



Organization for Security
Co-operation in Europe

Mission to Serbia

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The Aarhus Convention: Access to Justice and the Compliance Committee

“Implementation of the Aarhus Convention in Serbia”

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The Access to Justice Pillar



Access to Justice (Art. 9)

– Mechanisms for enforcing the legal regime

- 9.1 – Access to Information
- 9.2 – Participation in Decisionmaking
- 9.3 – Public “Defense” of environmental law
- 9.4 – Due Process requirements
- 9.5 – Practicalities: information and assistance



Article 9.1 claims



Review procedures to challenge the handling of information requests (any person) (art. 9.1)

Arise to guarantee rights under Article 4, where information request is:

Ignored

Refused

Partial information is given



Art 9.1 –

Obligation to provide review of claims that right of access to information is violated

- any person
- fast
- free of charge or low-cost
- before court or other body



Art.9.2 -



- Review procedures to challenge substantive or procedural legality of project-level decisions requiring public participation (restricted to subset of concerned public)

Art.9.2 - standing



- Members of the public concerned (art. 2.5)
 - affected or likely to be affected
 - having an interest in environmental decision-making
 - role of NGOs
- Criteria for standing in art. 9.2
 - Sufficient interest
 - Impairment of a right
 - criteria in national law consistent with the objective of giving wide access to justice

Art.9.2 - scope



- Reasons
 - Substantive or procedural legality
 - Decision, act or omission subject to Article 6
- Court review and administrative review



Article 9.3



Obligation to provide opportunities for public to challenge general violations of national law relating to the environment (citizen enforcement)

- conditions for standing may be imposed by Parties
- actio popularis
- acts or omissions of private persons or governmental authorities



Aarhus Convention: Third Pillar



Art 9.4 – Minimum standards for A to J

- Adequate and effective remedies, including
 - Injunctive relief ‘as appropriate’
 - Permanent and temporary
- Fairness
- Equity
- Timeliness
- Not prohibitively expensive
- Decisions made in writing & publicly accessible



Information and assistance

– Art.9.5

- Meta-Information -
relation to
 - Art.3.5 etc
- Assistance –
relation to Art.3.2



The Compliance Committee (Art. 15)



Compliance mechanism: Compliance Committee established, mandated to consider inter alia communications from the public

- Since 2004, at least 29 communications from the public, including civil organizations, triggering compliance review procedures
- Committee has found instances of non-compliance as well as instances where complaints were unfounded
- Committee findings are transmitted to MOP which takes appropriate action; MOPs in 2005 and 2008 reached decisions concerning non-compliance

Thank you



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