Access to justice under the Aarhus Convention

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Article 9 of the Aarhus Convention

• Art. 9(1) – access to review procedure for any person whose request for environmental information has been ignored, refused or inadequately answered

• Art. 9(2) – access to review procedure for members of the public concerned to challenge substantive or procedural legality of decisions, acts or omissions subject to public participation provisions of art. 6

• Art. 9(3) – access to administrative or judicial procedures for members of the public to challenge other acts or omissions which contravene provisions of national law relating to the environment
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• Art. 9(4) – review procedure shall provide adequate and effective remedies and be fair, equitable, timely and not prohibitively expensive.

• Art. 9(5) – information to be provided to the public on access to review procedures and establishment of assistance mechanisms to remove or reduce financial and other barriers to access to justice to be considered.
Mandate of the Aarhus Convention Task Force on Access to Justice

• Established by decision I/5 of the 1st Meeting of the Parties (Lucca, Oct. 2002)
• To report to the 2nd Meeting of the Parties (Almaty, May 2005) through the Working Group of the Parties (Geneva, Nov. 2004)
• 3 meetings with participation of government experts, NGOs, academic experts and representatives of judiciary and other legal professions
Mandate of the Aarhus Convention Task Force on Access to Justice

- Examination of good practices
- Identify activities to support implementation of art. 9, paras. 3, 4 and 5
- Assess and address impact of cost and delay on access to justice
- Assess and address information and training needs of public, environmental lawyers, academia and judiciary
- Sharing of experience with access to justice in relation to relevant provisions of Convention other than those relating to access to information and participation rights
- Possibility of preparing draft recommendations for adoption by 2nd Meeting of the Parties
Issues under discussion in the Task Force on Access to Justice

- Focus on examination of good practices (and “bad” practices?) and sharing of experience or on formulation of recommendations to Parties and signatories on implementation and interpretation of art. 9
- Criteria for standing of members of the public under art. 9 (3)
- Notion of “provisions of national law relating to the environment” under art. 9(3)
- Requirements for effectiveness of remedies
- Accessibility of decisions of courts and other review bodies
- Advantages and disadvantages of administrative versus judicial review procedures
- Measures to remove/reduce financial and other non-legal obstacles to access to justice (legal aid systems, information, etc.)
- Measures to improve training of members of judiciary and other legal professions
Links with developments in other fora

- EU draft directive on access to justice
- European Judicial Network (Decision 2001/470/EC) – potential role?
- Council of Europe recommendations and activities to promote access to justice and efficiency of justice