

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

Fifteenth meeting

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Stocktaking of recent and upcoming developments

Information paper N3

Draft report on the outcomes of the survey on measures to enable effective access to justice in environmental matters

At its fourteenth meeting (Geneva, 27-28 April 2022)¹, the Task Force on Access to Justice highlighted the need for further work to remove persistent barriers related costs, access to assistance mechanisms and timeliness and decided to undertake a survey to collect possible solutions and good practices to overcome these barriers. The Task Force took note of the draft questionnaire and agreed to provide final comments by 16 May 2022. Taking into account the comments received, the secretariat in consultation with the Chair revised as necessary and circulated the questionnaire to collect the required information by 1 November 2022.

In order to facilitate such discussion, the Chair with the support of the secretariat prepared the current document, which outlines a possible scope and methodology for the analysis.

Delegates are invited to consult this information document in advance of the meeting.

I. Introduction

1. At its seventh session², 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. Objective I.12 (c) of the Convention's Strategic Plan for 2022-2030³ also requires each Party to undertake genuine efforts to reduce and eliminate financial and other barriers that may prevent access to such review procedures and establishes, where appropriate, assistance mechanisms – also covering vulnerable and marginalized groups.

2. To support the implementation of the Convention's Strategic Plan for 2022-2030 and decision VII/3, the Task Force on Access to Justice agreed to carry out a survey to collect possible solutions and good practices to overcome the above-mentioned barriers and enable effective access to justice.

¹ See <https://unece.org/info/Environmental-Policy/Public-Participation/events/364935>

² 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>

³ See <https://unece.org/documents/2023/03/responses-2022-survey-measures-enable-effective-access-justice-environmental>

3. The draft questionnaire was prepared by the secretariat in consultation with the Chair. The draft was discussed at the fourteenth meeting of the Task Force on Access to Justice in Geneva on 27-28 April 2022⁴ and revised by the secretariat in consultation with the Chair in the light of the discussion at the meeting. Afterwards, the finalized questionnaire was distributed to national focal points of the Convention, the network of judiciary, judicial training institutions and other review bodies in the pan-European region, non-governmental organizations and other stakeholders with the request to complete the questionnaire by 1 November 2022.

4. To date, the secretariat received twenty-nine responses from twenty-one Parties. Sixteen responses were received from the governments (Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Finland, France, Georgia, Italy, Kazakhstan, Lithuania, Norway, Romania, Slovakia, Serbia and United Kingdom of Great Britain and Northern Ireland), eight responses from the members of judiciary (Armenia, Georgia, Republic of Moldova, Romania, Serbia, Spain, Tajikistan and Ukraine) and one from an independent review body (European Union), two from non-governmental organizations and two from the Aarhus Centres in Armenia and the Republic of Moldova.

5. Several responses from the governments indicated that the questionnaire was completed following the consultations with various competent public authorities, members of judiciary and other legal professionals.

6. The survey uncovered a variety of measures that Parties to the Convention have taken to enhance access to justice, providing valuable supplementary information to national implementation reports and facilitating the exchange of knowledge and experience in this field at the international level.

II. Summary of key survey outcomes

7. The present document provides for a concise summary of key survey outcomes, which will be included in the report of the Task Force on its fifteenth meeting, within the established word limit. Additionally, noteworthy practices cited by respondents are provided in an addendum to this document. For further information, individual responses can be accessed on the dedicated Task Force webpage⁵.

General observations

8. The public's access to justice in environmental matters is largely contingent on the overall efficiency and effectiveness of the domestic justice system. While most respondents reported general measures to enhance access to justice, which are also applicable to environmental cases, only a few measures were identified as specifically related to environmental matters.

9. The survey results also highlighted the potential benefits of standardizing the list of measures and their descriptions, particularly with respect to available legal aid services. This could facilitate monitoring of progress in the area and enhance reporting on such progress in national implementation reports.

10. Some respondents also noted challenges in identifying and categorizing environmental cases within the scope of the Aarhus Convention, due to varying categories used in national classifiers for civil, commercial, administrative, and criminal matters.

11. The survey responses showed that there were disparities in the application of certain measures (such as waiver of court fees, legal aid, and injunctive relief) across specific types of review procedures (administrative, civil, criminal), resulting in varying practices and levels of barriers for public access to these procedures. Additionally, some respondents noted a lack of common understanding regarding the application of these measures, and selective implementation in practice, which depended on the type of procedure and other factors.

12. The majority of respondents reported general measures to facilitate access to justice which could also be applied to environmental cases. Only a few measures specifically related to environmental cases were reported (e.g. in France, Finland, and Norway).

13. The survey highlighted the need for legal professionals to have a common understanding of rules and practices, and for the public to be regularly informed of measures taken to promote access to justice in environmental matters. This could be achieved through various means, including through maintaining a special webpage on an environmental portal.

⁴ More information is available from <https://unece.org/environmental-policy/events/fourteenth-meeting-task-force-access-justice-under-aarhus-convention>

⁵ See <https://unece.org/documents/2023/03/responses-2022-survey-measures-enable-effective-access-justice-environmental>

14. The survey results indicated that Aarhus Centres and NGOs with legal expertise in environmental, human rights, and other areas can play a crucial role in providing legal assistance to members of the public seeking access to justice and exercising their rights under the Convention. However, only few examples were provided of specific measures taken by Parties to provide public funding or establish independent mechanisms to finance and incentivize their work.

15. The digitalization of justice and administrative systems, as well as e-justice initiatives, are significantly transforming how members of the public can access and participate in administrative and judicial review procedures. Therefore, it is crucial to ensure effective onboarding for all members of the public, including those in vulnerable situations, to use new digital tools and prevent or reduce any new barriers.

16. Academic institutions have continued to play a significant role in promoting effective access to justice in environmental matters. They achieve this by supporting education and training in environmental law, providing expertise in environmental trials when requested and establishing environmental law clinics.

Measures to reduce or remove financial barriers for members of the public to bring environmental cases

17. The measures reported to reduce or remove financial barriers for members of the public were mostly included in the legal framework, with some degree of discretion given to courts and public authorities to apply them.

18. Half of the respondents reported that they undertook some measures to waive the court fees, mainly with regard to review by public authorities or access to administrative, criminal and constitutional courts (see examples from in the addendum to this document). Full waiver of costs was often clearly linked to the status of the claimant as the recipient of the legal aid and in some cases to the type of cases or type of proceedings. The Parties used different approaches to do this, for example through a general waiver for members of the public to bring an environmental case in laws on stamp duties, awarding legal aid to cover court fees or giving a power to a court to reduce or waive the court fees (for example, in Serbia and Tajikistan). Some Parties used a hybrid approach to these measures. In Italy, for example, the exercise of civil action in the criminal trial is not subject to the payment of the court fee, if only the general sentence of the person responsible is requested.

19. The application of the “loser pays” principle remained commonly used by the Parties, meaning that the losing party in a legal dispute is required to pay the costs of the winning party. However, a few Parties have implemented measures to waive or partially derogate from this principle in environmental cases in civil and administrative procedures. The examples of full waiver were reported by the Board of Appeal of the European Chemical Agency and Norway. A partial derogation from the application of the loser pays principle was reported in Italy and Serbia.

20. The application of the protective cost orders in environmental cases were reported in Bulgaria, Romania and the United Kingdom.

21. The practice of public authorities granting full or partial waivers of costs recovery in environmental cases brought and lost by the members of the public was less common. Mainly, such practice was reported in Austria, Bosnia and Herzegovina, Finland, Georgia, Lithuania and the Republic of Moldova. The survey also suggested that adopting legal provisions allowing public authorities to apply this measure could contribute to reducing financial barriers for members of the public to access justice and reduce the deterrent effect for members of the public to seek justice.

22. It is important to note that waiving bonds and securities can also contribute to reducing financial barriers for members of the public to access justice in environmental cases. However, the survey results indicate that only a few respondents reported measures to waive bonds and securities in environmental cases initiated by members of the public. For example, in Finland, no security is required from an applicant for injunction, regardless of whether enforceability is based on a granted right to commence or other order of execution. In Norway, when an interlocutory measure is granted to secure a main claim based on violation of provisions for the protection of the environment, the claimant is only liable to compensate such costs referred to if they knew or ought to have known that the claim did not exist when the order for provisional security was made. In the United Kingdom, the court has discretion in Aarhus Convention claims to award interim injunctive relief without requiring a cross undertaking in damages.

23. One third of the respondents reported implementing some measures to reduce the costs of experts in environmental cases. For example, In Norway and some other Parties in cases if free legal aid or exemption from court fees have been granted, they could cover the costs of experts. The Board of Appeal of the European Chemical Agency may decide - in exceptional cases and if applied for - that the Agency pays the costs for taking evidence,

where the evidence is necessary and decisive for the outcome of the proceedings and is in the interest of the proper administration of justice. Additionally, in Austria, the principle applies that the costs incurred by the authority are borne by the authority in procedures before administrative courts, including costs of experts of the authority, except of external experts.

24. Other measures to remove or reduce financial barriers could include (a) providing free of charge appeals against the denial of access to environmental information; (b) exempting the fee if the appellant is successful in his or her challenge; (c) not requiring the applicant to be represented by a lawyer; (d) charging the fee together with the decision of the court; (e) changing the language of the proceedings to reduce translation and interpretation costs for the parties; (f) providing a litigation costs calculator; (g) allowing judicial review proceedings to proceed without a hearing or without changing costs relating to that hearing; and (g) allowing a whistleblower who is a party to a dispute to ask the judge, in certain situations, to award him or her, at the expense of the other party, an advance on legal costs.

Measures taken to facilitate access to legal aid and other assistance mechanisms for members of the public to bring environmental cases

25. Most countries reported that they had established legal aid schemes, with criteria for eligibility varying between the Parties. These criteria often related to the applicant's financial status, with some countries also considering other vulnerability criteria and good faith legal action. In several Parties access to legal aid remained limited to natural persons only. The survey also revealed that access to legal aid by environmental NGOs can also be limited in practice or provided as an exception.

26. In most studied Parties, the legal aid in environmental cases can cover the pre-litigation advice, preparation of documents for bringing before the court in administrative, civil, criminal and constitutional justice procedures, as well as representation in court by a lawyer. However, in some countries, the scope of legal aid services provided to natural and legal persons differed. Some respondents also cautioned that the procedure to receive legal aid could be long and complicated. However, due to gaps in disaggregated data collection it is difficult to assess the application of legal aid in environmental cases in practice.

27. Specialized environmental law clinics have been established by universities in Armenia, Austria, Bulgaria, and Serbia, providing free legal assistance to individuals and groups in vulnerable situations. Any specific details about the procedural status of the legal clinics were not reported.

28. Some countries, for example France and United Kingdom, provided the possibility to members of the public to check the eligibility to legal aid through the website.

29. A number of respondents mentioned the availability of pro-bono legal services offered by NGOs providing general legal assistance, and law firms.

30. The provision of public funding to support environmental NGOs offering legal assistance to the public was mentioned only by Austria, Bosnia and Herzegovina, France, Kazakhstan and Norway.

31. Based on the responses received, there is little evidence of the use of crowdsourcing campaigns or other independent financing mechanisms for environmental NGOs. Only France mentioned facilitates and encourages independent financing of the associative sector through a tax reduction for taxpayers making unrequited donations to organizations of general interest. This includes payments of money, donations in kind, contributions, waivers of income or products and expenses incurred in the context of a voluntary activity.

32. From the NGOs side, a concern regarding the use of independent financial mechanisms was raised about their capacity to advocate so people could provide financial contribution, and legal support needed to make such mechanism work. Currently, in the Republic of Moldova the Law provide for a possibility to any taxpayer to re-direct 2 % of its income to one organization that is in the list. However, in practical terms it can mean that a few people will donate but the reporting requirements on the use of funds could be excessive and create additional bureaucratic burdens on NGOs.

33. Some NGOs responses revealed the potential challenges and limitations of implementing independent financial mechanisms, such as crowdsourcing campaigns or tax reduction programs, due to their capacity to effectively advocate for donations and the potential administrative burden of reporting requirements. These concerns highlight the need for effective communication and coordination between NGOs and relevant authorities in developing and implementing independent financial mechanisms to support environmental legal assistance.

Measures to promote specialization and training of members of judiciary and other legal professionals in environmental law

34. In most of the studied Parties, there were no specialized environmental courts or tribunals established. Instead, environmental cases were typically considered by administrative courts or administrative chambers of the courts. While some respondents provided examples of existing or planned specialization of particular administrative, civil, or criminal courts in environmental matters, these were the exception rather than the norm. Just a few examples from Finland and France were provided regarding existing or planned specialization of particular administrative, civil and criminal courts in environmental matters. Similarly, Austria, Kazakhstan, Lithuania and Slovakia reported some examples of the specialization of judges in environmental matters. However, such specialized courts or judges were not widely reported across the surveyed Parties.

35. Specialized prosecutors' offices to investigate environmental crimes have been established in France and Norway. Additionally, Ukraine has established a specialized department, while Romania has established specialisation of prosecutors in environmental matters.

36. Most respondents noted that some initial or continuous training programmes for judges and prosecutors in environmental law had been established, but most remained optional. However, no trainings for forensic technical experts were reported.

37. National associations of judges and lawyers, as well as international associations such as the European Forum of Judges for the Environment and the Global Judicial Institute on the Environment, provide important platforms for judges to exchange knowledge, expertise and best practices on environmental law and to receive training and support in this field.

38. Support of partner organizations like OSCE and UNDP to develop and update initial and continuous training programmes in environmental law also remained crucial.

Measures to access to independent environmental expertise during judicial and administrative review procedures

39. Access to independent environmental expertise during judicial and administrative review procedures varied across the Parties. In Norway and several other countries, there are two types of expert evidence: expert assessments by court-appointed experts, and expert evidence by expert witnesses who evaluate the evidence on behalf of a party without being appointed by the court. Usually, the party who requested the court to appoint an expert, is required to cover the costs of the expert. However, in cases where free legal aid or exemption from court fees have been granted, this includes the costs of the expert.

40. Finland and Norway have technical judges in courts. The Board of Appeal of the European Chemical Agency consists of technically and legally qualified members.

41. Independent forensic institutions that can provide various types of expertise in judicial proceedings have been established in Lithuania, the Republic of Moldova, and Kazakhstan.

42. In Serbia, the Association of Judicial Experts "Vojvodina" has established environmental protection as one of its areas of work, and provides expertise on environmental issues to the judiciary and other interested parties.

43. Publicly accessible lists or registries of judicial experts were reported by several Parties, including Austria, Bosnia and Herzegovina, Bulgaria, Georgia, Lithuania, Republic of Moldova, Romania, Slovakia, and Ukraine. It was noted that it is important to ensure that such lists or registries cover environmental expertise and are maintained transparently.

Measures to secure timeliness and reduce duration of judicial and administrative review of environmental cases.

44. In most Parties, the legal framework typically requires courts to adjudicate cases, including environmental ones, within a reasonable, optimal or predictable timeframe. Some countries established more specific timelines for administrative review or review before administrative courts.

45. Several respondents emphasized the importance of defining in the legal framework either the criteria for prioritizing and weighting the complexity of environmental cases or vesting the power on courts or judicial governing bodies to establish such criteria and regulate the workload of judges depending on the complexity of the received cases.

46. For example, a respondent from Armenia reported that the Supreme Judicial Council defined benchmark periods for the average duration of the procedures according to the individuality and complexity of the cases. Lithuania and the Republic of Moldova also applied a similar approach. Romania prioritized cases related to information of public interest in courts under an emergency procedure and waived stamp fees.

47. In case of inadequate case management, judges may be subject to disciplinary proceedings, appeals for delaying a civil or criminal trial can be launched (Romania) and claims for compensation for undue delay (Finland) or liability claims (France) can be made.

48. Sufficient funding and human resources in courts remained critical factors in ensuring effective access to justice in environmental matters, according to several respondents.

49. Half of the respondents reported the possibility of applying interim measures to prevent potential adverse impacts on the environment. In France, such measures included protective measures or measures of restoration to prevent imminent damage or stop illicit disturbance, or the temporary suspension of the execution of administrative decisions. In Finland, the court has the power to order a contested administrative decision regarding a protected area to remain in force. In Norway and the United Kingdom, such measures could be applicable without additional securities.

50. The automatic suspensive effect of administrative decisions when challenged in court is applied in Austria and Finland. This measure can be effective in preventing environmental damage, given the existing timeframes of court proceedings.

Measures related to e-justice initiatives that can support access to justice in environmental cases

51. Most respondents provided detailed examples of online access for members of the public to information about administrative and judicial review procedures, environment-related standards and legislation and case-law on environmental matters. However, many noted that further work is needed to improve and expand such access in the future.

52. At the same time, only one third of respondents reported collecting quantitative data on environmental cases, and further efforts are needed in this area to adjust case classifiers to support monitoring of cases related to the Convention.

53. Electronic submission and management of claims was mentioned in Armenia, Austria, European Union, France, Italy, Kazakhstan, Lithuania, Norway, Romania and Ukraine. Remote court hearings reported in Austria, Finland, Georgia, Kazakhstan, Lithuania, Norway and planned in Italy and Romania.

54. The United Kingdom reported on the experience in developing digital justice system in a way that digital technology could facilitate a user's journey from when they first realise they may have a legal problem, through to resolving their case in court where necessary. This approach also can be considered for environmental cases.

55. Data mining tools and tools integrating spatial, environmental and case-management data for processing and analysis of environmental cases seems to be less common.

Measures related to alternative dispute resolution of environmental cases is available and/or used in practice

56. Some Parties reported the possibility of using alternative dispute resolution mechanisms such as arbitration, negotiation, mediation, and conciliation in environmental cases, but the use of these mechanisms remained limited due to low public awareness and practice.

57. Half of the respondents indicated the possibility to use mediation as an alternative dispute resolution of environmental cases. Several countries initiated experimental and research projects on mediation.

58. In several Parties (e.g. Bulgaria, Italy, Lithuania, Romania, and Ukraine), special laws have been adopted to define the mediation procedure. For example, in Bulgaria, Norway, and Ukraine, laws regulate extrajudicial (out-of-court) procedures. In Lithuania, the Law on Mediation applies to extrajudicial and judicial (court-based) mediation of civil and administrative disputes.

59. In Kazakhstan and France, specific legislative provisions on judicial mediation were included in the administrative procedural codes. In Kazakhstan, parties may fully or partially resolve an administrative case by concluding an agreement on reconciliation, mediation, or dispute resolution through participatory procedures at all stages of the administrative process before the court renders a decision, based on mutual concessions. Reconciliation is possible only if the defendant has administrative discretion.

60. In Italy, as a result of a project activity “FacilitAmbiente service” has been established to help businesses, public bodies and citizens to deal preventively with environmental conflicts, through a facilitation process with qualified experts.

61. The United Kingdom also introduced initiatives to encourage and promote use of mediation in all civil disputes. For example, if the environmental claim is for compensation to the value of £10k, the claimant will be offered a free mediation session with the Small Claims Mediation Service.

62. Several respondents also mentioned the possibility of recourse to national human rights institutions, public prosecutor’s offices and national auditors’ offices as an avenue to bring environmental complaints against public authorities.