LFAIPI was amended by transferring the law violation responsibility, which was the responsibility of the person authorised to act upon requests for issuing information of public importance, under the competence of the head of the public authority due to the introduction of the misdemeanour liability to the head of the public authority, regardless of whether or not another person was designated to be an authorised person in the public authority. The practice of misdemeanour courts shows that such a system of liabilities is not recognised in the cases in which it is being determined whether there is a misdemeanour liability for the violation of the LFAIPI and what person is assigned with the misdemeanour liability. In order to achieve the uniform practice of misdemeanour courts, the Misdemeanour Appellate Court adopted a legal opinion in 2017, which indicates that, according to the LFAIPI, the head of the public authority, as well as the person authorised to access information of public importance, may have the status of a responsible person. The responsibility of a person for a committed

misdemeanour depends on whether or not an authorised person or an official was designated in the public authority to act upon requests for access to information. If such a person is designated, they are also assigned with the misdemeanour liability, and if an authorised person is not designated, the misdemeanour liability for violation is borne by the head of the public authority. The Supreme Court of Cassation confirmed the legal opinion of the Misdemeanour Appellate Court from 2017 in judgment No. 25/2019 dated 27 February 2020. In terms of the above stated, certain associations believe that heads of public authority may, based on the legal opinion of the Misdemeanour Appellate Court and the judgment of the Supreme Court of Cassation, never be held liable for inadequate respond to information seekers by designating one or more officials to act upon requests for access to the information of public importance and, thus, undermine the application of the LFAIPI.

Slovakia

Judges do not specialize explicitly in environmental matters; at regional courts and the Supreme Court of the Slovak Republic there are administrative boards the competence of which includes such cases, too.
Law firms do not specialize in cases of environmental law violations. There are just a few lawyers who would address such cases (also with regard to the fact that those are not lucrative cases). Moreover, the client has to pay the lawyer remuneration in an amount that is usually a disincentive to the client. New Act No. 162/2015 Coll. The Administrative Procedure Code has been effective since 1 July 2016, which can be considered a very short period to evaluate it in any way and it is not known yet, which changes it will bring to practice.

Slovenia

It should be noted that the provision of Article 14 of the ZVO-1, which enables *actio popularis*, has not been utilised in practice, but the reasons for this have not been analysed.

In its response to the draft report, the Spatial Planning Network is of the opinion that amendments to legislation (the GZ, the ZUReP-2 and the ZVO-2 proposals and the ZIUZEOP provisions suspended by the Constitutional Court of the Republic of Slovenia) show a clear trend of limiting access to justice by determining new (stricter) requirements for obtaining the status of an entity operating in the public interest and regarding procedures for which access to justice or accessory participation applicable thus far is even enabled.

The Spatial Planning Network states: "Access to justice for the purposes of protecting the interests of nature conservation has been limited significantly due to the amended Article 13 of the ZON. Due to the anticipated elimination of the right to access to justice currently applicable under Article 58 of the ZUreP-2, access to justice will also be denied for spatial planning (currently referring mainly to land use and variant selection) under the ZUReP-3. Neither limitation of the right to access to justice has been subject to public debate."

The Ombudsman emphasizes that changes in normative arrangements of the position of a members of the public (concerned) in an administrative proceeding, described under Article 6, negatively affect access to justice. It states: »Parties to the Convention, including the Republic of Slovenia, have the possibility to determine what is a sufficient interest or a violation of a right, but the conduct of a Contracting State must always be in accordance with the objectives of the Convention as specified in Article 1 thereof. "

Spain

146. Despite the constitutional right to a trial “without undue delay” (art. 24.2 of the Spanish Constitution), the main obstacle to full implementation of article 9 lies in the excessive duration of court proceedings. Precisely to speed up proceedings, Law 18/2011, of 5 July, regulating the use of

information technologies and communication in the Administration of Justice, was passed, though the situation of excessive duration persists.

Sweden

Under the Constitution, a decision concerning the release of an official document that is taken by a minister or the Government cannot be appealed to a court (Chapter 2, Section 15 of the Freedom of the Press Act), On this point Sweden has lodged a reservation in relation to the requirements of the Convention.

The right of access to justice has been developed i.a. through case law. Case law in this area has become very extensive. It can be difficult for individuals and environmental organisations to understand which decisions may be appealed. To get the complete overview you must go through several cases from the Supreme Court, the Administrative Court of Appeal and the Land and Environment Court of Appeal. See further on case law under XXX.

Switzerland

According to several environmental protection organisations the implementation of Art. 9 of the Convention seems to work on the national level. They have, however, criticized that there is still room for improvement on the cantonal level.

One of the problems mentioned by the organisations are high fees that the cantonal courts would put on them for certain procedures. In one particular case within the canton of Graubünden, the cantonal court imposed very high procedural costs on the applicant organisation (CHF 26'663 court fees and CHF 27'707.70 legal expenses of the opposing party). The Federal Supreme Court later stated in the same case that costs in this amount were of prohibitive character and could prevent the access to justice (Decision 1C_526/2015 of 12th October 2016). The cantonal court had thus to lower the costs in its follow-up decision.

Another problem that was put forward is the fact, that some cantonal decisions or even cantonal rules declare that a legal complaint has no suspensive effect. This means that the disputed project can be realized before a legal examination has taken place. For example, there were some cases, where wolves were shot, before it had even be examined, whether the instruction to kill was legally allowed.

Other problems that were stressed also include short time limits for participating in a procedure, incomplete weighting of the respective interests, denied access to cantonal courts, and incomplete publication of projects or cantonal decisions, which do not always explicitly mention all the regulations likely be hurt.

Furthermore, some cantons seem to charge fees for the access to their official journals that publish upcoming projects, cantonal decisions and legislative projects.

Turkmenistan

There are no particular obstacles to the implementation of Article 9 of the Aarhus Convention. The low legal literacy of the population in protecting their environmental rights and the absence of knowledge where to appeal in case of violation of these rights may be an obstacle.

Ukraine

Judicial proceedings in environmental cases take a long time due to an excessive workload on judges and other court staff. It should be noted that the generalisation of case law practices shows that courts

do not always give due regard to the need to apply special legislation to environmental relations leading to erroneous argumentation and court judgements.

United Kingdom of Great Britain and Northern Ireland

141. Responsibility for civil costs issues in England and Wales rests with the Ministry of Justice (MOJ). Compliance Committee findings on costs were adopted by the Meeting of the Parties in 2014 (decision IV/9n). The European Commission has pursued infringement proceedings against the United Kingdom in relation to the implementation of the requirements under the Public Participation Directive on costs. The MOJ for England and Wales and the relevant authorities in Scotland amended the court rules on costs in 2013. The rules govern the award of costs protection ('protective expenses orders' in Scotland) in respect of judicial reviews at first instance and are in part based on case law, including the law as set out in *Garner v Elmbridge Borough Council* [2010] EWCA Civ 1006. These rules were adopted on 1 April 2013. On 15 April 2013, similar provision was made in Northern Ireland (see the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 which have recently been amended (see above)).

142. The MOJ for England and Wales has previously amended the time limit for judicial reviews in relation to planning decisions, for which statutory appeal procedures are also available. The time period for commencing a claim for judicial review has been changed to six weeks in order to bring it into alignment with that for the statutory appeal procedure, and for such cases, the requirement that the judicial review claim be commenced "promptly" has been removed. Together with the cases involving assertion of rights under EU law, where the requirement of "promptness" is in any event disapplied, Aarhus cases where that requirement would potentially apply are unlikely to arise in practice.

143. Since the Uniplex case (Uniplex (UK) (Law relating to undertakings) [2010] EUECJ C-406/08), the courts in Northern Ireland have also been disapplying the promptitude requirement in judicial review challenges on EU grounds. The Department of Justice in that jurisdiction has, however, consulted on a proposal that there should be no requirement to bring judicial review proceedings promptly in any case in that jurisdiction Following consultation, the Northern Ireland Court of Judicature Rules Committee has made the Rules of the Court of Judicature (Northern Ireland) (Amendment) 2017 which removes the promptitude requirement. This amendment came into effect on 8th January 2018.