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## Economic Commission for Europe

### Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

#### Working Group of the Parties

#### Twenty-sixth meeting

Geneva, 22–23 June 2022

Item 3 (c) of the provisional agenda

**Substantive issues: access to justice**

### Report of the Task Force on Access to Justice on its fourteenth meeting\*

#### *Summary*

At its second session (Almaty, Kazakhstan, 25–27 May 2005), by its decision II/2, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters established the Task Force on Access to Justice to undertake a number of tasks related to promoting access to justice in environmental matters (ECE/MP.PP/2005/2/Add.3, paras. 30–33).<sup>a</sup> By that same decision, the Task Force was requested to present the results of its work to the Working Group of the Parties for consideration and appropriate action. At its seventh session (Geneva, 18–21 October 2021), the Meeting of the Parties renewed the Task Force's mandate to carry out further work under the authority of the Working Group of the Parties (see ECE/MP.PP/2021/2/Add.1, decision VII/3).<sup>b</sup>

Pursuant to the above-mentioned mandates, the present report of the Task Force on its fourteenth meeting (Geneva (hybrid), 27–28 April 2022) is being submitted for the consideration of the Working Group of the Parties at its twenty-sixth meeting.

<sup>a</sup> Available at <https://unece.org/environmental-policy/events/second-meeting-parties-aarhus-convention>

<sup>b</sup> Available at [https://unece.org/environmental-policy/events/Aarhus\\_Convention\\_MoP7](https://unece.org/environmental-policy/events/Aarhus_Convention_MoP7)

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\* The present document was submitted late owing to the substantial time required for liaising with the many speakers concerned regarding its finalization.



## Introduction

1. The fourteenth meeting of the Task Force on Access to Justice under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held on 27 and 28 April 2022 in a hybrid format.
2. The meeting was attended by the representatives of the following Parties to the Convention: Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Iceland, Ireland, Italy, Kyrgyzstan, Lithuania, Malta, Netherlands, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, Tajikistan and United Kingdom of Great Britain and Northern Ireland. A representative of Canada also participated in the meeting. Representatives of the European Commission attended the meeting on behalf of the European Union. Representatives of the European Investment Bank were also present.
3. Also attending the meeting were judges, representatives of judicial institutions and independent review bodies and experts from Albania, Armenia, Azerbaijan, Belgium, Croatia, Greece, Ireland, Kazakhstan, Kyrgyzstan, Latvia, Mauritius, Montenegro, Poland, the Republic of Moldova, Serbia and Spain. Some of those participants represented the European Union Forum of Judges for the Environment.
4. Representatives of the United Nations Environment Programme (UNEP) were present. The meeting was also attended by representatives of other international organizations, such as the Organization for Security and Cooperation in Europe and the International Union for Conservation of Nature World Commission on Environmental Law.
5. Representatives of Aarhus Centres, international financial institutions and business, professional, research and academic organizations were present, as were representatives of international, regional and local non-governmental organizations (NGOs), many of whom coordinated their input within the framework of the European ECO-Forum.

## I. Opening of the meeting and adoption of the agenda

6. The Task Force Chair, Mr. Luc Lavrysen (Belgium), opened the meeting.
7. The Task Force adopted its agenda as set out in informal document AC/TF.AJ-14/Inf.1.<sup>1</sup>

## II. Thematic focus:

### A. Access to justice in cases related to spatial planning

8. Opening the discussion on the item, the Chair underscored that spatial planning required consideration of multiple public and private interests in the development of land and space and the importance for members of the public to enjoy their right to live in an environment adequate to their health and well-being. Spatial planning could imply a complex, multistaged decision-making procedures, involving strategic environmental impact assessment, environmental impact assessment and public participation at various stages. Access to justice in spatial planning remained instrumental to protect the public's rights and legitimate interest, enforcing laws relating to the environment and preventing irreversible damage to the environment. Cases in that area could fall under the scope of article 9 (2) or (3) of the Convention, depending on their individual circumstances.
9. The representative of Georgia presented the national legislative framework guaranteeing access to justice in spatial planning matters, and explained that initiating

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<sup>1</sup> All documents for the fourteenth meeting, including background documents, a list of participants, statements and presentations, are available at <https://unece.org/environmental-policy/events/fourteenth-meeting-task-force-access-justice-under-aarhus-convention>.

authorities varied depending on the nature of the spatial plan, with spatial plans of Georgia falling under the purview of the Ministry of Regional Development and Infrastructure, autonomous regional plans under that of the relevant autonomous republic, and municipal plans under that of the relevant municipality. Administrative spatial planning proceedings consisted of two stages: approval of the concept; and approval of the plan itself. Each stage was conducted through public administrative proceedings, including a strategic environmental assessment procedure. Public participation and access to information should be ensured during those proceedings and every interested person had the right to appeal at all stages of the administrative proceedings to a higher administrative body, senior official or court. Nevertheless, cases of appeal against decisions of the Ministry of Environmental Protection and Agriculture, as one of the authorized administrative bodies, were rare. In general, the courts were overloaded with different types of cases and, due to the insufficient number of judges or the absence of the parties, trials were sometimes prolonged. Further activities focused on improving decision-making in spatial planning and included the development of an electronic environmental assessment system and shifting competencies to the Ministry of Economy and Sustainable Development.

10. The representative of Serbia set out the country's legal framework regulating the spatial planning decision-making procedure, including strategic environmental assessment and public participation procedures, and avenues for members of the public to seek justice to protect their rights and legitimate interests in that area. Such avenues included: filing an appeal against a decision on approval of a strategic environmental assessment report; initiating a procedure for assessing the constitutionality or legality of planning documents before the Constitutional Court (a right of all natural and legal persons); and filing a complaint with the Protector of Citizens. Several examples of cases involving the issue of public interest revealed the challenges in access to justice in that area, particularly that the only legal remedy against decisions on the adoption of planning documents was to request the competent authorities to initiate a procedure for assessing the constitutionality or legality of such documents before the Constitutional Court. The speaker noted the need to improve the legislation for strengthening access to justice in that area and called for further exchange of experiences, good practices and related legislation with other countries.

11. The representative of Malta gave a presentation on the main avenues available to challenge decisions of public bodies in relation to spatial planning regarding urban development, planning and land use in the country. The Environment and Planning Review Tribunal had jurisdiction to hear appeals on decisions of the Environment and Resources Authority and the Planning Authority. The Tribunal's proceedings were open to the public and appeals could be brought against its decisions before the Court of Appeal. Appeals against administrative acts of the public administration could be also brought before the Administrative Review Tribunal, which had the power to make decisions, including decisions that were binding upon the parties. In certain instances, claims for judicial review of administrative acts could also be brought before the civil courts on specific grounds. The representative provided several examples of case law of the above-mentioned bodies, reflecting a variety of scenarios and resulting decisions broadening standing, jurisdictional grounds and application of injunctive relief. Decisions of the respective tribunals and courts were made available online.

12. In the subsequent discussion, the participants identified the factors that could have an impact on the number of cases related to spatial planning, in particular:

(a) Broadening interpretation of standing for the members of the public promoting environmental protection, regardless of their actual participation in the decision-making procedure under review;

(b) Establishment of specialized tribunals to deal with such cases in some Parties to the Convention;

(c) A variety of forums that could deal with such cases, and determination of courts' jurisdiction and available remedies depending on the recognition of acts adopting spatial plans as individual administrative or normative acts in different Parties to the Convention;

(d) Population density, which could increase the number of conflicts in spatial planning.

13. The representative of the University of Alcalá de Henares, Spain, presented the legislative framework guaranteeing access to justice for NGOs to bring a public action against acts or omissions of public authorities relating to environmental issues. That framework could also be applied to spatial planning procedures, including with regard to strategic environmental assessment and opportunities for public participation and access to information. The Administrative Court could review acts and omissions of public authorities related to spatial planning. Following the case law of the Supreme Court of Spain, urban planning plans were deemed general regulations or requirements and acts approving those plans or their revisions could be considered void due to the lack of strategic environmental assessment or environmental impact assessment to be carried out in accordance with the national legislation. That approach had already been followed in a number of cases by lower courts. Using several examples of case law, the speaker underscored several challenges in that area, in particular financial barriers for environmental NGOs related to injunctive relief and obtaining the order to demolish a construction declared illegal by the courts due to the requirement to provide sufficient guarantees to cover the payment of compensation due to third parties acting in good faith.

14. The representative of the NGO Journalists for Human Rights explained the recently revised legal framework and challenges related to spatial planning, including the requirement to undertake strategic environmental assessment and environmental impact assessment. In particular, in North Macedonia there had been numerous cases related to the high number of illegally constructed buildings or parts of buildings without any assessments and the related tenants' efforts to remove the legal uncertainty and legalize them. In Bosnia and Herzegovina, legal challenges had been initiated to safeguard the rights and legitimate interests of returnees to protect their houses and agricultural land in a case of motorway construction in which due account of their situation and the impact on vulnerable groups had not been taken into account. The speaker recommended improving transparency of strategic environmental assessment and environmental impact assessment procedures, establishing a system for the early detection and reporting of the above-mentioned violations, supporting whistle-blowers and promoting networking of prosecutors in environmental matters.

15. The representative of the European ECO-Forum underscored the challenges for members of the public from one jurisdiction wishing to seek justice in spatial planning cases in another jurisdiction, using the example of the island of Ireland in the context of divergences exacerbated by the political departure ("Brexit") of the United Kingdom of Great Britain and Northern Ireland from the European Union. In particular, challenges in a transboundary context for members of the public could result from divergencies in costs, access to legal aid, scope of review, time limits, recognition and enforcement of judgments and limited capacities to operate in both jurisdictions.

16. In the subsequent discussion, the participants underscored that the flaws in spatial planning procedures linked to low level of law enforcement, corruption and "slicing"<sup>2</sup> of projects could cause irreversible damage to the environment and result in the legal uncertainty of the rights to illegally built objects. Broadening the possibilities for members of the public to seek justice in such cases, supporting whistle-blowers and specialization of courts, tribunals and prosecutors could improve compliance with laws relating to the environment and ensure environmental protection in spatial planning.

17. Following the discussion, the Task Force:

(a) Thanked the speakers and welcomed the exchange of experiences, good practices and challenges related to access to justice in spatial planning;

(b) Highlighted that spatial planning decisions could affect the possibility of members of the public to enjoy their right to live in an environment adequate to their health and well-being and other rights under the Aarhus Convention and their legitimate interests;

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<sup>2</sup> Division of a given project into parts, none of which trigger the threshold above which the developer concerned must seek a screening opinion from the planning and/or environmental authority.

therefore, judicial mechanisms should be accessible to members of the public wishing to challenge such decisions so that rights and legitimate interests were protected and environmental law enforced;

(c) Noted that a regular analysis of administrative and judicial complaints related to spatial planning could help improve public participation procedures in such multistage and complex decision-making;

(d) Encouraged Parties to take the necessary legislative, enforcement and other measures to ensure compatibility between provisions implementing public participation and access to justice provisions in accordance with the Convention concerning the multistage decision-making procedure of spatial planning, including with regard to strategic environmental assessment and environmental impact assessment;

(e) Welcomed measures adopted by several Parties to broaden standing for members of the public to bring cases related to spatial planning and establish specialized courts and tribunals to deal with such cases;

(f) Called on Parties to take the necessary legislative and other measures to address existing barriers in access to justice in spatial planning with regard to public access to adopted decisions, timeliness, court jurisdiction, transboundary cases, costs, injunctive relief, remedies in cases of illegally built objects and other issues highlighted by the speakers;

(g) Encouraged Parties, stakeholders and partner organizations to disseminate information to members of the public, especially to those in vulnerable situations, with regard to access to the related administrative and judicial review procedures and to promote awareness-raising and capacity-building for public authorities, judiciary and members of the public in the area in question;

(h) Decided to continue the exchange of information, experiences, challenges and good practices with regard to spatial planning through the Convention's reporting mechanism, the Aarhus Clearinghouse for Environmental Democracy and the jurisprudence database.

## **B. Access to justice in energy-related cases**

18. Opening the discussion on the item, the Chair highlighted the importance of the topic given fast-developing decision-making in energy-related matters and its complex and multistage character, involving strategic environmental assessment and environmental impact assessment procedures. Judicial and administrative review in that regard could be crucially important to ensure that such assessments and public participation procedures, as required, were properly carried out and duly taken into account. There was growing case law on such matters across different countries, in particular cases related to wind farms, hydropower plants and other projects concerning renewable energy that highlighted existing challenges.

19. A judge from Croatia presented the country's framework relating to access to justice in energy-related cases and provided two examples in the area. The first case, involving the Vrataruša II wind farm, in which a nature conservation organization had challenged the decision by the Ministry of Environmental Protection and Energy that an environmental impact assessment was not required for the development of the wind farm, on the grounds that the impact of two pre-existing local wind farms should be taken into account.<sup>3</sup> In the case, the High Administrative Court had annulled both the Ministry's decision and that of a lower court, finding that the environmental impact assessment was necessary. In the second example, the speaker presented a case decided by the High Administrative Court regarding the small Primišlje hydropower plant, in which another environmental NGO had challenged the decision by the Ministry of Environmental Protection and Energy deeming the construction of the small hydropower plant (part of a network of seven such plants) ecologically acceptable. In the case, the High Administrative Court had annulled both the

<sup>3</sup> Croatia, High Administrative Court, *Association BIOM, Zagreb v. Ministry of Environmental Protection and Energy*, Judgment No. Usž-4629/2018, 15 May 2020.

Ministry's decision and that of a lower court, finding that, as the proposed location of the plant was in a nature protection area, an environmental impact assessment must be conducted for all seven hydropower plants.<sup>4</sup>

20. The representative of the Supreme Court of Albania highlighted how the courts implemented the Convention to provide access to justice for members of the public in energy-related cases and enforced legal provisions prohibiting the building of hydropower plants in natural reserves and water resources. In particular, the administrative courts had allowed: (a) several environmental NGOs and residents to intervene as interested parties in a case brought by an operator against the Ministry of Tourism and Environment to challenge a negative environmental statement regarding the construction of a hydropower plant on the Vjosa River;<sup>5</sup> and (b) standing of residents to challenge the issuance of a licence by the Energy Regulatory Entity to produce electricity regarding two hydropower plants located within protected areas.<sup>6</sup> One more case decided by the Administrative College of the Supreme Court on appeal affirmed both the standing of residents and an environmental NGO to challenge the construction and operation of hydropower plants in the Valbona Valley area that might cause serious damage to Valbona National Park and the conditions for injunctive relief.<sup>7</sup>

21. In the subsequent discussion, the participants highlighted the need to remove financial barriers for environmental NGOs to bring such cases in order to improve compliance with environmental law and also the good practice of taking into account the cumulative impact of pre-existing energy installations on the environment in certain areas and the impact on nearby protected natural areas and habitats.

22. The representative of Armenia reported on access to justice in energy-related matters in Armenia, highlighting the Government's main priorities for energy sector development and the corresponding legislative framework. Those priorities included a new model for the gradual liberalization of the energy market, striving to provide equitable access to energy – especially for rural areas, and an update of the environmental impact assessment framework in accordance with international law and the appearance of new energy sources. For example, such assessment would be required for certain types of solar installations due to their impact on land and waste generation. Hydropower was considered to be a secondary priority due to climate change limiting its potential, the damage caused to river ecosystems and the impact on the water supply in rural areas. Due to public demand, the Government had decided not to build any further small hydropower plants on several rivers in Armenia. However, several lawsuits had been brought against the Ministry of Environment by promoters to challenge the refusal by the Ministry to issue water-use permits. Nevertheless, the ongoing discussion in that area focused on restoring justice and compensating communities for damage caused to ecosystems by hydropower plants. The ecological and cultural NGO Khazer had: offered to study the extent to which operators profited by selling electricity at the expense of the ecological flow; and, in a proposal currently under discussion, suggested that taxes paid to the State by those operators be returned to the affected population as an alternative mechanism for restoring justice.

23. The representative of France provided an overview of the legal framework guaranteeing access to justice in energy-related cases. Decision-making in that area included a wide range of regulatory acts and individual acts depending on the energy sources, mode of production and different sectoral requirements. All those acts were subject to administrative law and could be challenged before the Council of State. The most representative group of cases concerned the possibility for members of the public to challenge an individual act that could permit the operation of an energy installation. Such an act might

<sup>4</sup> Croatia, High Administrative Court, Association PAN, Karlovc v. Ministry of Environmental Protection and Energy, Judgment No. Usž-2272/2017, 18 October 2018.

<sup>5</sup> Albania, First Instance Administrative Court of Tirana, Ayen-ALB v. Ministry of Tourism and Environment, Judgment No. 80-2021-1696, 28 May 2021.

<sup>6</sup> Albania, First Instance Administrative Court of Tirana, Eight residents of *the administrative unit of Derjan in the municipality of Mat v. Energy Regulatory Entity and Seka Hydropower Ltd.*, Judgment No. 49, 18 January 2021.

<sup>7</sup> Albania, Administrative College of the Supreme Court, "*Land*" Association and others v. Ministry of Energy, Ministry of Environmental Protection and Energy, National Environmental Agency and others, Judgment No. 322-2021, 21 July 2021.

take the form of a single environmental permit regulating environmental impacts for an offshore wind park, thermal power plant or solar photovoltaic park, or a comprehensive permit in the case of a marine renewable energy project. The legality of the permit could be challenged with respect to the absence of, or flaws in, public participation procedures or its compliance with environmental laws. The complainant should demonstrate a legitimate interest that was largely recognized and directly linked to the project. Some NGOs promoting environmental protection could be deemed as having sufficient interest. Litigation should reconcile the rights of third parties and the legal certainty of projects. Therefore, the judicial powers had been adjusted to allow the public authority to address non-contentious claims and correct its decision in the course of the proceedings, at the direction of the court to be provided within certain time limits. Further evolution of the energy sector might bring new challenges regarding reduction of greenhouse gas emissions, State energy policy and failure to respect such policy and the general public interest in the development of renewable energy. While access to justice remained an important safeguard for protecting environmental rights, the focus should be also placed on promoting public participation and conflict prevention in the area.

24. Sharing the NGO perspective, the representative of the Guta Environmental Law Association provided three case studies exemplifying civil society concerns about compliance with participatory obligations and due consideration of scientific assessments in permit granting procedures for the extension of industrial waste deep depository operations in France, nuclear power plant site suitability in Hungary, and the adoption by the European Commission of the Taxonomy Climate Delegated Acts. The speaker underlined that public interest organizations meeting the “sufficient interest” requirements of the Convention should be perceived as partners in such cases, in order to prevent long-term costs and risks, particularly in sectors where high exposure to corruption and conflict of interest raised questions about the standards of environmental protection and public safety.

25. The representative of Ökobüro and Justice and Environment gave a presentation on options for challenging national energy and climate plans and decisions on strategic environmental assessments in different European Union member States, noting that those plans were not always subject to such assessment and also lacked a normative character. Reflecting information gathered through a recent survey of environmental law experts in eight countries (Austria, Bulgaria, Croatia, Estonia, Hungary, Romania, Slovenia and Spain), the speaker noted that legal remedies regarding national energy and climate plans differed widely and the possibility to challenge national energy and climate plans had been identified only in Bulgaria, Estonia, Romania and Spain. Reflecting on a 2020 survey regarding strategic environmental assessment practice in nine countries (Austria, Bulgaria, Croatia, Czechia, Estonia, Hungary, Romania, Slovenia and Spain), no legal remedies for NGOs were available in most studied countries, for example due to the lack of normative character of such assessments or access to information about them. Only in Bulgaria, Estonia, Slovenia and Spain could decisions on strategic environmental assessment be challenged under certain circumstances, mostly based on administrative procedure or a disputed act approving such assessment.<sup>8</sup> Justice and Environment called for: all strategies and framework programmes to undergo strategic environmental impact assessment screening; increased transparency; the broadening of consultation; and the provision of legal remedies to challenge decisions on strategic environmental assessment in all countries.

26. Subsequently, the participants shared different experiences of whether plans, programmes and decisions on strategic environmental assessment could be subject to judicial review and the scope and standards of such review in the respective jurisdictions. It was noted that the right to challenge decisions on strategic environmental assessment could be instrumental for access to justice in spatial planning, as discussed earlier, and access to justice in energy-related cases.

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<sup>8</sup> Justice and Environment, *Assessing the Impacts on Climatic Factors: Recommendations for Improving Strategic Environmental Assessments – Comparative Study* (n.p., 2020). Available at [www.justiceandenvironment.org/fileadmin/user\\_upload/Publications/2020/SEA\\_on\\_Climate\\_JE\\_recommendations\\_2020\\_FINAL\\_web.pdf](http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2020/SEA_on_Climate_JE_recommendations_2020_FINAL_web.pdf).

27. The Task Force then:

(a) Thanked the speakers and welcomed the exchange of experiences, good practices and challenges with regard to access to justice in energy-related cases and population of the jurisprudence database with new relevant cases;

(b) Encouraged Parties to take the necessary legislative, enforcement and other measures to ensure compatibility between the provisions of national legislation implementing access to information, public participation and access to justice provisions in accordance with the Convention related to the multistage decision-making procedure on energy-related matters, including with regard to strategic environmental assessment and environmental impact assessment;

(c) Noted that a regular analysis of energy-related cases could help to address challenges and improve procedures for public participation in decision-making and access to justice in the area and invited the Task Force to discuss the scope and methodology for such analysis;

(d) Called on Parties to take the necessary legislative and other measures to remove existing barriers in access to justice in energy-related cases with regard to standing, timeliness, limited scope of review, compensation for damages, costs and assistance mechanisms, use of scientific assessments and other issues highlighted by the speakers;

(e) Decided to continue the exchange of information, experiences, challenges and good practices with regard to public interest litigation in environmental matters through the Convention's reporting mechanism, the Aarhus Clearinghouse and the jurisprudence database.

### **III. Stocktaking of recent and upcoming developments**

28. In a discussion on recent and upcoming developments, participants shared their experiences regarding implementation of the Convention's third pillar, including those related to the coronavirus disease (COVID-19) pandemic, regarding: (a) public interest litigation and collective redress; (b) standing; (c) timeliness; and (d) costs and access to assistance mechanisms. The Chair drew attention to information document 2, which provided an overview of the status and obstacles encountered in the implementation of article 9 of the Convention.

29. The representative of Bulgaria gave a presentation on access to judicial review procedures in the country, highlighting that no specific rules were applicable to environmental matters. Bulgarian law granted standing to interested members of the public to challenge before the court both measures of a general nature, such as protected area management plans, and normative administrative acts (e.g., secondary legislation). Most environmental cases fell under the jurisdiction of administrative courts and should be considered within a reasonable time. An appeal challenging an administrative decision had suspensive effect unless an anticipatory enforcement had been allowed by the administrative authority or by law. Such enforcement also could be appealed against separately. Regarding costs, no duties or costs should be paid for any proceedings, except in special cases such as differentiated taxes for filing a cassation appeal or filing administrative cases with material interest. The "loser pays" principle was fully applicable. Legal aid assistance was provided from the State budget, with the aim of guaranteeing equal access to justice for all persons in criminal, civil and administrative cases before all court instances.

30. The representative of Denmark presented several avenues that could be used by members of the public to enforce the administration's compliance with environmental law. Those included: the Parliamentary Commissioner; legal remedy through specialized tribunals such as the Environment and Food Complaints Board or a high administrative authority; administrative supervision and remonstrations; and judicial review by the courts. The legal framework also provided for the possibility for individuals having uniform claims to initiate a class (collective) action against a private person or public authority, subject to determination by the courts of the qualifying conditions for such action. Time frames could differ depending on the avenue and included an average of 6.3 months for judicial review, 6 months for legal remedy, and varying amounts of time for both administrative supervision and remonstrations and the Parliamentary Commissioner. Most avenues could be used free of

charge, except for judicial review, where the judge could determine the costs for the losing party. Free legal aid could be obtained by individuals and legal persons under certain conditions. Individuals also could cover their costs through legal aid insurance.

31. The representative of the European Union highlighted developments related to the implementation of commitments to improve access to justice in environmental matters in the European Union and its member States, in accordance with the relevant European Commission communications.<sup>9</sup> With regard to access to justice at the European Union level, new changes introduced by the amendment of the Aarhus Regulation<sup>10</sup> (currently in force) would concern the material scope of claims, personal scope of standing and new deadlines of proceedings. Work was also ongoing to improve access to justice for members of the public to challenge State aid measures that contravened laws of the European Union relating to the environment. Further priorities included: the inclusion, by European Union co-legislators, of provisions on access to justice in the respective legislative proposals concerning environmental matters (see proposals related to the quality of water intended for human consumption, climate law, industrial emissions, air quality and others); member States ensuring correct transposition of European Union secondary law and reviewing their national legislative and regulatory provisions to remove barriers in access to justice; and the guaranteeing by national courts of the right to an effective remedy. Other initiatives included the updated Commission Notice on access to justice in environmental matters,<sup>11</sup> proposals for a Green Claims Regulation and a Deforestation Regulation and revised new Guidelines on State aid for climate, environmental protection and energy 2022.<sup>12</sup>

32. The representative of the NGO Environmental Law Clinic gave a presentation on developments and systematic challenges in public interest litigation in Serbia in environmental matters. The first case involved a challenge to a refusal by the public authority to recognize the claimants' status as a party with opposite interest in the administrative procedure of licence renewal for conducting detailed geological research. During the proceedings, the court had issued a temporary injunctive relief prohibiting the continuation of such research until the resolution of the case. The second case concerned strategic litigation, in which the residents, who lived next to a thermal power plant, coal dump and ash dump, had filed four lawsuits in February 2021 to seek protection of their human rights, removal of sources of danger and compensation for non-material and material damage. The preparatory process of filing the lawsuit had lasted 15 month beforehand due to the time needed to collect the necessary information related to the state of the environment, health and industrial safety upon request from the public authorities and to remediate refusals to grant such information before the Commissioner for Information of Public Importance and Personal Data Protection. Timeliness of the judicial review was another issue raised in such cases, as none of the proceedings had moved beyond the preparatory hearing, despite being recognized as urgent under the Law on Environmental Protection.

33. The representative of ClientEarth gave a presentation on challenges in and opportunities for addressing the lack of effective access to justice to challenge contraventions of environmental laws by public and private persons in the member States of the European Union (art. 9 (3) and (4) of the Convention). Though differing between the member States, the main barriers requiring legislative intervention included: the lack of standing and restrictions to scope of review; prohibitive costs; and insufficient standard of review in such cases. Those issues could be addressed by including access to justice provisions in sectoral European Union laws. To date, attempts to include such provisions (e.g., on single-use

<sup>9</sup> See COM(2020) 643, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020DC0643&qid=1654874195418>; and COM(2021) 400, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52021DC0400&qid=1654874337568>.

<sup>10</sup> Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, *Official Journal of the European Union*, L 356 (2021), pp. 1–7.

<sup>11</sup> Commission Notice on access to justice in environmental matters, *Official Journal of the European Union*, C 275 (2017), pp. 1–39.

<sup>12</sup> Communication from the Commission, Guidelines on State aid for climate, environmental protection and energy 2022, *Official Journal of the European Union*, C 80/1 (2022), pp. 1–89.

plastics or drinking water) had been insufficient to have an impact on the ground for people and the environment. However, there would be opportunities to introduce access to justice provisions into European Union legislative proposals, including with regard to climate, deforestation, nature restoration, air quality, chemicals and sustainable food systems. The representative called on delegates to support the introduction of such provisions into European Union law in order to step up the implementation and enforcement of environmental law and the protection of human rights.

34. In further statements, NGO representatives gave examples of the current situation and the impact of persistent challenges related to access to justice for members of the public in Armenia, Ireland, North Macedonia and the United Kingdom of Great Britain and Northern Ireland.

35. Following up on the discussion regarding persistent challenges in access to justice, the Chair invited the participants to discuss possible solutions in that area. He drew delegates' attention to information document 3, which presented a draft questionnaire on measures to enable effective access to justice in environmental matters, and invited Parties and stakeholders to provide comments. The participants suggested including information on challenges in the implementation of such measures.

36. Furthermore, the Chair invited the participants to express their views on the Task Force's future work in the current intersessional period in accordance with decision VII/3 (ECE/MP.PP/2021/2/Add.1). Subsequently, the participants suggested continuing to focus on access to justice related to spatial planning and energy-related decision-making (including standing and remedies) and related access to justice in strategic environmental assessments and in transboundary contexts, as well as measures to discourage strategic lawsuits against public participation and progress in the implementation of action plans related to access to justice. Regarding the latter issue, the Chair further clarified that stocktaking of recent and upcoming developments on access to justice in countries was a recurrent item on the agenda.

37. Following the discussion, the Task Force:

(a) Took note of the recent developments, challenges, lessons learned and suggestions related to access to justice in environmental matters as presented by the speakers;

(b) Highlighted the need for further work to remove persistent barriers related to costs, access to assistance mechanisms and timeliness, and decided to undertake a survey to collect possible solutions and good practices to overcome those barriers;

(c) Took note of the draft questionnaire and agreed to provide final comments by 16 May 2022;

(d) Requested the secretariat, in consultation with the Chair, to update as necessary and circulate the questionnaire to collect the required information by 1 November 2022, and invited the Chair to report at the fifteenth meeting of the Task Force (Geneva, March 2023) on the results of the survey;

(e) Encouraged Parties to continue national multi-stakeholder dialogues to discuss solutions for removing barriers in access to justice in environmental matters identified through compliance and reporting mechanisms under the Convention;

(f) Agreed that the Task Force meeting in 2023 would continue to focus on access to justice in cases involving challenges to acts or omissions that contravened permit requirements or laws relating to the environment, in particular, in relation to the following issues: spatial planning and energy-related cases (including standing and remedies); access to justice in strategic environmental assessment procedures and in a transboundary context; and measures to discourage strategic lawsuits against public participation.

#### **IV. Tools to promote effective access to justice**

38. In a discussion on tools to promote effective access to justice, participants shared experiences and lessons learned from initiatives related to: (a) promoting e-justice initiatives and other practical measures to ensure effective review procedure; (b) monitoring and evaluating the effectiveness of review procedures; and (c) promoting capacity-building, raising awareness and cooperation.

39. Opening the discussion on the use of e-justice initiatives, modern digital technologies and other initiatives for access to justice, the Chair drew attention to the Updated recommendations on the more effective use of electronic information tools (ECE/MP.PP/2021/2/Add.2) recently adopted by the Meeting of the Parties to the Convention.

40. The representative of the European Union gave a presentation on the relevant developments of the eJustice portal,<sup>13</sup> which aimed to facilitate implementation of European Union law and provide a single-entry point for all justice-related questions and procedures. A separate section of the portal was dedicated to information on access to justice in environmental matters and contained the updated eJustice fact sheets for the European Union member States,<sup>14</sup> which had been prepared following a thorough quality check. The fact sheets provided the status of implementation of European Union law on access to justice in environmental matters, established an indicator framework showing main systemic flaws, contributed to the Environment Action Programme and the Environmental Implementation Review and provided information to the public on access to review procedures in case of environmental disputes.

41. The representative of Tajikistan gave a presentation on the work undertaken by the National Centre of Legislation under the President of Tajikistan to provide members of the public with access to legal information on environmental, judicial and scientific matters through the official website,<sup>15</sup> social media tools and traditional media. The Centre provided open access to national legislation, maintained a register of scientific law publications and promoted legal knowledge through the dissemination of other publications, videos and news.

42. The representative of the European Environmental Bureau (also speaking on behalf of the European ECO-Forum) gave a presentation on experiences related to digitalization of the access to justice area based on the findings of a Justice and Environment survey covering Austria, Bulgaria, Czechia, Estonia, Greece, Hungary and Ireland. Regarding the working modalities of courts, following an initial pause at the onset of the pandemic, partial hearings had resumed online. Online modalities provided new access opportunities, but also raised concerns surrounding procedural guarantees, the right to effective representation and the right to be heard, along with concerns about limited access in some cases. Online access to laws and judgments had also been facilitated in recent years, although such access was powered by a diverse landscape of different online platforms and electronic case management systems. Welcome developments included the update of the European Union eJustice portal, provision of legal information in several languages and automatic notification systems for appeals and deadlines. The speaker called for the promotion of active dissemination of online accessible legal information, the continued development of easily accessible online national databases of judgments integrating information from all levels and courts, and the provision of assistance to the public to narrow to a minimum the digital divide.

43. Furthermore, the Task Force considered recent developments regarding specialization of judiciary and other legal professionals in environmental law. The Chair reiterated the importance of training for judiciary and other review bodies in environmental law and the integration, to the extent possible, of the issues of access to justice in environmental matters and environmental risks into the curricula of the respective training institutions. Exchange of experiences and peer learning had also become cornerstones of international judicial cooperation.

44. In that regard, the Chair informed the participants that the Task Force meeting had been preceded by the Judicial Colloquium “Adjudication of cases related to climate change and air quality”<sup>16</sup> (Geneva, 26–27 April 2022), pursuant to decision VII/3 of the Meeting of the Parties to the Convention. The Chair thanked the partner organizations such as UNEP, the International Union for Conservation of Nature World Commission on Environmental Law, the Global Judicial Institute on the Environment, the European Union Forum of Judges for the Environment and the Organization for Security and Cooperation in Europe for their valuable support in organizing the event together with the United Nations Economic

<sup>13</sup> See <https://e-justice.europa.eu/home?action=home&plang=en> .

<sup>14</sup> See [https://e-justice.europa.eu/300/EN/access\\_to\\_justice\\_in\\_environmental\\_matters](https://e-justice.europa.eu/300/EN/access_to_justice_in_environmental_matters) .

<sup>15</sup> See [mmk.tj](http://mmk.tj) .

<sup>16</sup> Additional information is available at <https://unece.org/environmental-policy/events/2022-judicial-colloquium> .

Commission for Europe (ECE). The Judicial Colloquium had provided an opportunity to take stock of progress and challenges, exchange views on the effective handling of cases related to climate change and air quality, and strengthen judicial cooperation (for Chair's summary of Judicial Colloquium, see annex below).

45. The representative of the Environment and Land-use Appeal Tribunal of Mauritius gave a presentation on the Appeal Tribunal, a specialized, quasi-judicial body that considered appeals on environmental and land-use matters against several public authorities. The appeal process through the Tribunal was flexible, with no costs for lodging an appeal and no costs ordered against the losing party in practice. The procedure allowed for mediation, injunctions and hearings. The standing of the appellants had been central to the appellate process before the Tribunal, with several cases in environmental matters involving the interpretation of criteria of the "aggrieved party" and opening the door to public interest litigation. Recent developments in land-use (spatial planning) case law of the Supreme Court and legislation significantly limited access to the Tribunal, allowing only appeals by a person whose application for a permit had not been approved or by those who had submitted a statement of concern in response to the public inspection. Decisions of the Tribunal should be made within a period of 90 days after the start of hearings, unless there was a valid reason otherwise and with the consent of parties. To ensure timeliness of the procedure and following a recent development, the Tribunal also should examine the appeal within a delay of 15 days after the reception of all the required documents to see if the appeal was vexatious or frivolous and, depending on the examination, could set aside the appeal. Several decisions of the Tribunal had been appealed against before the Supreme Court and only a few before the Judicial Committee of the Privy Council.

46. A representative of the Commission on Evaluation of the Performance of Judges of Armenia outlined the potential benefits of, and the legislative amendments required for, promoting the internal specialization of judges in environmental matters, and underscored the importance of special training programmes for specialized judges to gain proper knowledge and experience.

47. The representative of UNEP reported on the findings from the 2021 edition of *Environmental Courts and Tribunals: A Guide for Policymakers* (forthcoming), produced in collaboration with the Asia-Pacific Centre for Environmental Law at the National University of Singapore and Ghent University (Belgium) and scheduled to be formally launched in the near future. The report found that, during the period 2016–2021, environmental courts and tribunals had increased in number, sophistication and adaptation to changed conditions, and several reforms promoting their establishment and training programmes were planned across various systems. The use of modern digital technologies, influenced by the pandemic, had increased access to justice and efficiency, and reduced costs and backlogs, and would certainly be continued. The merging of several tribunals and institutions had become yet another emerging trend. Challenges remained with regard to inadequate capacity to enforce environmental legislation, digital divide and low political priority resulting in fewer training opportunities and insufficient budget, infrastructure, human resources and security of judicial officers. Therefore, the successful design and operation of environmental courts and tribunals should be based on independence, flexibility, inclusion of non-legal decision-makers, use of alternative dispute resolution, digitalization of procedures, enforcement powers and adequate resources.

48. In the subsequent discussion, the participants learned about: (a) the measures undertaken in France to establish regional centres specialized in environmental offences in the courts of appeal that would be competent to deal with serious environmental crimes and civil cases for compensation for environmental damage and to encourage cooperation between the judiciary and the administration to strengthen the enforcement of environmental law and establish environmental damage in complex cases; (b) a proposal for the revised European Union Environmental Crime Directive; and (c) the experience in the Netherlands in provision of technical expertise to courts by the Foundation of Independent Court Experts in Environmental and Planning Law.

49. The representative of ClientEarth, sharing experience in promoting specialization of public interest lawyers in environmental law, highlighted the work undertaken by the organization and benefits of the LIFE Programme project on Access to Justice for a Greener Europe. The 3-year project, which had begun in July 2017, aimed to promote education and awareness-raising of legal professionals on access to justice in environmental matters in the

following target countries: Austria, Estonia, France, Germany, Hungary, Poland, Slovakia and Spain. The outputs included national toolkits on access to justice, a digital information platform with an “ask a lawyer” function, a database of public interest lawyers active in the field of environmental law, a newsletter, guidance on access to justice rules and case law in the European Union, webinars/training courses in the target countries and a final European Union-wide conference. The project had resulted in increased knowledge and awareness about access to justice and the Aarhus Convention and increased attitude change, dialogue and cooperation among legal professionals.

50. The representative of the Ecoforum of Uzbekistan shared the ongoing work in the country to advance public participation in decision-making procedures, which would more closely align the procedures in Uzbekistan with the Convention’s provisions and different avenues for members of the public to protect their environmental rights, including redress to higher public authorities, the Ombudsperson and courts. To ensure compliance with environmental laws, members of the public could also exercise public environmental inspection and public control, as well as submit collective appeals through the media and a dedicated online portal. As an example, such tools had been instrumental in strengthening the protection of certain protected areas and natural sites.

51. Opening the discussion on measures to discourage strategic lawsuits against public participation, the Chair underscored that such lawsuits could constitute a serious barrier for members of the public seeking access to justice in environmental matters and an abuse of the justice system undermining several provisions of the Convention, including the eighteenth paragraph of its preamble and its articles 3 (8) and 9.

52. The representative of Justice and Environment (also speaking on behalf of the European ECO-Forum) presented the work of the Coalition against Strategic Lawsuits against Public Participation in Europe. Analysis by the Coalition against Strategic Lawsuits demonstrated that the number of such lawsuits across Europe had been increasing annually. Another survey prepared by Justice and Environment<sup>17</sup> and covering Austria, Belgium, Bulgaria, Croatia, Estonia, Hungary, Lithuania and Spain revealed that almost no country had introduced concrete measures (early detection, reversing the burden of proof, etc.) in that area and, in general, there was a lack of special laws and procedural legal tools deterring such lawsuits. Low impact of international law and insufficient protection of whistle-blowers were also widespread. To address those challenges, several actions had been launched by the European Union, in particular a road map and a legislative proposal against abusive litigation and connected online public consultations had been published<sup>18</sup>. Simultaneously, the Council of Europe was developing recommendations on such protective measures. The Coalition continued advocating for: harmonization of laws preventing abusive lawsuits to make the legal framework predictable for the victims; reform of the European Union/private international law framework; decriminalization of defamation and alignment of other laws criminalizing speech with human rights standards; full implementation of the respective European Union directive once enacted; support to victims of such lawsuits; creation of and support to independent bodies; the implementation of professional standards for lawyers and law firms; awareness-raising and training for stakeholders; and the collection of data on such lawsuits. He reiterated the importance of article 3 (8) of the Convention and the compliance and rapid response mechanisms under the Convention in contributing to the prevention and fight against cases of abusive litigation.

53. Several NGO representatives gave examples of how strategic lawsuits against public participation and other pressures faced by NGOs, for example before the Planning Appeals Commission, the Government Control Office and other review bodies, could have a chilling effect on participation and the seeking of justice and undermine the rule of law in environmental matters.

54. In the subsequent discussion, the participants learned about work undertaken by the European Union to protect whistle-blowers and other environmental defenders with regard

<sup>17</sup> Justice and Environment, *Comparative Study on SLAPPs in a few selected European Union member States* (n.p., 2021). Available at [http://www.justiceandenvironment.org/fileadmin/user\\_upload/Publications/2021/SLAPP\\_Comparative\\_study\\_final\\_for\\_web.pdf](http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2021/SLAPP_Comparative_study_final_for_web.pdf).

<sup>18</sup> See [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders_en).

to proposals for a directive addressing the issues of strategic lawsuits against public participation and environmental crimes and discussed the continuation of work by the Task Force on that area.

55. The Task Force noted that the adoption of decision VII/9 by the Meeting of the Parties on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention (ECE/MP.PP/2021/2/Add.1) was a very welcoming development in strengthening the implementation of the Convention.

56. Following the discussion, the Task Force:

(a) Welcomed initiatives of Parties and stakeholders as reported by the speakers aimed to promote effective access to justice by: (i) introducing ejustice initiatives, modern digital technologies and other tools; (ii) promoting specialization of judiciary and other legal professionals in environmental law; and (iii) introducing measures to discourage strategic lawsuits against public participation;

(b) Encouraged Parties to continue improving dissemination of information on access to administrative and judicial review procedures in accordance with the Updated recommendations on the more effective use of electronic information tools adopted by the Meeting of the Parties to the Convention at its seventh session (Geneva, 18–21 October 2021), taking into account challenges highlighted by the speakers;

(c) Encouraged Parties, stakeholders and partner organizations to promote public participation in the design, testing and implementation of e-justice initiatives linked to access to justice and to take into account needs related to access to justice in environmental matters;

(d) Called upon Parties to promote further building of capacities and strengthen specialization of judges, prosecutors, attorneys, public interest lawyers and other legal professionals in environmental cases in accordance with decision VII/3 of the Meeting of the Parties and to allocate sufficient resource for those purposes;

(e) Welcomed measures undertaken by the Parties to discourage strategic lawsuits against public participation, including by introducing early detection measures, guarantees for whistle-blowers and other environmental defenders related to cooperation in criminal proceedings, reversing the burden of proof, launching a public consultation and other measures as highlighted by the speakers;

(f) Encouraged Parties and stakeholders to continue the exchange of information, experiences, challenges and good practices to promote measures to discourage strategic lawsuits against public participation through the Convention's reporting mechanism, the Aarhus Clearinghouse, including its library on protection of environmental defenders, the jurisprudence database and other relevant tools;

(g) Noted the need for cooperation between the Special Rapporteur on environmental defenders under the Aarhus Convention and the Task Force in accordance with their mandates (ECE/MP.PP/2021/2/Add.1, respectively, decisions VII/9, annex, and VII/3).

## **V. Approval of key outcomes and closing of the meeting**

57. The Task Force requested the secretariat, in consultation with the Chair, to finalize the report and incorporate the agreed outcomes as presented by the Chair at the meeting (AC/TF.AJ-14/Inf.4). The Chair thanked the speakers, the participants, the secretariat and the interpreters, and closed the meeting.

## Annex

# Judicial Colloquium “Adjudication of cases related to climate change and air quality”

## Chair’s summary

### Introduction

1. The Judicial Colloquium “Adjudication of cases related to climate change and air quality” was held by the United Nations Economic Commission for Europe (ECE) in Geneva, on 26 and 27 April 2022, in cooperation with the United Nations Environment Programme (UNEP). The meeting was also organized in cooperation with the International Union for Conservation of Nature World Commission on Environmental Law, the Global Judicial Institute on Environmental Law, the European Union Forum of Judges for the Environment, the Organization for Cooperation and Security in Europe and other partner organizations. The event was organized pursuant to decision VII/3 of the Meeting of the Parties to the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (ECE/MP.PP/2021/2/Add.1).

2. The Judicial Colloquium was attended by representatives of the judiciary, judicial training institutions and other review bodies from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Belgium, Brazil, Bulgaria, Croatia, France, Georgia, Germany, Greece, Ireland, Indonesia, Kazakhstan, Kyrgyzstan, Latvia, Mauritius, Montenegro, the Netherlands, Poland, the Republic of Moldova, Serbia and Spain. Experts in environmental constitutionalism and environmental law also attended the meeting. The Colloquium was chaired by Mr. Luc Lavrysen (Belgium), the Chair of the Task Force on Access to Justice.

3. The Colloquium provided an opportunity to take stock of progress and challenges and exchange views on the effective handling of cases related to climate change and air quality. The meeting addressed the role of the Aarhus Convention in that context and its linkages with the ECE Convention on Long-range Transboundary Air Pollution (Air Convention), international climate change and human rights law.

## I. Setting the scene

4. Concerned at increasing impacts on human health and well-being caused by air pollution and climate change, members of the public increasingly had recourse to the courts and other independent review bodies to protect their rights and legitimate interests, address insufficient State climate and clean air actions, and enforce domestic laws relating to the environment.

5. The adjudication of those cases had relied on climate and air quality national frameworks that directed actions of public authorities and private bodies, decision-making procedures, and access to information in those matters. Such frameworks could vary between themselves and across countries and economic sectors. Nevertheless, they all shared a common goal; to protect human health, well-being and the environment.

6. International treaties such as the Paris Agreement and the Air Convention played a crucial role in improving those frameworks and reaching that goal by, for example, requiring the reduction of emissions of greenhouse gases and other pollutants and providing access to scientific knowledge and expertise to meet the obligations undertaken. In turn, the Aarhus Convention aimed to contribute to the right of every person of present and future generations to live in a healthy environment by empowering members of the public to challenge decisions, acts and omissions of public authorities and private bodies.

7. A safe, clean, healthy and sustainable environment was also essential to the full enjoyment of indivisible human rights, including the right to life, the right to respect for private and family life, the right to property, and the protection of the environment itself relied on freedom of expression and assembly and other human rights.

8. Being mindful of the values and commitments reflected in General Assembly resolution 70/1 on transforming our world: the 2030 Agenda for Sustainable Development,<sup>1</sup> the judiciary played a pivotal role in applying and interpreting provisions of domestic law in accordance with the Aarhus Convention and other multilateral environmental and human rights agreements and in achieving a wider objective of environmental protection and sustainable development.

9. The interpretation of international law provided by the European Court of Human Rights and other international adjudicative bodies was also of great importance.

10. The participants took stock of evolution, taxonomy and current trends in adjudication of cases related to climate change and air quality.

11. With regard to climate change, the cases brought by the members of the public had increased in numbers across different regions, in specific countries and in subject matters in the past years. Such cases relied on human rights enshrined in international law and national constitutions and challenged acts and omissions of public bodies and private persons. Lawsuits against the State or public authorities challenged domestic plans and enforcement of climate-related laws and policies, environmental assessment and permitting, access to information, public trust and just transition, trade and investments, reduction of and trading in greenhouse gas emissions, protection of biodiversity and ecosystems, failure to adapt and impacts of adaptation. Lawsuits against corporations and other private persons claimed corporate liability and responsibility for climate harms, reduction of greenhouse gas emissions and access to information, as well as challenging misleading advertising, environmental assessment and permitting.

12. With regard to air pollution, there had been an increase in the number of cases on subjects related to the content and scientific basis of air quality plans, zonal planning, location of air quality measurement points, diesel car bans, product approvals and defeat devices, and individual development projects that might cause exceedance of air quality standards.

## **II. Promoting effective access to justice in cases related to climate change and air quality**

13. The session took stock of experiences in different jurisdictions on how to make judicial mechanisms accessible to the public, including organizations, so that legitimate interests regarding air quality and safe climate were protected and the law was enforced.

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

15. Several current trends had been noticed:

(a) Increased review by administrative courts of decisions, acts and omissions of public authorities related to air quality and climate matters. Omissions of public authorities to take all necessary measures to comply with established emissions limit values as required by national law also should be considered illegal taking into account the international obligations;

(b) A shift towards an objective control by courts, including for individual acts of public authorities;

(c) A shift towards an "interested party", rather than an "injured party", action system;

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<sup>1</sup> A/RES/70/1.

(d) A broadening of the interpretation of the legitimate interests of the members of the public to bring a case regardless of participation in the preparatory phase or main administrative proceedings in question;

(e) Review of both procedural and substantive legality of decisions, acts and omissions by public authorities and private persons in such cases, including the quality and specificity of plans adopted by public authorities and related strategic environmental assessments and environmental impact assessments;

(f) Cases of environmental damage could prompt civil, criminal or administrative liability that should include effective remedies for the protection of the environment;

(g) Importance of cadasters and other environmental information systems for the assessment of environmental damage;

(h) Mere declaration of a decision, act or omission of a public authority or private person as a violation could not be sufficient for the remedy to be effective and concrete measures should be taken by defendant to ensure compliance with emissions limits values and restoration of environmental quality;

(i) The importance of the effective enforcement of court judgments for ensuring judicial protection and the rule of law in environmental matters and, in that regard, the required verification, for example, whether the plans subsequently adopted by the public authorities could achieve the air quality standards or reduction of greenhouse gas emissions;

(j) Remedies could include fines for public authorities for the omission to act effectively that could be distributed between institutions involved in air or climate protection and used for the verification of the enforcement of court judgments.

16. Further development of domestic climate and air quality legal frameworks should incorporate clear access to justice provisions, enabling members of the public to challenge decisions, acts and omissions of public authorities and private persons in order to ensure the protection of legitimate interests and compliance with respective laws.

17. Assessment of and compensation for environmental damage remained an important issue across civil, criminal and administrative proceedings in environmental cases. Such assessment could rely on environmental information systems maintained by public authorities based on data received from measurement stations and/or modelling estimations but could also take into account citizen science and otherwise crowdsourced data. Members of the public should be in a position to request judicial review of correct siting of measurements stations.

18. Additional measures should be taken as appropriate to address financial barriers and other existing challenges for members of the public in that regard, with the aim of giving the public seeking justice in environmental matters wide access to judicial and administrative review procedures, in order to meet the relevant requirements set out in article 9 and other respective provisions of the Aarhus Convention and other relevant treaties, constitutions and legislative acts.

19. With regard to criminal liability for environmental offences, it remained important to clarify personal responsibility for environmental criminal offences based on collective decisions and introduce criminal liability of legal entities.

### **III. Promoting judicial cooperation**

20. Awareness-raising, capacity-building and international cooperation among the judiciary remained an important element to strengthen countries' efforts to implement the 2030 Agenda for Sustainable Development and, in particular, target 16.3 of the Sustainable Development Goals (promote the rule of law at the national and international levels and ensure equal access to justice for all).

21. The Global Judicial Institute on the Environment and the European Union Forum of Judges for the Environment had continued to provide valuable platforms for increasing judicial capacity to handle environmental cases effectively and to undertake a number of activities in cooperation with partner organizations.

22. The participants shared different approaches to promoting the effective handling of environmental cases, such as: establishing environmental courts and other specialized independent and impartial bodies; promoting judicial awareness and competence through the activities of judicial training institutions; establishing certification programmes for judges specializing in environmental matters; establishing independent bodies providing technical expertise in environmental and planning laws; and the use of knowledge management, e-justice and e-learning initiatives such as the Global Judicial Portal<sup>2</sup> and InforMEA.<sup>3</sup>

23. The specialization of judges in environmental matters should rely on access to basic and advanced training in environmental law and environmental risks and take into account their territorial jurisdiction, enabling the protection of river basins, forests or biomes.

24. Feedback from the judiciary in designing legal responses to address climate change, air pollution and other environmental challenges and in improving environmental law could inform the work related to the Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo V) “Delivering for People and the Planet” for the period 2020–2030<sup>4</sup>.

25. Several assessments produced or recently updated by the United Nations Environment Programme regarding environmental rule of law, air pollution legislation, climate litigation and environmental courts and tribunals could provide a valuable background for promoting capacity-building of judiciary and improving administration and accessibility of justice in environmental matters.

26. Definition and classification of environmental cases could improve the collection of the necessary quantitative data regarding environmental cases, knowledge management and the application of tools and assistance mechanisms to reduce or remove financial barriers.

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

28. The participants highlighted the crucial value of sharing experiences, good practices and peer learning in environmental adjudication, welcomed the possibility to organize a judicial colloquium under the auspices of the next meeting of the Task Force on Access to Justice and a subregional meeting in Central Asia in 2023, and called for further support for and promotion of judicial cooperation in environmental matters at the national, regional, river basin and international levels.

29. The Chair thanked the United Nations Environment Programme, the International Union for Conservation of Nature World Commission on Environmental Law, the Global Judicial Institute on Environmental Law, the European Union Forum of Judges for the Environment and the Organization for Cooperation and Security in Europe for their crucial support to the event and concluded that the outcomes of the Judicial Colloquium would be summarized in the Chair’s summary and reported to the Working Group of the Parties at its twenty-sixth meeting (Geneva, 22–23 June 2022).

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<sup>2</sup> See <https://judicialportal.informe.org/> .

<sup>3</sup> See <https://www.informe.org/en> .

<sup>4</sup> See <https://leap.unep.org/> .