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Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental matters

Task Force on Access to Justice

STUDY ON STANDING FOR INDIVIDUALS, GROUPS AND ENVIRONMENTAL NON-GOVERNMENTAL ORGANIZATIONS BEFORE COURTS IN CASES IN ENVIRONMENTAL MATTERS

Unedited version[*]

Eastern Europe, the Caucasus and Central Asia

Selected countries:
Armenia, Azerbaijan, Belarus, Kazakhstan, Republic of Moldova and Tajikistan

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* *This document is an unofficial translation from Russian.*

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Note

The designations employed and the presentation of the material in this report do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries. Its contents express the personal opinions of the authors only, and do not represent position of any country, its authorities or ECE.

Language

The present report was originally prepared in Russian and informally translated into English.

Contents

[1] [1] The order of the countries in this report corresponds to the alphabetical order used in the original Russian text.

General Part

I. Purpose and methodology of the study

1. The purpose of this study is to identify criteria for standing for individuals, groups and environmental non-governmental organizations before courts or other review bodies competent to decide cases in environmental matters. The study aims to identify best practices and challenges in implementing the relevant provisions of article 9, paragraphs 1, 2 and 3, of the Convention based on the overview of the legislation and practice in six selected countries of Eastern Europe, the Caucasus and Central Asia (EECCA countries). It will also provide proposals on how the identified challenges may be overcome.

2. The study is based on the provisions of the Aarhus Convention and is conducted within the framework of the Task Force on Access to Justice to assist in the implementation of its mandate set out in decision IV/2 of the Meeting of the Parties to the Aarhus Convention adopted at its fourth session.

3. Objects of the study are national legislation and law enforcement practice (as of 1 April 2013) in 6 countries: Armenia, Azerbaijan, Belarus, Kazakhstan, Republic of Moldova and Tajikistan.

4. In order to gather the necessary information for the study, a questionnaire was developed and distributed to the national experts in Russian.

5. Information on the countries was provided by the national experts: Matanat Asgerova (Azerbaijan), Gore Movsisyan (Armenia), Elena Laevskaya (Belarus), Svetlana Kovlyagina (Kazakhstan), Natalia Zamfir (Republic of Moldova) and Tatyana Khatiukhina (Tajikistan). A synthesis of the provided materials was carried out by Mr. Dmytro Skrylnikov under supervision of the Chairman of the Task Force on Access to Justice Mr. Jan Darpo and the UNECE Aarhus Convention Secretariat.

6. In April 2013, the questionnaires filled out by the national experts were sent to national focal points of the Aarhus Convention for multi-stakeholder consultations and comments. The draft outline of the study and the initial findings were discussed during the Sixth meeting of the Task Force on Access to Justice (Geneva, 17-18 June 2013). The draft final document in Russian was sent in December 2013 for comment to the National Focal Points and to other relevant stakeholders of countries in which the study was conducted as well as it was also discussed at the Seventh meeting of the Task Force on Access to Justice (Geneva, 24-25 February 2014).

7. During the study process the written comments on questionnaires as well as on the draft of this document were received from the national experts, the Ministry of Ecology and Natural Resources of Azerbaijan Republic, the Supreme Court of the Republic of Belarus , the Ministry of Justice of the Republic of Belarus , the National and the Minsk City Bar Association of the Republic of Belarus, the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus, the Supreme Court of the Republic of Kazakhstan , West Kazakhstan Oblast Court , the Ministry of Environment of the Republic of Moldova and the Supreme Court Chamber of the Republic of Moldova.

8. This study is primarily based on analysis of the existing legislation, its implementation, as well as examples provided by the national experts as part of the questionnaire.

The results of the study on "Access to justice in environmental matters in Eastern Europe, Caucasus and Central Asia: available remedies, timeliness and costs"[2] were also taken into account.

II. Key issues and trends

A. General issues

9. In all countries, the standing rules are set, generally, in civil, administrative or economic procedural law. Some standing rules for cases in environmental matters can also be provided in the environmental legislation.

10. Usually there are two main types of court proceedings which can be initiated when the case relating to the environment is filed by an individual and (or) an ENGO:

a) civil court proceedings in the court of general jurisdiction for civil cases, and

b) administrative court proceedings in the administrative court (Armenia, Azerbaijan) or in the court of general jurisdiction (Belarus, Kazakhstan, Republic of Moldova, Tajikistan) for appeals against decisions, actions or omissions of public authorities and officials.

11. In some countries (e.g. Belarus and Kazakhstan), cases between legal entities (e.g. ENGO, which is registered as legal entity, and public authority or private legal entity) shall be filed to economic (commercial) courts.

12. “Narrow" treatment of the legal standing which is limited to the right to go to the court only for the protection of infringed rights, freedoms and legitimate interests / interests protected by law[3] (especially in the context of the capacity of the public to ask for the judicial review of violations of environmental laws and to bring claims in the public interest) is common to all the countries.

13. As a rule, the legislation in all participating countries provides the right of individuals to address the court for the protection of their infringed rights, freedoms and legitimate interests / interests protected by law. According to the legislation of the selected countries, ENGOs can also apply to court in the case of infringement of the rights or legitimate interests of the organization and / or its members.

14. In all countries, for groups not registered as legal entity, the general standing rules as for individuals apply.

15. In some countries, there is the theoretical possibility for ENGOs to apply in cases in environmental matters for the protection of the public interests or on behalf of an indefinite number of persons[4] mentioned in the legislation (Republic of Moldova and Tajikistan). The court practice, however, is not known. In most countries, legislation and practice of going to court to protect public interests exist in the field of consumer protection.

16. Usually the legitimate interests / interests protected by law for individuals or ENGO are not clearly defined in the legal systems of countries and therefore the infringement or protection of the legitimate interest can be interpreted in different ways.

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[2] The study is available from http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppatoj/analytical-studies.html

[3] In some countries standing may be limited to the right to go to the court only for the protection of infringed rights

[4] The expression “a lawsuit on behalf of an indefinite number of persons” is used in the legislation of most of the countries and for the purpose of this study shall be considered an “actio popularis”.

17. In most countries to prove sufficient interest ENGOs also may need to provide the court with statutory documents of the NGO, according to which one of the activities of the NGO is the protection of the environment. The territorial scope of activity could be also an issue in some countries (since in many countries NGOs are divided on this basis into national, local (regional) and international public associations). No examples where the cases were rejected by court because of these criteria were reported.

18. Sometimes a conflict of norms of environmental legislation and civil procedural legislation (and/or administrative or economic procedural legislation) could be found in the countries. While the provisions of environmental legislation provide "wider" standing in case of protection of public interest or challenging acts or omissions which contravene provisions of its national law, the procedural legislation provides standing in case of infringed rights, freedoms and legitimate interests / interests protected by law only. Moreover, in countries where some court practice already exists (Armenia), it shows that courts usually interpret such conflicts in the legislation in a way that is more restrictive for the public, and giving priority to the procedural laws.

19. The experts ascertained that in some countries there was practically no practice of court cases initiated by the public in environmental matters, or it was insufficient for the analysis of implementation of the existing legislation. In some cases, the national experts indicated that a legal norm exists, but due to the lack of practice it was difficult to assert whether it was effective and whether its application (incorrect application) created obstacles in access to justice and, specifically, whether certain criteria for standing were interpreted in a restrictive way or whether it provided wide standing.

B. Challenging the refusal of access to environmental information

20. In all countries, the individual and ENGO have the right to challenge the refusal of access to environmental information directly to the court. There are no any specific criteria in these cases and general rules on infringement of rights are applied.

C. Challenging the legality of decisions, acts and omissions of public authorities in relation to Article 6 of the Aarhus Convention

21. In all participating countries, individuals and ENGOs usually have a right to challenge the substantive and procedural legality of the decisions as well as acts or omissions with regard to specific activities relating to the environment in court. In countries there is a wide range of different types of decisions on specific activities relating to the environment. In some countries, certain types of procedure for the adoption of such decisions does not provide for public participation. As a rule, the legislation provides the right of individuals to address the court in case decisions, acts and omissions infringed rights, freedoms and legitimate interests/interests protected by law. In Armenia, it relates to rights and freedoms only.

22. In most countries in order to be able to go to court, ENGO also may need to prove the interest by providing the court with its statutory documents, according to which one of the activities of the NGO is the protection of the environment or the statutory purposes of the ENGO are related to the sphere in which the decision was taken.

23. In some countries, the public has the right to file a complaint either for an administrative, or a judicial review (Armenia, Azerbaijan, Kazakhstan, and Tajikistan). In these countries application of an administrative review does not preclude from a judicial review. In Belarus the complaints against acts can be filed to the court after their administrative review by the higher authority. There are also different views in Belarus whether and what outcomes of the administrative review can be appealed to the court (e.g. there is an opinion if the appeal body agrees with the appealed decision and does not adopt a new decision, this situation cannot be challenged in

court). Also in some countries, the legislation in certain cases requires an appellant to recourse directly to a decision-making body\official with a request to cancel its decision (Republic of Moldova), and only after that to the court.

D. Challenging acts or omissions "which contravene provisions of its national law in relation to the environment"

24. The situation with regard to the ability of going to court in the case of violation of law when such violation does not directly affect the rights and legitimate interests of individuals or entities is ambiguous. In most of the countries, this right is not explicitly enshrined in the legislation. However, in some countries, such ability exists on the basis of law but the lack of practice do not provide for a complete picture of implementation of this standard.

25. While in some countries the possibility to challenge actions violating the laws relating to the environment is established in environmental legislation, the relevant provisions of procedural (administrative, civil and / or economic) legislation require proof of a violation of rights or legitimate interests. For example, in Kazakhstan, according to experts, on the basis of the Environmental Code, individuals and ENGOs may appeal the action/ inaction of those who violate the provisions of law relating to the environment. However, in accordance with article 150 of the Civil Procedural Code (CPC) in the lawsuits the plaintiffs are required not only to indicate the demands but also describe in detail the essence of violation or danger of violation of their rights, freedoms and legitimate interests, the facts on which to base their demands, as well as proves supporting these facts and demands.

E. Claim for pause/stop of the activity

26. In most of the countries, it is possible to terminate an activity in both administrative and judicial procedures. In many countries, it is possible to get a permanent ban from the courts (in judicial review). In all the countries, courts also can temporarily restrict or suspend operations until they are brought into conformity with the standards or until certain requirements are fulfilled. In many countries, the law establishes the right of the public to apply for termination of environmentally harmful activities, the activity adversely affecting the environment and human health, or resulting in a breach of environmental legislation (Armenia, Azerbaijan, Belarus, Kazakhstan, the Republic of Moldova and Tajikistan). In most countries, the cessation of activities align with the negative impacts on the environment or damage to the environment, and not just the fact of violation of the legislation, however, as a rule, such a negative impact should be related to violation of the law. For example, in Belarus, according to article 100 of the Law "On Environmental Protection" individuals and ENGOs have the right to bring a court action to suspend (terminate) economic and other activities, that have adverse effect on the environment, if as a result of such activities violations of the requirements in the field of environmental protection occur, damage is caused to the environment or a risk of causing damage to the environment in the future is created. If we evaluate this provision of the law with respect to a given issue, it is worth noting that Article 100 of the law may not apply in all cases of violation of "provisions of the law relating to the environment" (Article 9, paragraph 3 of the Aarhus Convention), and in cases where there is a violation of "requirements in the field of environmental protection" (requirements stated in Chapter 6 of the Law "On Environmental Protection").

27. In fact, such provisions usually do not directly require the need to prove the infringement rights and legitimate interests/interests protected by law but in most countries it might be still applied together with more conservative civil procedure legislation. For example, in Tajikistan, paragraph 1 of Article 13 of the Law " On Environmental Protection " provides that associations and other non-profit organizations may apply to the public authorities and court to appeal the decisions on the design, location, construction, reconstruction and commissioning of facilities, as well as demand the limitation, suspension or termination of economic and other activities which have a negative impact on the environment. However, Article 251 of the Civil

Procedural Code provides that the court shall consider the case arising out of public legal relations, based on the application of the person concerned. The claim should indicate what decisions, actions (inaction) should be illegal, what specific rights and freedoms of persons have been violated by these decisions, actions (inaction). Also, in Belarus the Law "On Environmental Protection" provides for the right of civic associations operating in the field of environmental protection, and citizens "to file claims to the court for complete or partial suspension or termination of economic and other activities adversely affecting the environment, if as a result of such activities violations of the requirements in the field of environmental protection occur…". However, the Civil Procedural Code establishes the rights of public associations (organizations) to appeal only for the protection of the rights and interests of members of an association and only if these rights conform to the statutory purposes of the association (Article 86 of the Civil Procedural Code). The lack of court practice does not allow evaluating the implementation of such provisions.

F. Actio popularis

28. The concept of going to court for the protection of the public interests or on behalf of an indefinite number of persons[5] exists in the legislation of most of the countries, but it is mainly applicable to protection of consumers' rights. In the Republic of Moldova, according with Article 73 of the Civil Procedural Code, public authorities, organizations and individuals, if provided by law, may apply to the court to protect the rights, freedoms and legitimate interests of other persons at their request or to protect the rights, freedoms and legitimate interests of an indefinite number of persons.

29. In some countries, the right to apply on behalf of an indefinite number of persons has been enshrined in the legislation relating to the environment, but was not included in the procedural legislation. In some other countries, the procedural legislation contains the provisions establishing the right of individuals or legal entities to apply for the benefit of others or on behalf of an indefinite number of persons, if provided by law, but this provision is missing in the appropriate laws relating to the environment.

For example, in Tajikistan, the Civil Procedural Code provides that in cases stipulated by the Code and other laws, a civil proceeding can be initiated upon a claim of a person acting on its own name in the defence of the violated or disputed rights, freedoms and legitimate interests of the other persons involved in the case, in the defence of the rights, freedoms and interests of an indefinite number of persons, or in the defence of interests of the Republic of Tajikistan. However, the environmental legislation does not contain a direct provision establishing the right to apply on behalf of an indefinite number of persons.

30. In some countries, the right to go to court to protect the public interest or on behalf of an indefinite number of persons is granted only to NGOs (Azerbaijan, Kazakhstan and the Republic of Moldova).

G. Claiming for damage to environment

31. In most countries, individuals and ENGOs are not entitled to initiate actions claiming for damage caused to the environment. Usually, this is the competence of the prosecutor or competent authorities (e.g. environmental inspectorate). In Moldova, according to experts, the text of part 1 of Article 73 of the Civil Procedural Code and p.55 of the Resolution of the Plenum of the Supreme Court Chamber of the Republic of Moldova of 24 December 2010, can be concluded that public organizations and citizens can sue for damages caused to the environment, health, including, in the interests of an indefinite number of persons, however, the practical examples are not known in this field.

[5] The expression "a lawsuit on behalf of an indefinite number of persons" is used in the legislation of most of the countries and for the purpose of this study shall be considered an "actio popularis".

III. Findings

32. In most countries, there is an ambiguous interpretation or application of the criteria of legitimate interest / legally protected interest for individuals or ENGOs in cases relating to the environment, and therefore it is advisable to take into account the need to provide greater access to justice in environmental matters and, as a minimum, take into account the requirements of Article 9 of the Aarhus Convention. In particular, it is advisable to reflect in the legislation of countries the provisions one public concerned, according to which NGOs promoting environmental protection shall be deemed to have an interest (para 5 of Articles 5 and para 2 of Article 9 of the Aarhus Convention).

33. In many countries, there is inconsistent or unclear relationship between substantive and procedural rights in the environmental field.
In most countries in case of violations of legislation relating to the environment, individuals and ENGOs may challenge acts and omissions, both by public authorities and by private individuals, but usually only in the case of infringement of their rights, freedoms or interests, in connection with this there is a need of review or interpretation of the provisions of national legislation in the light of paragraph 3 of Article 9 of the Aarhus Convention.

34. The results of this study indicate the need for improving the legislation of countries in order to address existing conflicts between the relevant environmental legislation and civil procedural legislation (economic procedural or administrative procedural legislation) and also with a purpose to insure possibility to challenge actions / omissions of private persons or public authorities violating the laws relating to the environment.

35. In some countries there is also a need to address the contradictions between the legal provisions of legislation on NGOs (ENGOs) and the relevant provisions of environmental legislation and / or civil procedural legislation (economic or administrative procedural legislation). While environmental legislation and / or civil procedural legislation (economic or administrative procedural legislation) provides for standing for ENGOs in the interests of others or an indefinite number of persons, the legislation on NGOs (ENGOs) provides the standing of NGOs in court to protect their own rights and interests and / or rights and interests of its members only. The concept of lawsuits on behalf of an indefinite number of persons that exists in the legislation of all participating countries in relation to the consumers' rights could be extended to the cases relating to the environment by improving and amending legislation and practices.

36. Among other issues related to access to justice the need to eliminate financial barriers to access to justice in cases relating to the environment was especially noted by the majority of the participants of this study.

37. In some countries, among other general problems, the issues of general mistrust of public to the judiciary as well as the lack of jurisprudence on the issues addressed in the study were raised.

38. The countries highlighted the need to raise awareness of judges, prosecutors, lawyers and NGOs in the field of legislation and case law relating to the environment, especially regarding application of international agreements, including the Aarhus Convention, should be raised. These issues should be reflected in the programs and courses for trainings of judges, prosecutors, judicial workers, as well as in the teaching materials used for these purposes.

Overview of Countries

IV. Azerbaijan

A. General issues

Provisions on access to justice are generally applicable. The right to access to justice is stated in the Constitution, the Civil Procedure Code (CPC), the Law "On Administrative Procedure", the Law "On Protection of the Environment", and the Administrative Procedure Code (APC) of the Republic of Azerbaijan (RA).

Art. 4 of CPC RA and Art. 35.1 of APC RA provide judicial defence for all individuals and entities for protection and realisation of their rights and freedoms, as well as interests.
According to Art. 2.2 of APC RA there are possible following suits: 2.2.1. suits on challenging (cancellation or change) of administrative regulations, made by administrative body in relation to rights and liabilities of persons; 2.2.2. suits on placing of respective duty related to making of administrative regulation on administrative body and suits on protection from administrative omission (suits on coercion); 2.2.3. suits on administrative body's activity not related to making of administrative regulation (suits on enforcing obligations); 2.2.4. suits on protection from illegal intrusion of administrative body not related to making of administrative regulation violating rights and freedoms of a person (claim for forbearance); 2.2.5. claims for existence or absence of administrative- relation, and for cancellation of administrative regulation (claims for determination or recognition); 2.2.6. claim for examination of regulatory enactment compliance with legislation (claims for compliance with legislation) (excluding the issues within the competence of the Constitutional Court of RA); 2.2.7. claims for pecuniary demands, related to administrative dispute resolution, and for compensation of damage inflicted by illegal decisions (administrative regulation) or acts (omissions) of administrative bodies; 2.2.8. claims of local authorities against administrative bodies or claims of administrative bodies against local authorities. Ordinary proceeding is possible in courts of general jurisdiction (e.g. claims for damage compensation).

In order to have standing to sue ENGO must comply with the criteria of "objective", "geographical territory of activity". Only ENGOs who's Charters contain objectives of environment protection may have right for judicial recourse.

Quantitative criterions of ENGO are determined by the law "On Non-governmental Organisations (public association and funds)". According to the Art. 2 of the Law non-governmental organisation is public association created for the implementation of the objectives determined by its order by the initiative of several individuals and/or entities joined basing on their common interest. Fund is a non-governmental organisation with no members, established by one or several individuals and/or entities basing on voluntary contribution with social, charitable, cultural, educational and other socially-valuable objectives. Non-governmental organisations may be established with national, regional and local status.

B. Specific issues of access to justice for individuals, their groups and environmental NGO

1. Challenging the refusal of access to environmental information

Individual and ENGO has right to challenge the denial to access to justice directly to court. Pre-trial procedure (appeal of administrative regulation to the body which took the decision or superior

body) is unrequired. According to the Art. 11 of the Law "On Acquisition of Environmental Information" the denial to grant a permission to use an open information on the environment; ungrounded attribution of open information to restricted one; digression or denial to provide information; incomplete or inaccurate answer; violation of other rights of a person may be challenged in court. Persons who got inaccurate answer or ungrounded denial have the right to demand compensation of material and non-pecuniary damage. Disputes on ungrounded attribution of open environmental information to restricted one, and claims for damage compensation inflicted as a result of ungrounded denial to provide the environmental information or violation of his/her other rights are examined in court. The pre-trial procedure, i.e. administrative appeal to the authority that made the decision, or to a higher authority, responsible for the review of decisions is optional. According to the Art.72.1 of the Law "On Administrative Procedure" a claim on administrative regulation can be filed under administrative or judicial procedure.

2. Challenging the legality of decisions, acts and omissions of public authorities in relation to Article 6 of the Aarhus Convention

Private person or ENGO have the right to challenge decisions, acts or omissions directly in court or file the claim to body who had issued the decision. According to Art.72 of the Law "On Administrative Procedure" a claim on administrative regulation can be filed under administrative or judicial procedure. If administrative regulation is simultaneously challenged under administrative and judicial procedure, administrative proceeding is to be discontinued. According to the Art. 4 of the Civil Procedure Code of the Republic of Azerbaijan and Art. 35.1 of the Administrative Procedure Code of the Republic of Azerbaijan all natural and legal persons have a right to go to court in order to protect and secure their legally protected rights and freedoms, as well as interests.

3. Challenging acts and omissions by private persons "which contravene provisions of its national law in relation to the environment"

Individuals and ENGOs may challenge in the court acts and omissions, both by government and private entities which "contravene provisions of its national law in relation to the environment" only if they violate their rights, freedoms or interests. See also pp. 5 and 6 of this Chapter.

According to Art. 4.1 CPC, NGO as entity have right to use judicial protection under established procedure for the protection of its rights and freedoms as well as interests. In order to have a standing a Charter of an ENGO must contain a provision of the right for protection of environment.

4. Challenging of acts or omissions of public authorities "which contravene provisions of its national law in relation to the environment"

Individuals and ENGOs may challenge in the court acts and omissions by public authorities which "contravene provisions of its national law in relation to the environment" only if they violate their rights, freedoms or interests. See also pp. 3, 5 and 6 of this Chapter

5. Claim for pause/stop of the activity

Individuals or ENGO may apply directly to court with a demand to suspend/terminate an activity violating environmental legislation, if said activity violates its rights or legitimate interest. According to Art. 34 of the Administrative Procedure Code of AR a claimant with the suit for obligation enforcing may demand from a defendant commission of specific actions not related with administrative regulation (not directed to a decision-making). By means of the suit for obligation enforcing it is possible to demand compensation of a damage inflicted as a result of violation by administrative bodies general obligations. By means of the suit for omission of specific actions it is possible for a claimant to demand from defendant an omission or suspension of adverse action

which is not an administrative regulation. Filing of a preventive suit against the suit, which is to be made, is possible only in exceptive cases arising from objective cause (especially if there is the need to prevent intrusion to rights and legitimate interest of a person).

According to the Art. 1098.2 of the Civil Code if inflicted damage is the result of operation of enterprise, construction or any other productive activity, which continue to inflict damage or endangers with a new damage the court is justified to compel the defendant to compensate damage and stop or suspend its activity. Court may dismiss a suit for termination or suspense of respective activity if such a termination or suspense contradicts reasons of state. The denial to suspend or stop said activity does not deny the right of complainant for a compensation of a damage inflicted by that activity.

Besides, Art. 7 of the Law "On Protection of the Environment" provides the right of environmental non-governmental associations including the demand under administrative and judicial procedure for restriction, temporary or permanent stop of placement, construction, reconstruction and operation of harmful enterprises, constructions and installations whose economic activity have negative impact on the environment.

6. Actio popularis

The right of individual to apply to court with a suit for protection of "public interest" in environmental matters - actio popularis, is not provided in legislation.

According to the Art. 7 of the Law "On Protection of the Environment" and Art. 35.2 of the Administrative Procedure Code ENGO has right to apply to court with a suit for protection of "public interest" in environmental matters - actio popularis.

Actio popularis is limited in legislation. Art. 59 CPC directly stipulates that such application is possible only in cases provided by legislation. Art. 7 of the Law "On Protection of the Environment" provides the right of environmental non-governmental associations including the demand under administrative and judicial procedure for restriction, temporary or permanent stop of placement, construction, reconstruction and operation of harmful enterprises, constructions and installations whose economic activity have negative impact on the environment and health. ENGOs have right to apply to court with a suit for compensation of damage inflicted to health and property of citizens as a result of violation of the environmental legislation.

Chapter IV of the Law of RA "On Protection of Rights of Consumers" dated 19th of September 1995 N 1113 dedicated to non-governmental consumer organisations (consumer associations) that are eligible in accordance with the legislation in the courts to protect the rights of citizens who are not members of consumer NGOs (consumer associations).

7. Claiming for damage

Individual and ENGO as a general rule may apply to court for compensation of damage inflicted to them or members of ENGO.

8. Practical issues of exercising the right on access to justice

Amongst other issues related to the right on access to justice on cases in environmental matters the experts specify the following:
- the legislation doesn't provide the right for individuals to apply to court for protection of "public interest" - actio popularis
- individuals are not released from court fee in cases on environmental matters.

V. Armenia

A. General issues

The right for standing before court on cases in environmental matters is provided in general provisions of legislation of Republic of Armenia stated in:

1. The Constitution of Republic of Armenia (Art.18, 19).
2. The Judicial Code of Republic of Armenia.
3. The Administrative Procedure Code of Republic of Armenia (APC RA)
4. The Civil Procedure Code of Republic of Armenia. (CPC RA)
5. The Criminal Procedure Code of Republic of Armenia.

Art. 18, 19 of the Constitution of Republic of Armenia (hereinafter RA) state general principles of the right for judicial recourse for protection of natural or legal entity rights, freedoms and basic interests.

The Judicial Code of RA regulates organisation and activities of judicial authority (Art.2).
Art. 3 and 4 of the Administrative Procedure Code of RA provide general criteria for individuals and legal entities for applying to the Administrative Court with a demand to revoke administrative regulation, activity or inactivity of public bodies or local self-government authorities or their officials.

According to Art. 3 of the Administrative Procedure Code of RA any individual or legal entity has the right to appeal to Administrative Court according to procedure established by the Code, if that individual or legal entity considers that by the administrative regulations, activity or inactivity of public bodies or local self-government authorities or their officials:
1) the rights and freedoms stated by the Constitution, international treaties, laws or other legal regulations of RA have been violated or could be violated, including:
a. obstacles to the exercise of those rights and freedoms have been created,
b. conditions necessary for exercising of the rights have not been provided, which however should be provided according to the Constitution, international treaty, law or other legal regulations of RA;
2) any obligation have been illegally imposed on that individual or legal entity;
3) this individual or legal entity in administrative procedure has been illegally brought to the administrative responsibility.

Art. 2 of the Civil Procedure Code of RA provides general criteria for judicial recourse on civil cases: “The person concerned has the right following the procedure laid by this Code to apply to court for protection of the rights, freedoms and legal interests, stated in the Constitution of Republic of Armenia, laws and other legal regulations or provided by a treaty. In cases provided by this Code and other laws the persons with respective credentials has the right to apply to court for protection of other persons' rights, freedoms and legitimate interests” (for analysis of this provision of law see p.6 part B).

The Criminal Procedure Code of RA regulates relations on initiation and procedure of criminal cases. According to Art. 33 of the Code criminal action could be exercised in public and private order. Criminal action in private order includes the cases when criminal case is initiated by court on the ground of application of a victim (Art. 183). It is important to note that private order cases do not include crimes against environment (Chapter 27).

Environmental legislation of RA doesn't provide any special rules for standing in environmental matters. The only exception is Article 21 of the RA Law "On expertiza of the impact on the

environment", according to which all issues related to the process of expertiza of the impact on the environment can be appealed in court". This provision gives a chance to NGO to apply to court in the process of expertiza (e.g. breach of public hearings procedure). However there is no practice in Armenia on this provision. Along with this, such fact needs to be taken into account that the Administrative Procedure Code and the Civil Procedure Code at a ratio of norms of mentioned codes and procedural rules of other laws give priority to codified acts. According to the Art.2 of the Administrative Procedure Code the norms of administrative procedure provided by other legislation must comply with the Code. Art. 1 of The Civil Procedure Code states that the norms of civil procedure provided by other legislation (excluding bankruptcy procedure) must comply with the Code, in case of the contravention norms of the Code must be applied.

Therefore the procedure of judicial recourse in RA is stipulated by the above-mentioned legal acts, and there are no special provisions in procedural legislation for standing in cases on environmental matters.

The cases on environmental matters are subjects to civil or administrative judicial procedure. According to the Art. 8 of the Administrative Procedure Code (subject matter jurisdiction) all cases arose from public legal relationship are cognizable to Administrative court.

The issue of concordance of the above-mentioned wording to the Constitution of RA was examined by the Constitution Court for the purpose of possibility to consider civil cases in administrative court procedure, if civil cases logically result from administrative suit. The Constitutional Court handed down decision N787 stating the Administrative Court must handle civil cases which logically result from administrative suit (e. g. a demand to compensate the damage to the environment, if that right arises as a result of administrative regulation invalidation).

According to the Art. 15 of the Civil Procedure Code of RA all civil cases are cognizable to the courts of general jurisdiction. Above-mentioned norms prove the fact that the legislation of RA doesn't divide proceedings by the category of proceeding initiator. Therefore individuals and environmental NGO (defending rights and interests of environmental NGO or rights and interests of environmental NGO members) may apply both to the Administrative Court and to the Court of general jurisdiction depending on nature of the suit. (E. g. claim for damage compensation should be directed to Court of general jurisdiction, and claim for cancellation of administrative regulation should be directed to Administrative Court.)

The notion of “legitimate interest” is used in the Constitution of RA (Art. 27.1, 31) and in other legislation. However legislation and judicial law-making of Armenia don't expand the issue.

B. Specific issues of standing for individuals, their groups and environmental NGOs

1. Challenging the refusal to access to environmental information

There are both prejudicial and court procedures of challenging the refusal (administrative regulation) of access to environmental information. An individual or an environmental NGO may lodge a complaint for the decision to superior administrative body or a court. The choice of a legal means is up to the individual or the environmental NGO.

2. Challenging the legality of decisions, acts and omissions of public authorities in relation to Article 6 of the Aarhus Convention

Individual or ENGOs can challenge decisions, acts or omissions in relation to Article 6 of the Aarhus Convention. Following the logic of the legislation of RA, this is only possible if this decision directly violated the rights of a particular individual or ENGOs.
On the basis of judicial practice analysis experts conclude that in RA environmental NGO or other registered groups of individuals cannot challenge legality of decisions on above-mentioned specific activities. (See paragraph 6 of this Chapter).

3. Challenging acts and omissions by private persons which "contravene provisions of its national law in relation to the environment"

The right for challenging acts and omissions by private person which "contravene provisions of its national law in relation to the environment" in judicial procedure is not provided in the legislation of RA if the contravention doesn't violate rights of particular individual or environmental NGO. During the study of the jurisprudence of RA relevant court cases on this issue have not been identified.

4. Challenging of acts and omissions by public authorities which "contravene provisions of its national law in relation to the environment"

The right for challenging of acts and omissions by public bodies which "contravene provisions of its national law in relation to the environment" in judicial procedure is not provided in the legislation of RA if the contravention doesn't violate rights of particular individual or environmental NGO. During the he study of the jurisprudence of RA relevant court cases on this issue have not been identified.

5. Claim for pause/stop of the activity

Environmental legislation of RA determines only power of public authorities to suspend or terminate activity violating environmental legislation. In Armenia there are no provisions related to the right of individual or environmental NGO for judicial recourse claiming suspension or termination of activity violating environmental legislation. As a general rule, the violation must lead to violation of right or legitimate interest of individual or environmental NGO.

6. Actio popularis

According to the Art. 3 of the Administrative Procedure Code of RA and to the Art. 96 of Law of RA "On the Fundamentals of Administration and Administrative Activities" a person may apply to administrative body only for protection of his/her violated rights and legal interests. Therefore an individual, a group or an environmental NGO cannot file a claim or a suit to administrative court or administrative body for protection of public interest or interest of particular group without prove of their personal interest.

Art. 2 of the Civil Procedure Code of RA states "The person concerned is entitled to apply to court, with accordance to the procedure established in this Code, for the protection of one's rights, freedoms and legal interests stipulated and envisaged in the Constitution of the Republic of Armenia, laws and other legal acts or agreements. In cases envisaged in this Code and other laws, the persons entitled to defend the rights, freedoms and other legal interests of other persons, can apply to the court for the purpose of protection." Second paragraph of the article creates possibility for certain persons to apply to court for the purpose of protection of rights, freedoms and legal interests of other persons. This provision is applied chiefly for the public authorities (e.g. Prosecutor's Office with a suit for protection of public pecuniary interest or Children Custodial Service) with the right to apply to court by civil judicial procedure.

From experts' judgment one may conclude that individuals in Armenia has no right to apply to court for the protection of “public interest”. There is no judicial practice in this field.

In years 2009-2012 environmental NGO applied to courts for protection of public environmental interests or their rights that accordingly had impact on protection of rights of general public. In general, basing on the decisions of different judicial bodies of Armenia, one may conclude that judicial law of RA doesn't acknowledge *actio popularis*.

Criteria for applying to administrative bodies or courts are the same for the environmental NGO and legal entities (see part A of this Chapter). Procedural and substantive legislation doesn't contain special norms on criteria of environmental NGO's applying to court or administrative body.

The question of differential regulation of ENGOs rights of access to court in environmental cases and identification criteria become relevant in connection with the case, initiated by ENGOs, with the aim of cancelling the license (permit) for the operation of Teghut copper-molybdenum deposit.. In 2009 three environmental NGOs Anti-corruption Centre Transparency International, Ekodar, Vanadsor Office of Helsinki Citizens Assembly applied with respective claim to the Administrative Court of RA against the Ministry of Nature Protection. The Administrative Court on the basis of Art. 3 (see part A of this Chapter) and Art 79 of the Administrative Procedure Code (“1. Administrative court declines a claim if: 4) a claim is filed knowingly by a person who has no right for it.”) declined the claim due to the lack of legal standing of NGO . The substantiation of the Administrative Court was as follows “Legal entities and individuals have an access to justice if administrative regulation, acts or omission of administrative bodies violate or may directly affect their rights and legal interests”. The Administrative Court of RA considered claim of NGO being abstract.

The decision of the Administrative Court to decline the claim was challenged by two NGOs (Ekodar, Vanadsor Office of Helsinki Citizens Assembly) to the Cassation court of RA (Appellation Administrative Court hasn't been functioning at the time). With its decision dated 30th of October 2009 the Cassation Court of RA has found the denial in access to justice for NGO Ecodar illegal and proposed the following criteria for determination of environmental NGO, who should have an access to justice. “The Cassation Court of RA considers NGO Ekodar as legal entity, created in compliance with the Law of RA “On Social Organisations” and other provisions of national legislation”, promotes protection of the environment basing on its charter objectives. Therefore the court stated that NGO Ekodar has the right to access to justice on cases in environmental matters. Alternatively court stated that NGO Anti-corruption Centre Transparency International had no sufficient interest and had no standing for protection of public interest in environmental matters since there is no such objective as environment protection in its charter”.

Therefore NGO may apply to court for protection of public interest in environmental matters (in the above-mentioned case – revocation of license), if the charter of the organisation states an objective of environment protection.

After respective decision of the Cassation Court of RA the Administrative Court of RA basing on procedural legislation was obliged to examine the claim on the merits (substantive grounds of the suit), but with its decision of 24th of March 2010 the Administrative Court reaffirmed its preceding position on ineligibility of individuals and legal entities to demand a protection of “any or abstract right” in court, and declined NGO's claim. NGO Ekodar again challenged that decision to the Cassation Court of RA.

Before the hearing the case in the Cassation Court, the wording “his/her” after the word “violation of” in Art.3 of the Administrative Procedure Code had been a subject to consideration in the Constitutional Court of RA. According to the decision of the Constitutional Court the wording

"his/her" of Art.3 of the Administrative Procedure Code complies with the Constitution. The Constitutional Court had substantiated its decision as follows:

"2. Actio popularis must be excluded if "sufficient interest" is lacking. With the aim to raise effectiveness of public control over state and local governing bodies, and for provision of realisation of basic NGOs' functions in the subsequent law-making the stated position of the Court must be taken into account".

After final examination of the claim the Cassation Court in its decision of 1st of April 2011 stated "In its decision N 906 the Constitutional Court of RA revised constitutionality of the wording "his/her" in the Art.3 p.1 of the Administrative Procedure Code of RA and decided that said norm complies with the Constitution of RA. Following the logic of Armenian legislation one can state that effective protection of violated rights includes amongst other the right for judicial recourse for the person(s), whose rights were directly violated".

The Cassation Court on the basis of the decision of the Constitutional Court and taking into account respective provisions of the Administrative Procedure Code of RA with its decision of 1st of April 2011 declined the claim and upheld the decision of Administrative court of 24th of March 2010.

Following the interrelation of above-mentioned court decisions one may conclude that Cassation Court with its latest decision inclined to the general approach of judicial system of RA. This approach was formed with the decision N 127 "On Practice of Implementation of the Art. 79 of the Administrative Procedure Code of RA" of the Council of Court Chairmen of Armenia. According to that decision "Individuals and legal entities has no right to challenge any acts or omissions of administrative bodies. Their right on judicial recourse is based only on their direct interest in legitimacy of administrative bodies' activity".

After above-mentioned decisions environmental NGO (on the case of Yerevan dolphinarium) applied to court with a demand to oblige the Ministry of Nature Protection to conduct the expertise of environmental impact, but the claim was declined since NGO had no standing.

7. Claiming for damage

As a rule individuals and ENGO may apply to court with suits on compensation of damage inflicted to them, or in case of ENGO to the members of organisation.

As a general rule suits on damage compensations inflicted to the environment may be filed by public bodies, in particular by State Environment Protection Inspection of the Ministry of Nature Protection of RA. Individuals or environmental NGO without direct interest cannot claim for damage inflicted to the environment.

8. Practical issues of exercising the right on access to justice

Amongst other issues related to the right on access to justice on cases in environmental matters the experts specify the following:

- inconsistent or vague interrelation between procedural and substantive rights of citizens in this fields,
- lack of awareness of citizens,
- lack of differentiated approach to establishment of legal criteria for applying to court at law-making level,
- ambiguity of public authorities and judicial system of RA concerning *locus standi* and sufficient interest.

VI. Belarus

A. General issues

The right to access to justice is stated in the Constitution of Republic of Belarus (1994). According to the Art. 60 of the Constitution "everybody has the right for protection of his/her rights and freedoms in competent, independent and impartial court in time defined by law". The Code on Judicial System and Status of Judges (2006) in Art. 10 states "citizens of the Republic of Belarus have right for judicial protection from an infringement on life and health, honour and dignity, personal liberty and property, other rights and freedoms provided in the Constitution of the Republic of Belarus and other legislative acts, and from illegal acts (or omissions) of public bodies, other organisations, their officials. Foreign citizens and apatrides has the same right to access to justice as the citizens of the Republic of Belarus, if other is not provided by the Constitution of Belarus, laws and international agreements of the Republic of Belarus. Organisations, private entrepreneurs have the right for judicial protection from infringement on their rights and legal interests provided by the legislation and from illegal acts (or omissions) of public bodies, other organisations and their officials".

Therefore the right to access to justice is generally applicable and is connected with the protection of citizens' rights and freedoms in general.

Legislation of the Republic of Belarus apart from generally applicable provides specific norms stated in the Law "On Protection of the Environment" (1992): Art. 13 provides judicial protection of the right on favourable environment, Art. 12 and 15 provide citizens' and environmental non-governmental organisations' right, to access to justice with suits on suspension (termination) of economic or other activities of legal entities and private entrepreneurs, which inflict damage to the environment. According to the Art. 74-4 a denial to provide environmental information may be appealed to superior public body or other governmental organisation (superior official) and/or court. According to Art. 12 and 15 of the Law citizens have the right to bring a suit on compensation of damage inflicted to their life, health, property as a result of negative impact on the environment. Non-governmental organisations have the right to bring a suit on compensation of damage inflicted to their life, health, property of their members as a result of negative impact on the environment.

Substantive norms of civil rights protection assigned in the Civil Code of the Republic of Belarus (1998, hereinafter CC). Therefore Art. 10 of CC provides that "protection of violated or contravened civil rights is performed by the court, economic court, arbitration court (hereinafter - court) according to the jurisdiction, defined by the procedural legislation, and in cases specified in legislation – according to the agreement"; means of civil right protection are stipulated in the Art.10 of CC.

Legislative acts which recognize the right to access to justice in procedural terms are as follows:

The Civil Procedure Code of the Republic of Belarus (1999, hereinafter CPC);
The Economic Procedure Code of the Republic of Belarus (1999, hereinafter EPC).

The cases may be considered under civil or economic procedure, therefore judicial procedure is regulated by CPC or EPC[6].

[6] Since January 1, 2014 the courts of general jurisdiction and the economic courts of the Republic of Belarus are combined into a system of courts of general jurisdiction of the Republic of Belarus. Thus, the Supreme Court is the only highest judicial body in civil, criminal, administrative, and economic cases. In connection with this it is planned to make changes and amendments to a number of regulatory and legal acts, including the EPC and the CPC. This study examines the national legislation and enforcement practice as at 1 April 2013. However, in general, according to

According to the Art.37 of CPC general jurisdiction courts consider the following cases:

1) on disputes arising from civil, family, residential, land relations, relations on use of natural resources, the environment, *if at least one of the parties is a citizen,* excluding cases when legislative acts refer solving of such disputes to the competence of other courts or other public bodies or organisations;

2) on disputes o*f legal entities in cases stipulated in CPC and other legislation*;

3) on cases arising from administrative legal relations, stipulated in the Art.335 of CPC (e.g. *on claims for acts (omissions) of public bodies and other legal entities, and organisations (not legal entities) and officials violating citizens' rights;* and in cases stipulated in legislation – *violation of legal entities rights*).

According to the Art.39 of EPC economic court settles economic disputes and considers *other cases with the participation of legal entities,* private entrepreneurs, and in cases stipulated in EPC and other legislation, with the participation of the Republic of Belarus, administrative-territorial units of the Republic of Belarus, public bodies, local authorities, organisations (not legal entities) and officials and c*itizens*. According to the Art. 41 of EPC economic court settles economic disputes arising from civil or other relations also the court considers other cases *related to economic or business activity carried out by legal entities* and private entrepreneurs and in cases stipulated in EPC and other legislation by organisations (not legal entities) and c*itizens* if other is not stipulated in legislation. According to the Art.42 of EPC economic court in the administrative judicial procedure settles economic disputes arising from administrative or other public relations and considers other cases related to economic or business activity carried out by legal entities, private entrepreneurs and citizens particularly on challenging of acts (omissions) of public body, local authorities, other body or official who affect rights and legitimate interests (related to the economic activity) of the applicant.

The legislation of the Republic of Belarus doesn't contemplate establishing of administrative courts.

The disputes between legal entities (for instance, when the claimant is a public association and defendant is a public authority or other legal entity) almost always are handed to economic court without considering of nature of the dispute. As a general rule, it is non-economic disputes. In practice, this leads to the fact that the courts of general jurisdiction where plaintiffs (public associations) apply against a public authority, for example, with a claim for environmental information, etc., refuse to accept the case with the reason that such case is under the competence of the economic court.

According to the Art.6 of CPC *an interested person has the right to apply to court under established procedure for protection of violated or contravened right or protected interest*. A person can apply to court with *a statement of claim for protection of violated right, or with a claim for acts (omissions) of public bodies and other legal entities, and organisations (not legal entities), officials who violate the rights of citizens,* and in cases stipulated in legislation – rights of legal entities.

According to the Art.6 of EPC legal entities, private entrepreneurs; organisations (not legal entities, including labour collectives), in cases stipulated in legislation as well as, in cases stipulated in legislation – citizens have the right to apply to economic court *for the protection of their violated rights or contravened interests*.

Therefore general criterion for applying to court is *violation of right or contravention of protected interest of a person.*

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experts, these changes would not significantly affect the main conclusions of this study concerning the legal standing and the competence of the courts.

The notion of “legitimate interest” is in use in the legislation, but not explained (there is no definition of what is *legitimate interest*).

One may unequivocally state that individual or ENGO may apply to court in cases relating to the environment if:

a) Individual

damage is caused to life, health, property as a result of harmful impact at the environment (Art. 12 of the Law “On Protection of the Environment”);

the fact of economical or other legal entity 's and private entrepreneurs activity having harmful impact at the environment is disclosed (Art. 12 of the Law “On Protection of the Environment”);

the right for safe environment is violated (including inflicting of non-pecuniary damage) (Art. 14 of the Law “On Protection of the Environment”);

an activity is carried out creating possibility of damage inflicting (to life, health, property) in the future (Art. 934 of CC);

non-normative act is taken by state body or local authority, and legislative act not corresponding to other legislative acts and violating *civil rights and protected by legislation* citizen's *interest* (Art. 12 CC);

acts (omission) of public bodies and other legal entities and organisations (not legal entities), and officials take place *violating citizens' rights* (Art. 335 of CPC).

The law doesn't provide any additional criteria for individuals for applying to court in this case.

b) ENGO

damage is caused to life, health to members of public association, or to property of public association a result of harmful impact at the environment (Art. 58 of CC, Art. 15 of the Law “On Protection of the Environment”);

the fact of economical or other legal entity 's and private entrepreneurs activity having harmful impact at the environment is disclosed (Art. 12 of the Law “On Protection of the Environment”);

an activity is carried out creating possibility of damage inflicting to the property of public association in the future (Art. 934 of CC);

non-normative act is taken by state body or local authority, and legislative act not corresponding to other legislative acts and violating *civil rights and protected by legislation interest of public association* (Art. 12 CC);

acts (omission) of public bodies and other legal entities and organisations (not legal entities), and officials take place *violating rights* of public association (Art. 335 of CPC).

The law doesn't provide any additional criteria for public associations for applying to court in this case. The entity must get civil capacity to sue which they get as a general rule being registered under established procedure. Only the public associations operating in the field of environmental protection (indication of this fact shall be contained in the Charter) have the right to file a suit on compensation of damage inflicted to their life, health, property of their members as a result of negative impact on the environment (Art. 15 of the Law “On Protection of the Environment”) as well as to file suits on suspension (termination) of economic or other activities of legal entities and private entrepreneurs, which inflict damage to the environment (Art. 15 of the Law “On Protection of the Environment”).

According to the Art. 3 of the Law of the Republic of Belarus “On non-governmental associations” at the territory of the Republic of Belarus may be established and operate international, republican and local non-governmental associations, unions.

International associations are public associations, unions whose activity cover the territory of the Republic of Belarus (one or several territorial units) and territory of one or several foreign countries. Republican associations are public associations, unions whose activity cover all the

territory of the Republic of Belarus. Local associations are public associations, unions whose activity cover the territory of one or several administrative units of the Republic of Belarus.

As to group of individuals not registered as legal entity it is necessary to note that one of the terms of state registration is establishment of legal entity (Art. 44 of Civil Code).
Activity of unregistered public associations, unions at the territory of the Republic of Belarus is prohibited (Art.7 of the Law "On Non-governmental Associations" (1994). According to the Art. 193-1 of Criminal Code activity or participation in the activity of political party, other public association, religious organisation or fund which has no state registration according to determined procedure entails appliance of criminal penalties (1999). Therefore, it is difficult to discuss possibility of protection of the "legitimate interests" of such groups.

B. Specific issues on access to justice for individuals, their groups and environmental NGO

1. Challenging the refusal of access to environmental information

A person and ENGO have the right to challenge directly to court the denial to access to environmental information. This right is stipulated in the Art. 74-4 of the Law "On Protection of the Environment". According to this article "a denial to provide environmental information may be challenged in superior state body or other public organisation (superior official) and/or in court". The said provision entitles citizens and legal entities, which are not state bodies or other state organisation.

The law doesn't provide any additional criteria for ENGO and private persons for applying to court.

2. Challenging the legality of decisions, acts and omissions of public authorities in relation to Article 6 of the Aarhus Convention

According to the Art. 6 CPC interested person may apply to court for the protection of violated or contravened right or protected interest. In particular, CPC provides the person can apply to court with a statement of claim for protection of violated right, or with a claim for acts (omissions) of public bodies and other legal entities, and organisations (not legal entities), officials who violate the rights of citizens. Individual or ENGO may apply to court, in relation to specific types of activity if:

Individual

the right for safe environment is violated (including inflicting of non-pecuniary damage) (Art. 14 of the Law "On Protection of the Environment");

an activity is carried out creating possibility of damage inflicting (to life, health, property) in the future (Art. 934 of CC);

non-normative act is taken by state body or local authority, and legislative act not corresponding to other legislative acts and violating *civil rights and protected by legislation* citizen's *interest* (Art. 12 CC);

acts (omission) of public bodies and other legal entities and organisations (not legal entities), and officials take place *violating citizens' rights* (Art. 335 of CPC).
The law doesn't provide any additional criteria for individuals for applying to court in this case.

ENGO

an activity is carried out creating possibility of damage inflicting to the property of public association in the future(Art. 934 of CC);

non-normative act is taken by state body or local authority, and legislative act not corresponding to other legislative acts and violating *civil rights and protected by legislation interest of public association* (Art. 12 of CC);

acts (omission) of public bodies and other legal entities and organisations (not legal entities), and officials take place *violating rights* of public association (Art. 335 of CPC).

The law doesn't provide any additional criteria for public associations for applying to court in this case. The entity must get civil capacity to sue which they get as a general rule being registered under established procedure.

3. Challenging acts and omissions by private persons "which contravene provisions of its national law relating to the environment"

According to the Art. 100 of the Law of the Republic of Belarus "On Protection of the Environment" individuals and ENGO have right to apply to court with a suit for a suspense (termination) of economic and other activity having harmful impact at the environment, if such an activity violates requirements of environmental legislation, causes damage to the environment or there is possibility of the damage to the environment in the future.

Considering that provision in respect of the issue there is a need to note that Art. 100 may not be applied to all cases of violation of "provisions of its national law relating to the environment" (Art.9, p. 3 of Aarhus Convention), but only in cases of violation of "requirements of environmental legislation" (the requirements are provided in the chapter 6 of the Law "On Protection of the Environment"). See p.5 of this Chapter.

4. Challenging acts and omissions by public authorities "which contravene provisions of its national law relating to the environment"

Individuals and ENGOs have no right to contest in court act or omissions of public bodies "which contravene provisions of its national law relating to the environment" if there is no direct violation of rights or legitimate interests.

5. Claim for pause/stop of the activity

Individuals and ENGOs have right to apply to court with

suit for suspense (termination) of economic and other activity of legal entities and sole entrepreneurs, having harmful impact *on the environment* (Art. 12,15 of the Law "On Protection of the Environment");

suit for termination of activity creating danger of causing damage (to life, health, property) in the future (Art. 934 of CC).

According to the Art. 100 of the Law "On Protection of the Environment" citizens have right to apply to court with a suit for a suspense (termination) of economic and other activity having harmful impact at the environment, *if such an activity violates requirements of environmental legislation, causes damage to the environment or there is possibility of the damage to the environment in the future.*

According to the Art 934 of CC if inflicted damage (to life, health, property of individual or legal entity) is the result of enterprise operating, constitution or any other production activity continuing to inflict damage or hazards with a new damage, court may compel defendant to compensate damage and suspend or terminate respective activity. *Court may deny the suit for suspense or*

termination of respective activity only if its suspense or termination contradicts state and public interests. The denial to suspend or terminate said activity does not deny the right of complainant for a compensation of a damage inflicted by that activity.

6. Actio popularis

As a general rule according to CPC and EPC a person has right to apply to court *for the protection of his/her violated rights and legitimate interests (Art. 6 of EPC, Art. 6 of CPC).*

According to the Art. 6 of CPC "legal suits for protection of rights and legitimate interests of citizens and legal entities in cases provided in legislation may be also brought on prosecutor's application, application of public bodies, *legal entities and citizens*". Technically this provision provides capability to use *actio popularis* in civil procedure, but, as it is said in provision "in cases provided in *legislation*".

Thus according to the Art. 86 of CPC *trade unions* may apply to court with a suit for the protection of rights and legitimate interests of their members on disputes arising from labour relationship and cases indicated in Art. 85 of CPC. *Other non-governmental organisation* have the same rights relating protection of rights relevant to rights and interests of their members stipulated in the statute, if it is provided in legislation (Art.87 of CPC). For example it is the right of non-governmental organisations acting in the field of environment protection to apply to court with a suit for compensation of damage inflicted to life, health, property of *their members* as a result of harmful impact on the environment (Art. 15 of the Law "On Protection of the Environment").

It should also be noted that according to Art. 47 of the Law "On Protection of Consumers' Rights (2002), consumer associations may apply to the court *for the protection of consumer rights, represent and defend the rights and legitimate interests of consumers (indefinite number of consumers); to sue in court for recognition of the actions of the manufacturer (seller, supplier, representative, executor, repair organization) unlawful, void contract terms in relation to an indefinite number of consumers and the termination of these actions.*

Public association of consumers have the right to ... apply to the court for the protection of consumer rights, represent and defend the rights and legitimate interests of consumers (indefinite number of consumers) on condition that employee of a public association of consumers implementing these rights of the public association, has a Certificate of Attestation. Said attestation is carried out to examine the knowledge of legislation relating to consumers rights under the procedure established by the Government of the Republic of Belarus (Art.48 of the Law "On Protection of Consumers Rights").

Environmental legislation and legislation relating to the use of natural resources doesn't provide additional rights of individuals to apply to court with claims for the protection of public interest. Similar by nature to *actio popularis* is a lawsuit for suspense (termination) of economic or other activity having harmful impact on the environment, *if such an activity violates requirements of environmental legislation, causes damage to the environment or there is possibility of the damage to the environment in the future* (Art. 100 of the Law of the Republic of Belarus "On Protection of Environment").

Art. 6 of EPC provides that the right to apply to economic court for the protection … *of public interests, and interest of other entities (legal entities, private entrepreneurs, collectives of workers and citizens – in case of two latter in case provided in legislation),* in cases provided in legislation is assigned to prosecutor, state bodies, local authorities, other bodies. As it is clear from the explained norm *actio popularis* is not used in economic procedure.

7. Claiming for damage

As a rule individuals and ENGO may apply to court with suits on compensation of damage inflicted to them, or in case of ENGO to the members of organisation.

The right of individuals and ENGO to sue for compensation of damage inflicted to the environment is not provided by legislation.

8. Practical issues of exercising the right on access to justice

The main practical issues related to standing, which were indicated during the research process, are as follows:

- it is difficult to protect the right for environmental information if the reply doesn't contain a denial but provides incomplete or inaccurate information. The law “On Protection of the Environment” allows applying to court only in case of denial to grant information. In other cases one may use a procedure of complaint for acts or omission. But in that case the pre-trial procedure is quite long. For cases of demolition of flora object, development of land plots etc. the fact of claim submission doesn't stop execution and pre-trial and trial procedure may not so far have any sense (the trees may be as well cut); exercising of Art.100 of the Law “On Protection of the Environment” (on suspense (termination) of economic or other activity having harmful impact on the environment, if such an activity violates requirements of environmental legislation, causes damage to the environment or there is possibility of the damage to the environment in the future) is problematic since there is no uniform understanding and interpretation of its content. It leads to denial to commence a suit on grounds of wrong jurisdiction;
- the procedure of obligatory pre-trial appeal of acts/omissions is inefficient for environmental disputes;
- lack of legal notion of violation of right for healthy environment leads to differing interpretation of legislation during consideration of disputes;
- lack of suspense effect (when for the period of proceeding regulation\act under appeal is suspended by the court decision; now it is in court's competence) makes applying to court (including pre-trial procedure) inefficient in environmental disputes;
- there is need to raise an awareness of judges, employees of Prosecutor's Office and citizens regarding specific characteristics of new for national system category of cases – environmental disputes with participation of citizens and non-governmental organisations arising from environmental legislation and the Aarhus Convention;
- procedural legislation concerning jurisdiction of cases in environmental matters when claimant is a non-governmental organisation and defendant is other organisation need to be improved. Resolution of a Plenary Session of Supreme Court of the Republic of Belarus, Plenary Session of Supreme Economic Court of the Republic of Belarus dated 22nd of June 2000 N4/3 “On Delimitation of Jurisdiction of Cases Between Courts of General and Economic Jurisdiction” doesn't fully take into account specifics of consideration of environmental disputes, particularly basing on Art. 100 of the Law “On Protection of the Environment”;
- financial barriers for applying to economic court of ENGO (substantial court fees and other cost (service fees for attorneys, other experts) are too substantial for them, since they don't have their own costs for applying to court. Besides there is imperative prohibition in legislation for reception of charitable aid (including foreign non-reciprocal and technical aid) for use for indicated purposes).

VII. Kazakhstan

A. General issues

The right for access to justice on cases in environmental matters is provided in general provisions of legislation stated in:

the Constitution of the Republic of Kazakhstan adopted at republican referendum 30th of August 1995

the Civil Procedure Code of the Republic of Kazakhstan dated 13th of June 1999 N 411

the Civil Code of the Republic of Kazakhstan (general part), put in force with a resolution of the Supreme Council of the Republic of Kazakhstan dated 27th of December 1994

the Law of the Republic of Kazakhstan "On Non-governmental Associations"

the Environmental Code of the Republic of Kazakhstan, dated 9th of January 2007 N 212.

The right for access to justice is stated in the Art. 13 of the Constitution of the Republic of Kazakhstan. According to the article every person has right to access to justice for the protection of his/her rights and freedoms.

Judicial protection of the rights, freedoms and legitimate interests of a person is guaranteed with the Art. 8 of the Civil Procedure Code (CPC). The article states "any person has right under procedure established by this Code, to apply to court for the protection of violated or contested constitutional rights, freedoms or legitimate interests. Public bodies, legal entities and citizens has right to apply to court for the protection of the rights and legitimate interests of other persons or indefinite range of persons in cases stipulated in legislation".

Procedural legislation equally covers all categories of cases including cases in environmental matters. Art. 2 p. 3 of CPC states: "Legislation on civil proceeding establishes an order of consideration of cases arising from civil, trade, housing, administrative, financial, economic, land, use of natural resources, environmental and other legal relations and special proceedings cases".

The CPC doesn't provide special norms regulating the right to access to justice on cases in environmental matters.

Besides, according to the Art. 13 of the Environmental Code an individual has the right to demand under administrative or court procedure a cancellation of regulations on placement, construction, reconstruction, and putting into operation of enterprises, installations and other environmentally hazardous objects, and on restriction, suspense and termination of economic or other activity of individuals or legal entities, having adverse impact to the environment and humans' health. The same goes for ENGOs according to the Art. 14 of the Environmental Code.

Individuals have the right to apply to court with the suits for compensation of the damage inflicted to their health and property as a result of violation of environmental legislation of the Republic of Kazakhstan (Art. 13 of the Environmental Code), and ENGOs while carrying out their activity on environmental protection have right to apply to court with the suits for compensation of the damage inflicted to health and(or) property of citizens as a result of violation of environmental legislation of the Republic of Kazakhstan.

Civil cases on environmental disputes brought up by individuals, are considered by courts of general jurisdiction (district/city courts and equivalent courts basing on the rules of jurisdiction provided in Art. 3 of the CPC).

Civil cases on environmental disputes between ENGOs and legal entities are considered by special interdistrict economic courts.

Legislation in force, especially, the Code of Administrative Violations doesn't stipulate the right of individuals and NGOs to bring up a case in environmental matters in Special Administrative Courts under administrative procedure.

As a general rule any individual and ENGO with civil procedural legal capacity which considers his/her/its right violated or there is danger of violation of rights, freedoms and legitimate interests, has the right to apply to court. At that, according to the Art. 150 of CPC, a plaintiff in the lawsuit is obliged not only to indicate the demands but also describe in detail the essence of violation or danger of violation of his/her/its rights, freedoms and legitimate interests, facts for basing of his/her/its demands and proves supporting these facts and demands[7].

Registered ENGOs as legal entities are rightful subjects of civil law and may apply to court. The Law "On Non-governmental Associations"[8] states that one may establish at the territory of the Republic of Kazakhstan republican, regional and local non-governmental associations. According to the Law "On Non-commercial Organisations" non-commercial organisation for exercising of Statute objectives may act as complainant and defendant in court, and realize other rights not contravening legislation of the Republic of Kazakhstan[9].

Cases of restriction of the right to appeal to the court on the basis of the territorial scope of ENGOs at the time of preparation of the report were not reported. This may also be related to the lack of relevant practice.

B. Specific issues on access to justice for individuals, their groups and environmental NGO

1. Challenging the refusal of access to environmental information

A denial to provide environmental information may be challenged directly in court. Preliminary application to superior bodies and organisations or officials is not a necessary condition for submission of application its acceptance and decision on the merits.

In case of denial to provide environmental information or not providing environmental information in terms stated in legislation, providing of incomplete information to individual or ENGO, individual or ENGO under procedure stated in the Art. 278 of CPC may challenge regulation, act (or omission) of public bodies, local authority, non-governmental association, organisation, official, government employee directly in court.

2. Challenging the legality of decisions, acts and omissions of public authorities in relation to Article 6 of the Aarhus Convention

According to the Art. 13 of the Environmental Code an individual has the right to demand under administrative or court procedure a cancellation of regulations on placement, construction, reconstruction, and putting into operation of enterprises, installations and other environmentally hazardous objects, and on restriction, suspense and stop of economic or other activity of individuals or legal entities, having adverse impact to the environment and humans' health. The same goes for ENGOs according to the Art. 14 of the Environmental Code.

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7 The Regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20th of March 2003 N 2 «On Specific Issues of Courts Application of Norms of Civil Procedure Legislation»

8 The Law "On Non-governmental Associations" dated 31st of May 1996. N 3

9 The Law «On Non-commercial Organisations» dated 16th of January 2001 № 142-II

The order of the challenge of regulations and acts (omissions) of public bodies, officials and government employees is stipulated in Chapter 27 of Civil Procedure Code of the Republic of Kazakhstan. Thus individual or ENGO under procedure stated in the Art. 278 of CPC may challenge regulation, act (or omission) of public bodies, local authority, non-governmental association, organisation, official, government employees directly in court.

Preliminary application to superior bodies and organisations or officials is not a necessary condition for submission of application its acceptance and decision on the merits.

According to the Art 279 of CPC regulations, acts (omissions) of public bodies, local authority, non-governmental association, organisation, official, government employees which may be challenged in court are collegial or individual decisions and acts (omissions) resulted in the following:

1) violation of rights, freedoms and legitimate interests of citizens and legal entities;

2) establishment of obstacles to exercising of citizen's and legal entity's rights and freedoms and legitimate interests;

3) liability or obligation was illegally imposed on citizen or legal entity, or they were illegally hold liable.

For means of ensuring of unified understanding and use of legislative act during consideration of the individuals and legal entities' claims in order established by the art. 27 of Civil Procedure Code, the Supreme Court of the Republic of Kazakhstan issued regulatory resolution No. 20 dated 24th of December 2010 "On Specific Issues of Courts Application of Norms of the Article 27 of Civil Procedure Code of the Republic Kazakhstan" which gives the following explanations:
Regulations, acts (omissions) of public bodies, local authority, non-governmental association, organisation, official, government employees which may be challenged in court if claimant considers

1) his subjective rights, freedoms and legitimate interests are violated;

2) that there are obstacles for exercising of his subjective rights, freedoms and legitimate interests;

3) that an obligation was illegally imposed on him.

3. Challenging acts and omissions by private persons "which contravene provisions of its national law in relation to the environment"

According to the Art. 13 of the Environmental Code an individual has the right to demand under administrative or court procedure a cancellation of regulations on placement, construction, reconstruction, and putting into operation of enterprises, installations and other environmentally hazardous objects, and on restriction, suspense and termination of economic or other activity of individuals or legal entities, having adverse impact to the environment and humans' health. The same goes for ENGOs according to the Art. 14 of the Environmental Code.

Thus according to the Environmental Code individuals and ENGOs may challenge acts (omissions) of individuals violating environmental legislation in court under ordinary and special proceedings.

According to the Art 150 of CPC claimants are obliged not only to indicate the demands but to give a detailed account of the nature of violation or danger of violation of his rights, freedoms and legitimate interests, facts for basing of his demands and proves of the facts and demands. *See p.6 of the present Chapter*.

4. Challenging acts and omissions by public authorities "which contravene provisions of its national law relating to the environment

The order of challenging of acts (omissions) of public authorities and requirements for standing are described in p. 2 of the present Chapter. On this basis, the ability to challenge acts and omissions by public authorities in case of violation of the provisions of law relating to the environment, without having to prove a violation of personal rights or legitimate interest is debatable.

5. Claim for pause/stop of the activity

According to the Art. 13 of the Environmental Code an individual has the right to demand under administrative or court procedure a cancellation of regulations on placement, construction, reconstruction, and putting into operation of enterprises, installations and other environmentally hazardous objects, and on restriction, suspense and termination of economic or other activity of individuals or legal entities, having adverse impact to the environment and humans' health. The same goes for ENGOs according to the Art. 14 of the Environmental Code.

P. 25 of the Regulatory Resolution of the Plenary of Supreme Court of the Republic of Kazakhstan dated 22th of December 2000 N 16 "On the Practice of Application of Environmental Legislation" states that during considering demands of citizens and non-governmental association on termination of economic and other activity of legal entities and individuals having negative impact at the environment and human health (Articles 5 and 6 of the Law "On Protection of the Environment"[10)] courts may take a decision on termination of illegal as well as legal (authorized) activity, whereas the reason for satisfaction of claims on this category of cases is not a violation but a fact of negative impact on the environment and human health stated with the relevant expert examination conclusion.

See also pp. 3 and 6 of the present Chapter.

6. Actio popularis

According to the Art. 8 and 56 of CPC public bodies, local authorities, organisations or citizens have the right to apply to court for the protection of the rights of other persons or public and state interests but only in cases provided in legislation. Environmental legislation doesn't stipulate such cases directly. The only direct case of *actio popularis* is provided in the Law "On Protection of Consumers Rights" dated 4th of May 2010 N 274-IV.
It's worth noting that Art. 19 of the Law "On Non-governmental Associations" dated 31st of May 1996 N 3 provides the right of non-governmental associations to represent and defend the rights and legitimate interests of their members in court and other public bodies, other non-governmental associations, and to exercise other powers, which not contravene legislation. But the p.1.1 of Art. 14 of the Environmental Code states that "Non-governmental organisations while exercising their activity on protection of the environment have the right: 1) to develop and promote environmental programmes, defend citizens' rights and interests, involve them for volunteering in activity for protection of the environment". According to expert opinion for unified understanding and use of this norm for suits of ENGOs initiated in the interest of an indefinite number of persons, this norm must be complemented with direct indication of ENGOs' right to defend rights and interests of other persons or indefinite number of persons.

7. Claiming for damage

10 Void since adoption of the Environmental Code (2007).

As a rule individuals and ENGO may apply to court with suits on compensation of damage inflicted to them, or in case of ENGO to the members of organisation.

The Environmental Code doesn't provide the right of individuals and ENGOs to apply to court with a suit for compensation of damage inflicted to the environment.

Individuals may apply to court with a suit for compensation of damage inflicted to their health and property as a result of violation of environmental legislation of the Republic of Kazakhstan (Art. 13 of the Environmental Code). Art. 14 of the Environmental Code states that non-governmental associations while exercising their activity on protection of the environment have the right to apply to court with suits for compensation of damage inflicted to citizens' health and (or) property as a result of violation of environmental legislation.

According to the Art. 117 of the Environmental Code the right to make an order on compensation of damage to the state and apply with the corresponding lawsuits to court is assigned to officials carrying out the state environmental control. In addition, such actions to protect the interests of the state may be brought by the prosecutor on the basis of Article 23 of the Law "On Prosecutor's Office".

8. Practical issues of exercising the right on access to justice

- Main practical obstacles relating to access to justice are as follows: - the material costs associated with going to court, which include the court fee and other court costs associated with the proceedings may be an obstacle to access to justice. "Fear of" losing a lawsuit and in this case to bear the cost for compensation legal costs is also a serious obstacle to going to court. There is a conflict of different norms of civil procedure legislation, environmental legislation, legislation on non-governmental associations as well as respective clarifications of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan on application of norms related to right of ENGO for judicial recourse on behalf of the organisation itself, its members and indefinite number of persons. (See pp. 2, 6 of the present Chapter).

VIII. Republic of Moldova

A. General issues

The right for standing before court on cases in environmental matters is provided in general provisions of legislation stated in:
The Constitution of Republic of Moldova dated 29 of July 1994.
The Civil Procedure Code of Republic of Moldova Nr.225, dated 30.05.2003.
The Law on Administrative Court Nr.793 dated 10.02.2000.

Furthermore certain nature protection legislation provides special norms enforcing the right for judicial recourse on environmental matters. According to Art. 30 of the Law on Protection of the Environment the state legitimate every individual's right for healthy environment. To this effect the state ensures citizens right to appeal (directly or through the organisations, parties, causes, associations) to the nature protection bodies, administrative bodies or court with a demand to stop activity which impacts the environment.

Legal procedure on cases in environmental matters regardless of claimant status is general and takes place in administrative court or court of general jurisdiction. Any person who considers his/her right violated by public authority by means of any administrative regulation or by failure to grant person's request in terms provided by legislation has the right to address respective administrative court with a request to revoke the regulation, recognition of right and compensation of damage. a The competence of the courts of general jurisdiction includes a judicial review of civil cases for protection of violated or contested rights, freedoms and legitimate interest of individuals and legal entities and their associations, public bodies, other parties to civil, family, labour and other legal relationship, as well as protection of the state and public interests, promotion of legitimacy, legal order and prevention of violations. Courts examine cases with participation of organisations and citizens of Republic of Moldova, foreign persons, apatrides, foreign organisations, organisations with cross-border capital, international organisations if competence of foreign courts or other bodies is not stated by law or international agreement to which Republic of Moldova is a party.

Criteria for a "legitimate interest" is not clearly defined in the legislation.

The main criterion of environmental NGO's legal capacity is registration of a statute, where goals and tasks (i.e. protection of environment, rights and interest of people, which includes filing petitions, claims, suits etc.) of environmental NGO are stated. NGOs are categorized based on territoriality into republican, local and international organisations. For the moment it is impossible to identify how territoriality affects the right on judicial recourse, since there is no information on respective practice.

B. Specific issues of standing for individuals, their groups and environmental NGOs

1. Challenging the refusal of access to environmental information

The Law on Access to Information states that a person (individual and NGO) who considers its rights or interests are violated by provider of information can make a complaint both in extrajudicial procedure to the providers management and/or to the superior body and directly to relevant administrative court (Art.21). If providers of information do not have superior bodies the claims for their action or omission to act are made directly to respective administrative court.

Art. 23 of the Law on Access to Information states that person who considers its legitimate rights or interests on access to information are violated, can make a complaint against provider's of information action or omission to act directly to respective administrative court. The same goes for person who is not satisfied with the decision made by provider's management or its superior body.

Also, in accordance with p.62 of the Regulation of the Plenum of the Supreme Court of Justice №. 3 of 24 December 2010 "On the practice of application by courts of certain provisions of environmental legislation in civil matters," environmental information is equated to public information, and unreasonable failure to provide environmental information may be challenged in court by filing an administrative lawsuit.
Depending on the severity of the consequences of the unlawful refusal of the official responsible for providing official information to provide the requested information, the court decides to apply sanctions in accordance with the law, compensation of losses caused by unreasonable refusal to provide information, or other acts that infringe upon the right of access information, as well as the urgent consideration of the applicant's request (Article 24 of the Law on Access to Information).

2. Challenging the legality of decisions, acts and omissions of public authorities in relation to Article 6 of the Aarhus Convention

Any person concerned has the right to apply to court, in the manner prescribed by law, for protection of violated or contested rights, freedoms and legitimate interests. If the decision of public body made in form of administrative regulation violates the right of an individual or an ENGO said individual or ENGO has the right to apply to respective administrative court in order to cancel the decision.

3. Challenging acts and omissions by private persons "which contravene provisions of its national law relating to the environment"

As a rule according to civil and administrative procedural legislation any person concerned has the right to apply to court, in the manner prescribed by law, for protection of violated or contested rights, freedoms and legitimate interests.

As it follows from the implication of Art. 30 (g) of the Law on Protection of the Environment there is a possibility to apply to court with the demand of termination of the activity which affects the environment. The article does not state the necessity to prove the fact of violation of rights, freedoms or legitimate interests.

4. Challenging acts and omissions by public authorities "which contravene provisions of its national law relating to the environment"

As a rule according to civil and administrative procedural legislation any person concerned has the right to apply to court, in the manner prescribed by law, for protection of violated or contested rights, freedoms and legitimate interests.

See also pp.2 and 3 of this Chapter

5. Claim for pause/stop of the activity

As one of the remedies the Art.11 of the Civil Code envisages a suppression of actions which violates the law or creates a possibility of such a violation.

A right to file claims to stop/ terminate of activity also follows from the meaning of Art. 30 (g) of the Law on Protection of the Environment, which provides the possibility to apply to courts directly

or through organizations, parties, movements, associations with demands of the termination of activities which are harmful to the environment.

According to p.50 of the Regulation of the Plenum of the Supreme Court of Justice of 24 December 2010 the courts can deliver the judgment to suspend the activity of economic agent when said activity contravene environmental legislation. Moreover, the background of settle of the claim or dismissal of the case on this category of cases is not the fact of inflicting the damage but the fact of harmful impact on the environment and human health proved by respective examination.

6. Actio popularis

Provisions of part 1 of Art. 73 of the Civil Procedure Code imply that in cases prescribed by a law, organisations, individuals may apply to court with a suit (a claim) for protection of rights, freedoms and legitimate interests of other parties on their demand or for protection of rights, freedoms and legitimate interests of undefined quarter.

Paragraph 55 of the Regulation of the Plenum of the Supreme Court of Justice of 24 December 2010 explains that non-governmental organisations and individuals can bring an action for adjudications illegal administrative acts of public authorities on access to information in environmental matters as well as they can bring an action for termination of economic or other activity of individual or legal entity, if said activity negatively affects an environment or health; on compensation of damage inflicted to environment as a result of pollution or other action; on compensation of damage to human health and other claims. Thus, according to the experts, from the text of part 1 of Art.73 of the Civil Procedure Code and of the paragraph 55 of the abovementioned Regulation it can be concluded that the non-governmental organisations and citizens can sue for damages to the environment, health, including, in the interest of an indefinite number of persons, however, the practical examples in this area are unknown.

7. Claiming for damage

As a rule individuals and ENGO may apply to court with suits on compensation of damage inflicted to them, or in case of ENGO to the members of organization.

According to Art. 1422 of the Civil Code if non-pecuniary damage (moral or physical sufferings) through acts that infringe on personal non-property rights was inflicted to an individual or in other cases prescribed by a law the court may compel responsible party to compensate the damage in money equivalent. Non-pecuniary damage is compensated independently of availability or size of property damage.
Suits on compensation of damage inflicted to the environment may be filed either by prosecutor (part 3 Art. 71 of the Civil Procedure Code), or by the State Environmental Inspection.

8. Practical issues of exercising the right on access to justice

The main practical issues related to standing, which were indicated by experts during the research process, are as follows:

- the need to increase the level of knowledge and practical skills of individuals and ENGOs;
- the need to improve awareness of the procedures for access to justice;- court expenses connected with the necessity to pay attorney fees as far as attorneys only has a right to act as the representative in court, and only under authority of attorney's order.
- other court expenses – costs to be paid to witnesses, interpreters, experts; costs for examination;
- low level of trust to the public authorities and the judiciary.

IX. Tajikistan

A. General issues

The right to appeal to the court in cases relating to the environment in the Republic of Tajikistan (RT) are regulated by following major legislative acts:

The Civil Procedure Code (2008), (CPC);
The Economic Procedure Code (2008);
The Code on Administrative Procedures (2007) (CAP);
The Constitutional Law of the Republic of Tajikistan "On the courts of the Republic of Tajikistan" (2001) ;
The Constitutional Law "On the Constitutional Court" (1995);
The Criminal Procedure Code (2009).

In Tajikistan, the judicial power is carried out by constitutional, civil, economic, administrative and criminal proceedings (Article 2 of the Constitutional Law "On Courts ").

The appeal of the legal entities directly to the Constitutional Court is regulated by the Art. 37 of the Constitutional Law "On the Constitutional Court" and may be applied in case of violation of the constitutional rights and interests by the application of laws and other legal acts in a particular matter, as well as on the issue of accordance to the Constitution of the laws, other regulations and guiding explanations of the Plenum of the Supreme Court of the Republic of Tajikistan and of the Supreme Economic Court of the Republic of Tajikistan, which court has applied against them in a specific case.

Civil proceedings are based on the Civil Procedure Code (CPC). Courts hear and decide cases on claims of citizens and organizations, public authorities and local governments on the protection of violated or disputed rights, freedoms and legitimate interests, including disputes arising from environmental relations (Article 24 of the Civil Procedure Code (CPC) (2008). According to Art. 249 of CPC the court jurisdiction include also the cases arising from public relations, in particular claims against decisions and actions (inaction) of public authorities, local authorities, officials and public servants.

In addition, paragraph 1 of Article 13 of the Law "On Environmental Protection" provides that public associations and other non-profit organizations may apply to the public authorities and court in order to appeal the decisions on the design, location, construction, reconstruction and commissioning of facilities, as well as to demand the limitation, suspension or termination of economic and other activities which cause negative impact on the environment.

Also, in accordance with paragraph 2 of Art. 12 individuals are entitled to bring an action in court on damage compensations inflicted to the environment, personal property and health. According to paragraph 1 of Article 13 of ENGOs can submit to the court claims for compensation for damage to the environment to protect the interests of citizens.

Economic disputes, as a rule, fall under the jurisdiction of Economic Courts (Constitutional Law "On Courts", Economic Procedure Code (Chapter 4).

All offenses under Chapter 24 of the Criminal Code (1998) are considered in the framework of criminal proceedings. Individuals and legal entities are required to apply to the competent authorities (Internal Affairs, Prosecutor's Office) with facts and information about the violation of

criminal law, if such information became available to them. The claim may be filed in order of private-public prosecution (directly to the court at the request of the victim or any other person) in case of infliction due to the negligence of serious injury or injury of average gravity.
Article 20 of the Law "On Public Associations" entitles public associations to represent and protect their rights, the rights and legitimate interests of its members and participants, as well as other citizens in the judiciary and in other cases provided by law. According to the experts the only additional criterion for ENGOs may be the presence in the statutory purposes of the ENGO relevant objectives in the sphere environmental protection.

Criteria for a "legitimate interest" are not clearly defined in the legislation of the Republic of Tajikistan.

B. Specific issues on access to justice for individuals, their groups and environmental NGO

1. Challenging the refusal of access to environmental information

Refusal to provide information, unreasonable delay or failure to reply within the prescribed period, as well as other violations of the order of consideration of the request may be appealed to a higher official or court.

Action (inaction) of public authorities, organizations and their officials that violates the right to access to information may be appealed to the relevant authorities in accordance with the laws of the Republic of Tajikistan.

Persons who are illegally denied access to information, as well as persons who have received inaccurate, incomplete, or received information not in time are entitled to compensation for non-pecuniary (moral) damage in the manner specified by law. (Article 16 of the Law "On the Right of Access to Information»). See also paragraph 2 of this Chapter.

2. Challenging the legality of decisions, acts and omissions of public authorities in relation to Article 6 of the Aarhus Convention

According to paragraph 1 of Article 13 of the Law "On Environmental Protection" public associations and other non-profit organizations may apply to the public authorities and court in order to appeal the decisions on the design, location, construction, reconstruction and commissioning of facilities, as well as to demand the limitation, suspension or termination of economic and other activities which cause negative impact on the environment.

Individuals and legal entities may appeal the actions and decisions of officials, inspection bodies in the manner and within the time limits established by the legislation of the Republic of Tajikistan.

Article 251 CCP provides that the court shall consider the case arising out of public relations, on the basis of the application of the person concerned The claim should indicate what decisions, actions (inaction) should be considered illegal, what specific rights and freedoms of persons were violated by these decisions, actions (inaction).

Appeal of the person concerned to the authority of to a higher authority is not a prerequisite for application to the court.

According to the Code on Administrative Procedures there are following types of claims:

- *Claim for recognition of administrative-legal act invalid or one that lost its force.* A claim for recognition of administrative-legal act invalid or one that lost its force, if in the legislation of the Republic of Tajikistan is not stated otherwise, may be submitted if the administrative-legal act or its part causes direct and immediate (personal) harm to the rights or legitimate interests of the claimant or illegally restricts rights (Art.125);
- *Claim with the demand to adopt the administrative-legal act.* If in the legislation of the Republic of Tajikistan is not stated otherwise, the claim can be brought, when the refusal of administrative authority to adopt the administrative-legal act causes harm to the rights or legitimate interests of the claimant (Art. 126)
- *Claim with the demand to perform an action or to refrain from such action.* A claim may be filed with the demand to perform an action or to refrain from such action, which does not imply the adoption of administrative-legal act. The claim is allowed, if the action of the administrative authority or refraining from action harms the rights and legitimate interests of the claimant. (Art. 127).
- *Claim for recognition.* Claim for recognition may be filed with the request for recognition of the presence or absence of rights or legal relationship, if the claimant has a legitimate interest in it (Art. 128).

The jurisprudence with regards to appealing by NGOs and individuals of the decisions, acts / omissions of public authorities, authorized bodies of government and control is very limited in Tajikistan.

3. Challenging acts and omissions by private persons "which contravene provisions of its national law in relation to the environment"

The right to challenge in court actions / omissions by private persons "which contravene provisions of its national law in relation to the environment" if the violation does not result in the infringement of the rights or interests of a particular individual or ENGOs, is not envisaged in the legislation of the RT.

It should be noted that the legislation provides for a claim to protect the rights, freedoms and legitimate interests of an indefinite number of persons, as well as claims for termination of environmentally harmful activities that harm the environment. However, the practice of application of these rules in cases concerning the environment is not known. Relevant court cases on this issue have not been identified. See also paragraphs 5 and 6 of this chapter.

4. Challenging of acts or omissions of public authorities "which contravene provisions of its national law in relation to the environment"

The right to challenge in court acts / omissions by public authorities "which contravene provisions of its national law in relation to the environment" if the violation does not result in the infringement of the rights or interests of a particular individual or ENGOs, is not envisaged in the legislation of the RT.

Relevant court cases on this issue have not been identified. See also paragraphs 2, 5 and 6 of this chapter.

5. Claim for pause/stop of the activity

According to the Article 80 of the Law on Environmental Protection natural and legal persons may bring claims to the court for termination of environmentally harmful activities that cause harm to the health, their property and to the environment.

Paragraph 1 of Article 13 of the Law "On Environmental Protection" provides that public associations and other non-profit organizations may apply to the public authorities and court in order to appeal the decisions on the design, location, construction, reconstruction and commissioning of facilities, as well as to demand the limitation, suspension or termination of economic and other activities which cause negative impact on the environment.

Also, individuals and ENGOs may appeal the actions and decisions of officials, inspection bodies in the manner and within the terms in cases specified by law of the Republic of Tajikistan. According to the Code on Administrative Procedures of RT filing of administrative appeal or claim to the court suspends the challenged administrative-legal act.

6. Actio popularis

According to the Article 48 of the Civil Procedure Code in cases specified by law, public authorities, local governments, citizens or legal entities may apply to the court to protect the rights, freedoms and legitimate interests of other citizens, at their request, or of an indefinite number of persons. See also paragraph 5 of this chapter.

In practice, there are lawsuits to protect the interests and rights of consumers, but they are initiated at the request of individuals. There are no cases when such provisions are applied in matters related to environment.

7. Claiming for damage

According to paragraph 2 of Art. 12 of the Law "On Environmental Protection", individuals have the right to file a claim for damage to the environment, personal property and health. According to paragraph 1 of Article 13 of the Law "On Environmental Protection" ENGOs may file claims to the court for compensation for damage to the environment to protect the interests of citizens.

8. Practical issues of exercising the right on access to justice

According to the experts the main practical issues related to standing are as follows:
- The lack of precedents of filling the claims to the courts by individuals and non-governmental organizations;
- Stereotype of "the judiciary" as "punitive structure";
- The need to increase of public trust in justice and the judicial system;
- Financial barriers in covering of the court costs by the plaintiff;
- "Fear" to lose lawsuits in connection with the laying the costs on the losing party.