



REGIONAL ENVIRONMENTAL CENTER

# Access to Justice under the Aarhus Convention



A user guide for the  
**Former Yugoslav Republic of Macedonia**



Federal Ministry  
for the Environment, Nature Conservation  
and Nuclear Safety



# Table of contents

<b>1. Administrative procedures</b>	
1.1 Appeal to higher authorities	
1.2 Appeal to the Administrative Court	
1.3 The Ombudsman	
1.4 Using the State Environmental Inspectorate and the Office of the Public Prosecutor	
<b>2. Standing: Who has the right to bring a case?</b>	
2.1 Standing for individuals	
2.2 Standing for NGOs	
<b>3. How to go to court</b>	
3.1 Suing techniques	
3.2 Which court to go to?	
3.3 Timing	
3.4 Court cases	
3.5 Is the case admissible?	
3.6 Preparation of the case to be heard	
3.7 Other useful techniques	
	<b>3.8 Ceasing activity while a decision is made (temporary relief)</b>
	<b>3.9 How to get help (public interest advocacy)</b>
	<b>3.10 Involving experts</b>
	<b>4. Strategic lawsuits against public participation (SLAPPs)</b>
	<b>5. Barriers to going to court</b>
	5.1 Counter-lawsuits
	5.2 Costs
	5.3 Social factors
	5.4 NGO standing
	<b>6. International appeal process</b>
	6.1 Compliance Mechanism and review of implementation
	<b>7. European Court of Human Rights</b>
	<b>Useful links</b>

*Access to Justice under the Aarhus Convention* (2017) is an easy-to-use guide for civil society organisations on the rights, opportunities and avenues for access to justice based on national legislation and the provisions of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. It provides practical advice on litigation, the development and initiation of administrative and court procedures, the utilisation of the national ombudsman system, the Aarhus Compliance Committee, and more. It is based on the 2004 publication *Implementation of the Aarhus Convention: A User Guide for Civil Society in the Eastern Europe and Caucasus Region* and the content has been revised and adapted for the former Yugoslav Republic of Macedonia.

The 2004 guide was written by **Magda Toth Nagy, Marianna Bolshakova, Kaidi Tingas, Rodica Iordanov** and **Pavel Antonov** of the Regional Environmental Center for Central and Eastern Europe (REC).

The present publication was adapted for the former Yugoslav Republic of Macedonia by **Aleksandra Bujaroska**.

The publication was reviewed by: **Tsvetelina Borissova Filipova** (Project Director) and **Brendan Kenneth Duprey** (Deputy Project Manager) from the REC. The production of the publication was managed by **Cecile Monnier** (REC).

This publication has been produced under the project “Better Access to Justice in South Eastern Europe”, funded by the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety by the Advisory Assistance Programme for environmental protection in the countries of Central and Eastern Europe, the Caucasus and Central Asia and other countries neighbouring the European Union (AAP). It was supervised by the Federal Environment Agency (Umweltbundesamt, UBA). Responsibility for the content of this publication lies with the authors.

Every constitution in the region guarantees the right of access to justice where one's rights have been violated. Article 15 of the Macedonian Constitution guarantees the right to appeal against individual legal acts issued in a first instance proceedings by a court, administrative body, organisation or other institution carrying out public mandates. The former Yugoslav Republic of Macedonia has a developed procedures for adjudication in civil, criminal and administrative cases.

The former Yugoslav Republic of Macedonia ratified the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) in 1999. Since then, it has adopted legislation that secures the right to access to justice if information and participation rights are breached in violation of the third pillar of the convention, which deals with the right to appeal against decisions and actions that obstruct access to information or prevent participation in decision making.

The Macedonian public tends to mistrust the country's court access and appeal processes, whether due to slow proceedings, lack of faith in the judiciary system, or a general lack of familiarity with legal processes. However, more and more administrative cases that challenge decisions by governmental bodies are being brought before the courts. These administrative cases follow an expedited procedure that makes it possible to complete these cases within a shorter timeframe and with fewer costs involved.

In fact, it is not all that difficult to win a case on access to information. When there is a national law that says environmental information should be provided; and if there is a deadline that says when it should be done, it is very likely that the court will decide in your favour. While you actually obtain the disputed infor-

mation, the side effect of your case may be even more important — it could create a precedent, and a person in a similar situation at a later date may have an easier case. In addition, within a few years the authorities will likely pay more attention to responses to requests, as it is much easier to simply provide information than to spend time in court.

The Aarhus Convention obliges the former Yugoslav Republic of Macedonia to draft and adopt legislation that establishes a proper legal framework for the implementation of the third pillar of the convention. The national framework should also secure proper enforcement. However, the fact that, according to the Macedonian Constitution, international agreements are directly applicable and superior to national law, does not relieve that party from taking the necessary legislative and other measures to ensure the effective implementation of the convention<sup>1</sup>.

One may refer to Article 9 of the Aarhus Convention and resort to an administrative or judicial appeal in a court of law if:

1. The **right of access to information** is violated (Article 9.1)
  - Information is provided, but is incomplete and/or irrelevant to the request.
  - The request for information is rejected.
  - No reply is given within the deadline (i.e. 1 [+1] month).

2. The **right to participate** is violated (Article 9.2)

- Notification about the decision-making procedure is not provided.
- The means of notification are insufficient to reach those concerned.
- Notification is issued at a late stage in the procedure.
- The notification does not contain the minimum required information.
- More detailed information about the project, programme or plan is not available.
- The procedure does not allow for submission of comments.
- Comments do not take due account of the following:
  - The decision maker cannot reasonably explain why a certain comment was not incorporated in the final decision.

- The decision is not published.
- The published decision does not include the rationale for the decision.

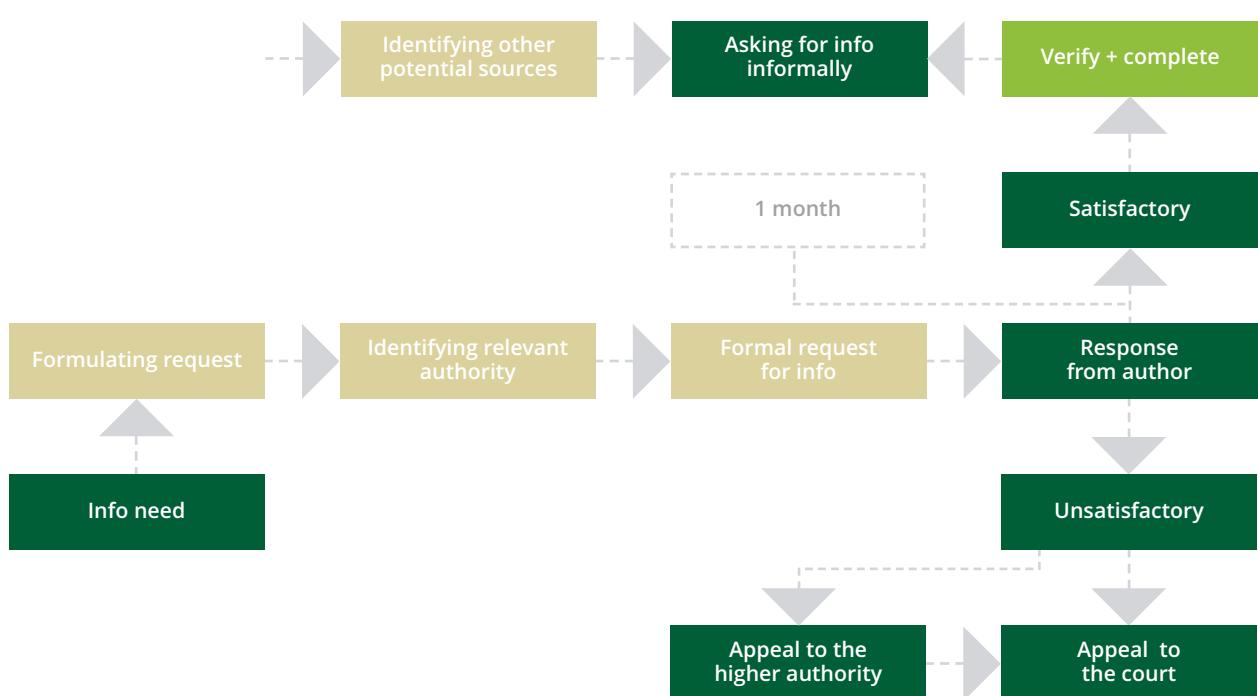
3. **Environmental laws** are violated (Article 9.3)

- Acts or omissions of private persons who violate laws related to the environment may be challenged.
- Acts or omissions of public authorities that violate laws related to the environment may be challenged.

(This provision has several conditions, including that the right to bring a case is conditional on meeting certain criteria — usually an affected interest. This right is known as “standing”).

Article 9 of the convention gives special status (2.2) to environmental NGOs, recognising them as having an interest in cases of access to justice and the right to participate in decision making, and therefore “standing” to bring cases in these instances.

Figure 1. Steps to obtaining information



Access to an appeal procedure is usually reached through an administrative appeal to bodies superior to the decision maker, and through the courts. Where any of the means of access to justice cannot be used successfully, several procedures also exist internationally, including the convention's own Compliance Mechanism, and in some cases the European Court of Human Rights.

## 1. Administrative procedures

People usually identify access to justice with courts and hearings. However, there are several other ways to appeal against decisions. The most typical are administrative appeals, appeals to the Ombudsman and appeals to the Office of the Public Prosecutor. In some cases, an administrative appeal is a precondition for an administrative court procedure.

You always need to consider what is the best strategy for a given situation. Going to court can take up time, and significant costs are often involved. What follows is an explanation of four ways of access to justice, according to Macedonian legislation. It should, however, be borne in mind that the effectiveness of the procedure will vary on a case-by-case basis.

- 1.1. Appealing the decision to the higher administrative authority.
- 1.2. Appealing the decision to the administrative court.
- 1.3. Appealing the decision to the Ombudsman.
- 1.4. Submitting a complaint to the State Environmental Inspectorate/Prosecutor.

### 1.1. Appeal to higher authorities

This simply means that if you are not satisfied with the decision of an official, you can always turn to a higher authority in the hierarchy.

According to the Law on General Administrative Procedure, decisions issued in the first instance are subject to complaint to a higher authority (e.g. a decision issued by the Ministry of Environment is subject to appeal to the State Commission in the case of decisions in administrative procedures and procedures for employment in second instances). A complaint to a higher authority may also be submitted if a public authority does not act on the request of the party within the defined timeframe, or by a specific deadline (e.g. within 30 days in the case of a request for access to information). An appeal should be submitted within 15 days of the receipt of the decision, unless otherwise determined by the specific law. The deadline for submitting an appeal is calculated from the date of the receipt of the decision.

Administrative decisions adopted by a commission (through an administrative complaint procedure), and administrative acts for which the administrative complaint procedure is not provisioned by law, are subject to administrative dispute (Administrative Court: see 1.2).

The complaint in an administrative review can be sent either to the issuing body or directly to the higher authority. If sent to the higher authority, the complaint is first forwarded to the issuing body to check its admissibility. Within seven days from the submission of the complaint, the issuing body should examine whether the complaint is admissible (i.e. grounded, timely and completed by an authorised person). If admissible, the issuing body shall hand over the complaint and all related documents to the higher instance, which is then entitled to:

- a) annul the first instance act (partially or completely) and request the first instance (issuing body) to review the procedure with specific guidelines for amendments; or
- b) annul the first instance act, review the administrative procedure, and adopt a new administrative act on the subject (if the

complaint is submitted on an act that has been previously annulled by a higher instance, but the issuing body has not followed specific guidelines for amendments).

The administrative procedure for the complaint should be completed without delay, and no later than 60 days from the date of receipt of the complaint and all related records.

During the administrative complaint procedure, the administrative act cannot be implemented, except in cases when the law specifically stipulates that the complaint does not delay the execution of the act.

FOR EXAMPLE



### How the law may be applied in practice

**Ms. Ivanovska has requested information regarding annual emissions of chemicals into the air from the cosmetics plant near her town. While processing the request, the head of the Macedonian Environmental Information Centre, Mr. Petrovski, notes that the plant has requested to keep its emission records confidential. The company claims that any disclosure would make it easier for their competitors to replicate protected formulas. Based on the confidentiality request, Mr. Petrovski rejects Ms. Ivanovska's request for information. Ms. Ivanovska then contacts a local environmental NGO. The NGO explains that, according to Article 55, Paragraph 3, of the National Law on Environment, her request for access to emissions-related information may not be refused. Ms. Ivanovska then submits a formal complaint to the Commission in the interest of exercising her right to free access to public information.**

## 1.2 Appeal to the Administrative Court

The former Yugoslav Republic of Macedonia has a special court that processes administrative lawsuits: the Administrative Court. In administrative disputes, the court decides on the legality of administrative acts in the form of a decision adopted by the authorities, the government and public enterprises (regarding disputes where the subject being decided on is a subjective legal situation or an individual administrative act). An administrative dispute is initiated by filing a lawsuit. The lawsuit may be submitted within 30 days of receiving, or being informed of, the administrative act.

An administrative dispute may be initiated against:

- an administrative act adopted in the second instance (final administrative act);
- a first instance administrative act that cannot be appealed through an administrative procedure; or
- a competent authority that has failed to issue an appropriate administrative act on request or appeal, as stipulated by law.

An administrative act/decision may be challenged if the law is improperly applied (substantive issue); the act is issued by an unauthorised authority; or the implemented procedure is not in accordance with the law (procedural issue).

In a lawsuit, the plaintiff (person or legal entity) must provide the following:

- personal/entity information (name, surname and place of residence of the plaintiff; or name and address of head office of the legal entity, as registered in the Central Register);
- the decision (name, number etc.) against which the lawsuit is lodged;
- the rationale of the claims and supporting documents (explaining the breach of law or how the procedure was not properly implemented); and

- a proposal on how the issue should be resolved by the court (scope and direction of proposed annulment or revision of the administrative act).

The lawsuit must always be accompanied by the original act or a certified copy thereof. When the return of property or compensation for damage is requested, the lawsuit must contain the specific amount to be compensated.

The lawsuit and all supporting documents must be delivered to the court, either directly or by post. The filing of a lawsuit does not generally mean that the administrative act against which it is lodged will be suspended.

In cases where implementation of the administrative act is likely to cause personal and/or material damage to the complainant that would be difficult to repair, implementation of the administrative act may be suspended. The suspension should be in line with the public interest and must not cause irreparable damage to the opposing party. This procedure is initiated upon the plaintiff's request. The court must decide on each request within a period of no longer than three days.

The Administrative Court can dismiss the lawsuit if:

- the lawsuit has not been submitted within the legal deadline;
- the act disputed by the lawsuit is not an administrative act;
- the lawsuit affects neither the plaintiff's right nor the plaintiff's direct personal interest based on the law;
- a complaint (in the second instance) should have been lodged, but no such complaint has been filed;
- administrative dispute is not provisioned; or
- a legally valid decision on an administrative dispute procedure regarding the same matter has already been adopted.

Generally, the Administrative Court in administrative disputes decides in a non-public session. The court decides on the lawfulness of the act and the administrative matter itself. In the verdict, the court accepts the lawsuit as grounded, or rejects it as ungrounded. The authority that adopted the administrative act/decision is obliged to act as determined in the verdict and to adopt a new or revised administrative procedure. Also, the court can decide on the administrative matter and issue a verdict on its own. An appeal against the decision of the Administrative Court is submitted to the Higher Administrative Court.

### 1.3 The Ombudsman

The institution of ombudsman came originally from Scandinavia and in translation means "people's representative". The ombudsman represents the interests of the people regarding governmental institutions. Some countries even have several ombudsmen that specialise in certain areas. In Hungary, for example, in addition to the regular ombudsman, there is one that looks into matters affecting ethnic minorities, and another that deals with data protection and information.

The ombudsman undertakes investigations of alleged violations of citizens' rights through actions or omissions by public authorities, and issues opinions with regard to such violations. While the opinions of the ombudsman are not binding, they tend to be highly respected.

#### Institution

In the former Yugoslav Republic of Macedonia, the Ombudsman is appointed by, and accountable to, the Macedonian Assembly, and is independent of the executive power. The Ombudsman is elected for a term of eight years, with the right to re-election.

The Parliament appoints an individual person — usually a well-respected expert in the areas of human rights, constitutional law and related

matters. In the realisation of his/her functions and competences, the Ombudsman is assisted by deputies elected by the Assembly.

## Tasks

The Ombudsman:

- reviews cases on the basis of submissions from the public;
- reviews cases upon the request of Parliament;
- reviews cases on her/his own initiative;
- has investigative authority;
- analyses situations in areas relevant to the work of the Ombudsman, including human rights, constitutional rights, information rights, minority rights or any other areas for which the office is given responsibility;
- proposes initiatives to the Assembly for amendments and modifications to laws and by-laws, and their harmonisation with international agreements; and
- submits proposals to the Constitutional Court for evaluation of the constitutionality of laws and the constitutionality and legality of other regulations or general acts.

## Accountability and independence

The Ombudsman reports to the Assembly through annual reports summarising his/her findings, cases and studies. Because the Ombudsman looks into the actions of the executive branch, it is vital that the institution itself is independent from the executive bodies of government.

## Authority

The Ombudsman is not a judicial body. Although its findings often resemble judicial opinions and rulings, they are not binding. In the former Yugoslav Republic of Macedonia, the Ombudsman can:

- give recommendations, proposals, opinions and indications on the manner of the removal of the determined infringements;

- propose that a certain procedure be implemented pursuant to law;
- submit an initiative for commencing disciplinary proceedings against an official (i.e. the responsible person); and
- submit a request to the competent Public Prosecutor for the initiation of a procedure to determine criminal responsibility.

When the Ombudsman issues an opinion on an individual case, this opinion is not binding on the parties. But because of the nature of the institution and the stature of the individual who holds the post, these opinions and rulings are usually respected and followed. Moreover, if the case is ever brought before a court, it is likely that the court will form a judgement based on the opinion of the Ombudsman.

## Turning to the Ombudsman

The procedure for the protection of the constitutional and legal rights of citizens by the Ombudsman is initiated by putting forward a submission. The submission, addressed to the Ombudsman, should:

- be signed and contain personal data about the person putting it forward;
- contain the circumstances, facts and evidence on which the submission is based;
- refer to the body, organisation, institution or person to whom the submission refers; and
- define whether the person putting the submission forward has already used legal remedies, and if so, identify which remedies.

A request to initiate a procedure may be submitted in writing or orally in minutes. A request for a procedure submitted before the Ombudsman is tax exempt.

It should be noted that the opinion of the Ombudsman is not binding on the executive, meaning that, in our example, Mr. Petrovski can still refuse to provide information to

Ms. Ivanovska, even if the Ombudsman rightly finds that environmental information on emissions should not be confidential. If the executive branch does not accept his/her recommendations, the Ombudsman reports this to Parliament.

Although Ombudsman procedures are similar to judiciary processes, the Ombudsman is not a judicial body. You may still file a lawsuit in a court of law at the same time as, or after, filing a complaint with the Ombudsman.

## 1.4 Using the State Environmental Inspectorate and the Office of the Public Prosecutor

The Macedonian State Environmental Inspectorate is one of the institutions that can be involved in an out-of-court defence of rights (including environmental rights, rights to information, rights of participation, and others). The inspectorate supervises the implementation and enforcement of the provisions of the Law on Environment (including provisions on access to information and public participation) by the responsible authorities. In case of non-compliance, the inspectorate can issue a fine and punish the body or bodies responsible.

Anyone (without stating an interest) may submit a supervision initiative to the Inspectorate (i.e. initiate an inspection procedure). The initiative may be submitted anonymously.

If the violation is defined as an offence in the Criminal Code, then it falls within the competences of the Public Prosecutor. Tasks of the Public Prosecutor relevant for implementing Article 9 of the Aarhus Convention include:

- investigation of crimes;
- protection of human rights and freedoms from criminal violations;
- protection of citizens' rights and interests; and
- carrying out preventive activities.

### Benefits of Using the State Environmental Inspectorate and the Office of the Public Prosecutor

The State Environmental Inspectorate and the Public Prosecutor review public initiatives for investigations related to violations of the law.

Some of the benefits of turning to the office of the State Environmental Inspectorate and Public Prosecutor are outlined below:

- As with most administrative complaints, initiatives sent to the Office of the Public Prosecutor are not very time-consuming. For example, the Environmental Inspectorate must act upon the initiative within seven days. The Public Prosecutor has a maximum of 30 days to take action on criminal charges.
- Sending an initiative to the State Environmental Inspectorate and Public Prosecutor does not involve any costs.
- There is no need to provide lengthy legal backing and references when submitting a complaint (unlike when bringing a lawsuit to court).

### What can the State Environmental Inspectorate and the Prosecutor do?

The Inspectorate and the Prosecutor have the right to request any legal or natural person (including public authorities) to remediate any violated rights. Inspectors and prosecutors also have an obligation to take all possible measures to prevent or terminate any possible violation of the law. Finally, the inspector and the prosecutor must take measures to ensure the safety of an individual if there is any possible danger to an individual's life or health.

### Sending your initiative

The best way to submit your initiative to the office of the State Environmental Inspectorate and the Public Prosecutor is to send it via registered mail. This way you have written confir-

mation. You can also submit your initiative via email and telephone.

Another possibility is to submit a complaint directly to the office. In such cases, it is better to produce the initiative in two copies and to keep one for yourself. Bear in mind that the receiving officer should indicate the number and date of receipt of the initiative on both copies. The legal timeframe will be calculated according to the date written on the initiative.

The Inspectorate has a deadline of up to seven days to act on the submitted initiative, while the Prosecutor has up to 30 days. The time is calculated from the date on which your letter is delivered to the inspector/prosecutor.

The Office of the Public Prosecutor has a hierarchical structure. When submitting a complaint, your first destination is the district office.

### How is it useful?

Using a review by the Public Prosecutor is a tactical step: if nothing else, it might give you more time to prepare for a court hearing. You may be confronted with problems with lengthy procedures and over-burdened officials at the Office of the Public Prosecutor. But here it plays into your hands, as the complaint goes through every stage — all the way to the Prosecutor General.

## 2. Standing: Who has the right to bring a case?

Macedonian legislation requires that administrative complaint processes be fulfilled before one can turn to the Administrative Court.

Legally, this is called “exhaustion of administrative remedies”. In practice, it means that our Ms. Ivanovska has to appeal to the higher authority before she can file a lawsuit with a court. The legislator usually makes this a prerequisite to avoid placing a further burden on

the already overloaded courts. The law that regulates a specific issue or decision making will usually determine whether such a step is necessary.

### 2.1 Standing for individuals

To bring a case before any court you have to prove to the judge that you indeed have an interest in the case (i.e. that one or more of your rights are affected). Here again, the standards differ for civil and administrative matters. To determine whether you have standing you should check whether the claim meets one of the requirements described below.

#### Access to justice regarding access to information

(Aarhus Convention, Article 9.1)

This is the simplest case. It is enough to prove that you have asked for information and that you received a response that was not, in your opinion, satisfactory, or not fully satisfactory, or that there was no reply at all.<sup>2</sup>

#### Access to justice regarding public participation

(Aarhus Convention, Article 9.2)

Because the qualification of the public concerned is a precondition for participation in a specific or strategic decision-making process, you must prove that you can be affected by the decision, and describe how (e.g. you are a resident in an area for which a permit is being issued, or in which a plan will be implemented). You do not have to prove that the procedure has been violated in some way: this is something that the court will decide in its ruling.<sup>3</sup>

#### Enforcement of environmental law

This is probably the most difficult standing to prove. Most countries do not recognise the right of an individual or legal entity to bring to court cases that do not affect them individually, but are

## PRACTICAL TIP

To be entered in the Central Register, an organisation must file an entry application and submit the following documents:

- **articles of incorporation;**
- **statutes;**
- **programme of activities;**
- **decision on election of the bodies and data on the members of the bodies;**
- **decision on election of the representative by law, including personal data;**
- **minutes from the founders' assembly or a report on the establishment; and**
- **a statement verified by a notary, signed by the representative, confirming that the performance of the activity is operating in accordance with the law.**



rather an attempt to prevent violations of environmental protection legislation. The usual way, as discussed above, would be to try to deal with the matter by bringing it to the attention of the State Inspectorate or the Public Prosecutor. However, Article 9.3 of the Aarhus Convention refers to various possibilities for standing in law enforcement cases. Practice shows that courts in some countries have ruled that any individual has an interest in the protection of the environment, corresponding both to the constitutional right to a healthy environment and to the duty to protect the environment.

### Access to justice to protect one's environmental or civil rights

Tort, or civil law, cases require proof that the plaintiff's health, property or other material rights have been affected by the defendant's action. These are cases where compensation or restoration to the previous state is usually sought (e.g. where over-the-limit emissions from a facility cause negative health effects and lead to extra costs for medical care).

## 2.2 Standing for NGOs

Article 9.2 of the Aarhus Convention grants special standing to NGOs in cases of access to justice regarding public participation. According to this provision, any NGO is recognised as "the public concerned" and as having an interest in the case (regardless of whether or not any direct interests of the NGO itself or its members are affected), providing the following criteria are met:

1. The NGO is recognised in accordance with national legislation (e.g. registered as a non-governmental or civil society organisation). The convention does not require the NGO to be officially registered to have standing and be recognised as "the public concerned". It does, however, refer to domestic legislation in determining what constitutes an NGO. Ac-

cording to the Macedonian Law on Associations and Foundations, NGOs must be registered in the Central Register. An association may be established by a minimum of five founders, three of whom must have permanent or temporary residence in the former Yugoslav Republic of Macedonia.

Once registered, the NGO obtains an official registration document, tax status, seal and stamp, and legal personality.

The requirement to register NGOs can also be an obstacle to effective public participation and access to justice, as discussed below (Section 5.4).

2. The NGO has environmental protection as one of its goals — for example, environmental protection is fixed as one of the goals in the statutes of the organisation. Submission of a copy of the statutes and record from the Central Register is sufficient to prove standing in matters of public participation in decision making.

However, it can also be argued that even where environmental protection is not writ-

ten into the registration documents, regular organisational activity in some areas of environmental protection should be enough to satisfy these criteria.<sup>4</sup>

### 3. How to go to court

Rules regarding who can challenge a decision, and how, are generally set out in procedural codes. The Law on Administrative Dispute is the first thing to check if you need more information about bringing a case to court. This chapter offers practical tips for going to court and details of some of the procedural steps.

#### 3.1 Suing techniques

Contrary to common belief, bringing a case to court is not always extremely difficult, drawn out and hopeless. Cases based on administrative issues, such as access to information or procedural violations of public participation requirements, are mostly straightforward. Moreover, in many cases it is quite easy to prove a procedural violation.

Once you or your representative have drafted a lawsuit, it can be filed with a court. Besides paying court fees (see 3.4), there are several other requirements for submitting documents. The first thing to check is whether the procedural code or relevant laws regulating a specific process require you to exhaust administrative remedies first (see 1.1).

#### Putting together a lawsuit

It is always good to involve a professional lawyer to help you put together a list of documents and evaluate all the supporting circumstances and evidence. Although private attorneys can cost you a lot, there are usually several pro-bono environmental attorneys or advocates that will take your case for free.

The lawsuit document should contain:

- the name of the court to which the case is submitted;
- the names and addresses of the plaintiff and defendant and, if applicable, the plaintiff's attorney;
- the act against which the lawsuit is lodged, and the lawsuit's rationale (the lawsuit must also be accompanied by the original act or a certified copy);
- evidence that supports the claim;
- references to laws and regulations that support the lawsuit;
- the scope and direction of the proposed annulment of the administrative act;
- information about the object or the amount of the damage suffered, if a return of property or compensation for damage is requested (this request is further processed in a civil procedure);
- the value of the claim (if damage compensation is required);
- the signature of the plaintiff (in the case of a public entity, an NGO for example, it must be signed by a competent authority and stamped); and
- the date of submission.

#### Keep things clear and simple

If you decide to prepare the document yourself, it is important to remember that the courts are overloaded with cases and that the judges are inundated every day with complaints, appeals and lawsuits.

A clear list of facts, dates and names, simple references to supporting documents and properly listed attachments can be more helpful to you and the judge than fancy legal language. Keep things clear and simple, and try to provide as many references to the legal provisions that support your case as possible.

Even though the former Yugoslav Republic of Macedonia does not use a system of precedent officially, references to previous decisions in similar cases and judicial interpretation given to legal provisions by international courts can be very helpful as well. The judge only has a week or two to decide whether your case is admissible and to set the hearing date. And, of course, a first impression of the case and the parties is formed primarily on the basis of the documents that you submit. First impressions, as we well know, are important.

### Submit enough copies

In addition to the original set of documents, a copy should be submitted for each defendant in the case.

### There is always a second chance

If the documents are not correct or complete, or if the court fee (3.4) has not been paid, the judge can stop the proceedings and inform the plaintiff about the missing elements and reset the deadline by which they must be submitted.

## 3.2 Which court to go to?

In the former Yugoslav Republic of Macedonia, administrative lawsuits are brought before the Administrative Court.

The Administrative Court is a specialised court based in Skopje. There are no municipal, or primary, administrative courts.

Administrative Court procedures are simplified procedures compared to civil procedures, because matters of administrative dispute are usually simpler to decide on and do not require much evidence or lengthy debate between the parties (except in cases where an expert report is required).

The lawsuit must be filed within 30 days of submitting the administrative act to the party. If the

administrative procedure is not properly fulfilled, a lawsuit can be filed within 30 days from the day of non-fulfilment of the obligation.

In our case, Ms. Ivanovska would be able to submit a lawsuit to the Administrative Court if the decision received regarding the administrative complaint in the second instance was not satisfactory, or if she did not receive an answer in time.

There are three tiers of courts in an administrative procedure:

- The court of first instance is the Administrative Court (there is only one court, based in Skopje).
- The court of appeals is the Higher Administrative Court, which reviews the case on its merits (second instance). An appeal to the Higher Administrative Court can be submitted due to actual violations of the provisions on the procedure; incorrectly or incompletely determined actual conditions; or the misapplication of the material right.
- The Supreme Court decides on extraordinary legal means in cases against decisions of the Higher Administrative Court (third instance).

If you sue in the Administrative Court and lose, you can appeal to the Higher Administrative Court; and if you lose again, you can still submit a complaint to the Supreme Court.

Finally, there is also the Constitutional Court, which hears cases connected to the interpretation of the Constitution and laws, and infringements of constitutional rights. When it comes to the Constitutional Court there is no lapse in the right to initiate procedures. The main competences of the Constitutional Court are:

- control over constitutionality and legality, within the framework of which the Constitutional Court decides on the conformity of regulations with the Constitution and laws, as well as the constitutionality of the programmes and statutes of political parties and associations of citizens;

- the protection of the freedoms and rights of individuals and citizens;
- decisions on conflicts of competence; and
- decisions on the accountability of the president of the republic.

According to the Constitution, the Constitutional Court shall annul or repeal a law if it is not in conformity with the Constitution, or it shall annul or repeal other regulations or acts that are not in conformity with the Constitution or law. Constitutional Court decisions are final and executive.

Anybody can submit to the Court an initiative to commence a procedure for assessing the constitutionality of a law or the constitutionality and legality of another regulation. The submission of initiatives is not connected with any legal interest on the part of the person who submits it.

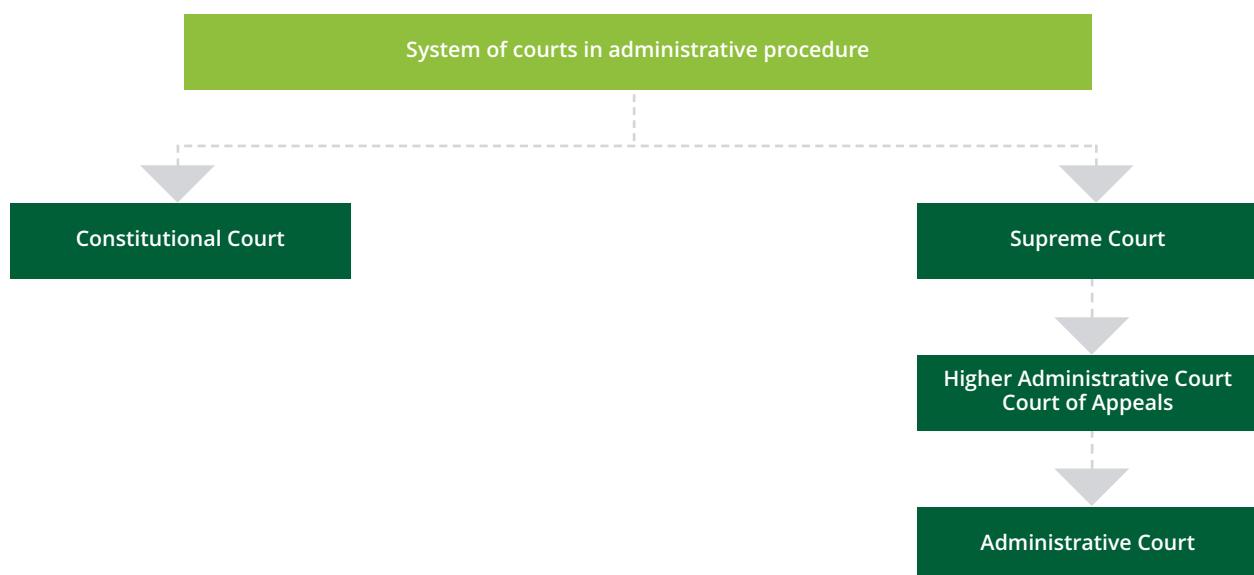
The initiative should be appropriately composed in terms of form and content — that is, the act being challenged, the reasons for challenging the act, the constitutional or legal pro-

visions that are violated by the challenged act, as well as its initiator, should be clearly stated.

The challenged act must be a general one (to regulate undefined entities in the law, and not legally specific only to the parties) and currently in force. The Court's decisions may abrogate (ex nunc) or annul (ex tunc) laws or other general legal acts. With the decision to abrogate, the law or other regulation or other general legal act shall cease to apply from the moment of publication of the decision. On the other hand, with the decision to annul, the Constitutional Court nullifies not only the act, but also all the consequences of its practical application until the moment of the decision.

One example is Constitutional Court Decision No. 24/2009-0-1<sup>5</sup>. The Court annulled the Decision on the Spatial Plan for Unit Number 8, adopted by the Municipality of Ohrid. With this decision, the Court also annulled the implementation of individual acts (construction permits) approved by the Municipality of Ohrid that were based on the annulled spatial plan.

Figure 2. **System of courts in administrative procedure**



## Territorial jurisdiction

The Administrative Court exercises judicial power on the whole territory of the former Yugoslav Republic of Macedonia. As is the case with both the Higher Administrative Court and the Supreme Court, the seat of the Administrative Court is in Skopje and it has jurisdiction on the whole territory. The Administrative Court does not have basic courts established in either single or multiple municipalities.

If a final verdict that concerns the right to compensation is adopted by the Administrative Court, based on the verdict the plaintiff can further submit a request via civil procedure to the Civil Court. In such cases, the plaintiff must submit the compensation request to the basic civil court that has jurisdiction (depending on the administrative location).

## 3.3 Timing

The issue of timing is mainly relevant to cases of administrative procedure. The term may start running from the time when the plaintiff has learned about a violation of his/her rights through an administrative action or omission. Alternatively, a shorter term can be calculated from the time when a written rejection of an appeal was received from a higher authority where an administrative appeal was filed. (See example top right.)

The Macedonian Law on Administrative Dispute provides a 30-day window during which to submit an administrative lawsuit against an administrative act (see Figure 3 on page 14). However, related civil requests for remedying damages can be brought to the Civil Court within a three-year period.

## 3.4 Court costs

When one decides to go to court, it is important to come up with an estimation of how much the case might cost.



FOR EXAMPLE

### Timing for administrative appeal/lawsuit in practice

**Ms. Ivanovska was refused information following her information request to the inspectorate. The one-month term starts from the day she receives the refusal letter. However, if she files an administrative complaint first (for example, appeals the refusal to the higher authority) and her appeal is rejected, she needs to bring her case to the Administrative court within one month from the date she received the rejection.**

While sometimes the cost can be a significant obstacle — where major damages are claimed, for example — most cases that can be brought under the Aarhus Convention will not be too costly.

Table 1. Typical court expenses

Expense	Relevance to cases
Court fee	All lawsuits
Expert costs	Mainly torts, other criminal law and substantive grounds-based cases
Investigation costs	Torts, other criminal law and substantive grounds-based cases
Costs for bringing in witnesses	Torts, other criminal law and substantive grounds-based cases

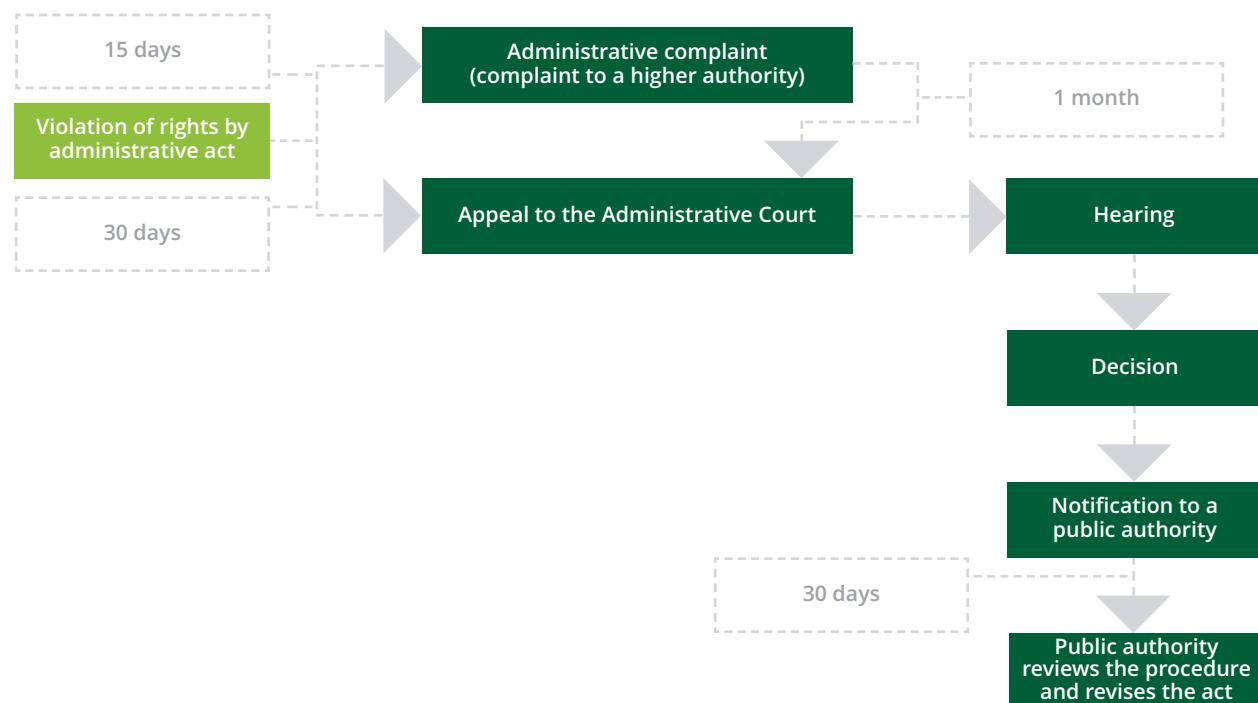


Figure 3. **Timetable of administrative cases**

### Calculation of court fees

Cases related to appealing decisions or failure to act by public authorities (access to information, procedural violations under public participation provisions etc.), along with submitting an administrative complaint to the higher authority, are free of charge. Submitting a lawsuit to the Administrative Court requires a nominal, fixed fee of MKD 400.

In civil law cases that involve disputes regarding property or damages, the cost is a percentage of the total value of the disputed property or damages. For example, if a lawsuit claims damages to health and medical expenses worth MKD 100,000, the court fee, according to Macedonian legislation, is 2 percent (MKD 2,000). The maximum amount of tax for such cases is MKD 48,000.

The plaintiff is required to pay the court fees prior to filing the lawsuit. The set of documents filed with the court contains receipts for paid

fees. In administrative cases (unlike civil cases), regardless of the outcome of the administrative lawsuit (in favour/not in favour of the plaintiff), the plaintiff must pay MKD 800 after receipt of the decision.

### Waiver of fees

The plaintiff can ask to be exempted from the fee, or request a deferment or the opportunity to pay in instalments. A judge who also rules on the admissibility of the case usually decides such requests. The usual grounds for a waiver are the material status of the plaintiff. The court can release the plaintiff from paying tax in a civil procedure if, by paying the fee, the funds of the plaintiff or members of his or her family will be significantly reduced.

### Reversed payment

In cases resulting from civil proceedings, where the complaint is upheld and rulings are made in

favour of the plaintiff, the costs of the hearing, including transportation and legal aid, are borne by the defendant. In administrative cases, there is no possibility for reversed payment, even where the decision favours the plaintiff.

### 3.5 Is the case admissible?

In an administrative dispute, the court shall rule in a council. If the lawsuit is incomplete or incomprehensible, the president of the council shall summon the plaintiff to eliminate gaps and flaws in the lawsuit. The plaintiff will thus be instructed on what to do and how to act. If the plaintiff does not eliminate the flaws in the lawsuit within the determined period, the Administrative Court can reject the lawsuit, unless it finds that the abnegated administrative act is null and void.

### 3.6 Preparation of the case to be heard

Generally, in administrative disputes, the Administrative Court reaches a decision in a non-public session. The court will hold a public session if:

- the complexity of the case makes it necessary to do so;
- it is deemed necessary to provide better clarification of the administrative matter or to determine the actual conditions; or
- the court exhibits evidence.

This involves:

- plaintiff interviews;
- preliminary evaluation of proofs; and
- the identification of co-defendants, where necessary.

Figure 4. Steps following the submission of an administrative lawsuit



Merging claims and class action suits are usually decided at this stage. After the completion of a hearing, the court adopts and verbally announces its verdict. In complex cases, the court may postpone the verbal announcement of the verdict, but for no longer than three days after the hearing ends.

### Appealing the case

Either of the parties in the case (i.e. the plaintiff or the defendant) can appeal the decision of the court of first instance to the court of appeals within 15 days of receiving the decision.

The appeal should contain the following:

- the name of the court to which the appeal is submitted;
- the name, address and contact information of the appellant;
- reference to the decision appealed and scope of the appeal;
- reasons for appealing and reference to relevant legislation;
- request of the appellant;
- list of documents attached;
- signature of the appellant; and
- powers of attorney, if relevant.

### Appealing to the court of appeals

The appeal is submitted through the court of first instance that hears the case and whose decision is being appealed.

In the appeal, the appellant may not present new facts regarding the case, or new evidence, unless they refer to essential violations of the provisions of the procedure. As a rule, the Higher Administrative Court decides on a complaint without a hearing. (See Figure 5 below.)

### Cassation complaint

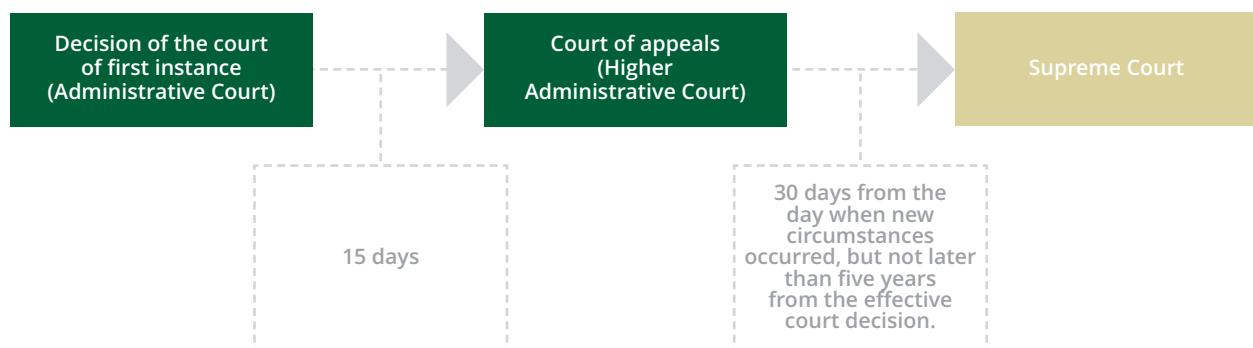
The decision of the Higher Administrative Court may be challenged further in the Supreme Court, and the documents submitted are mostly the same as those shown above. The Supreme Court, however, reviews the decision of the Higher Administrative Court only on the basis of submitted documents. If this court decides that the complaint is justified, the case is returned to the lower court for review.

## 3.7. Other useful techniques

### Class action

A case can be much stronger if the plaintiff is not an affected individual or organisation, but rather groups of people or multiple CSOs that

Figure 5. The appeal process



have been similarly affected and are willing to join the case.

For example, a lawsuit challenging a smelter in the former Yugoslav Republic of Macedonia was supported by five CSOs and the Municipality of Veles. The lawsuit demanded state compensation for damages from the operation of the lead and zinc smelter within the city of Veles, which operated from 1974 to 2004. The lawsuit was dismissed because the court could not determine during which period the harmful pollutants were emitted — that is, whether after independence, or in the former Yugoslavia. The decision was subject to appeal to the Court of Appeals and to the European Court of Human Rights.

### Using precedent

In all European countries, the UK excluded, when deciding a case, the court relies on legislation and, where needed, common sense. But more and more value is given these days to decisions of other courts, especially hierarchically superior courts.

The Macedonian Supreme Court issues compilations of its landmark decisions. These are binding on lower courts in future cases and are reference points that the judge of a lower court will consult when studying the case.

The main task of the Constitutional Court is to interpret constitutional provisions and determine whether certain actions or acts may contradict these provisions. These interpretations are then used by other courts.

It is certainly worth checking beforehand if cases on similar matters have been resolved before. If so, reference to these will make your lawsuit much stronger. Cases from the lower courts may help, but will not be officially used by the judge. The decisions and interpretations of the Supreme Court and Constitutional Court can provide official reference points for the lower court decision.

### 3.8 Ceasing activity while a decision is made (temporary injunctive relief)

Temporary injunctive relief is a very important tool that can be used in environmental cases, especially when challenging permits or licences. A judge grants temporary injunctive relief upon the request of a plaintiff. In the context of environmental litigation, it is usually an order prohibiting an action to ensure that a future court decision will be enforceable.

Several issues should be kept in mind when dealing with temporary injunctive relief. One is related to the issue of depositing guarantee bonds. The court may order the plaintiff to post these bonds to compensate a defendant's losses. For example, a judge can ask the plaintiffs (e.g. local residents challenging the permit) to post a bond in an amount sufficient to compensate a construction company for losses sustained while waiting for a final decision, were the plaintiffs to lose the case. The Administrative Court decides on such a request within seven days from the submission of the request for temporary injunctive relief.

### 3.9 How to get help (public interest advocacy)

As is well known, getting a lawyer to represent a case can be expensive. On the other hand, administrative legislation can be quite complex. Some believe that lawyers write laws using special jargon so that they are needed to interpret it. Whatever the story, legal assistance can certainly make your case stronger.

Fortunately, legal assistance can now be obtained without spending one's life savings, in the form of public interest environmental advocacy organisations. A list of public interest advocacy offices and individual lawyers that take pro-bono cases can be found at:

[www.justice.gov.mk/PravnaPomos/](http://www.justice.gov.mk/PravnaPomos/)

If you are unable to find anyone in the country to help you bring your case to court, most of the entities listed on the above website will be glad to assist you with advice and, perhaps, contacts.

### 3.10 Involving experts

Cases that are based on substantive claims (a violation of substantive rights, including the right to a healthy environment, property rights, compensation for damages, and other rights) often require proofs and expert opinions. Even a case that challenges a decision because you are not satisfied with how your comments have been considered may sometimes require expert opinion. It is usually extremely difficult to challenge something as vague as "due account of comments", unless there is a clear procedure established for it. However, if a decision is clearly unreasonable, it is possible to challenge it by demonstrating that the damage to the environment will clearly outweigh any possible social or other benefits it might have.

The court may appoint experts, especially where one of the parties is not satisfied with the experts engaged by the other party. However, in many cases you will need to base your claims on the expert opinions your side provides.

#### Where to find an expert

This depends on the field of expertise. Many technical experts are engaged in environmental movements and can be contacted or even engaged through their NGOs. Many of these experts may support your case pro bono, or for a nominal fee.

Another place to look is local universities and research institutes, which have both expertise and technical capacities. Finally, you can also engage other private experts.

It is important that your experts have good credentials, which is sometimes more important than if they support the cause.

#### Other tips

While going to court will often bring a final resolution to a problem, it is sometimes faster and cheaper to appeal to the higher authorities.

At the same time, although administrative appeals are faster, resolving your case in court will put the issue behind you, and the court decision can establish a precedent.

Always keep a record of what you communicate with the relevant authorities and stakeholders. When you submit comments or request information, make sure you have proof of your communication (postage stamps, recordings, official emails etc.). Avoid unofficial and oral communication (except if recorded). These records will support your claim and serve as proof in any legal procedure.

## 4. Strategic lawsuits against public participation (SLAPPs)

While the public, individuals and NGOs can sue public authorities and private and state companies for a violation of participation rights and environmental legislation, sometimes private entities or authorities use the courts to prevent active participation.

An example of a SLAPP lawsuit is the case of Mr. Igor Smilev from Veles. Mr. Smilev publicly opposed the reopening of a smelter that was polluting the city of Veles for 30 years (Veles is one of the most polluted cities in Europe because of the smelter). He participated in and organised protests and other events in Veles to gather support from local communities. The owner of the smelter sued Smilev for libel and sought EUR 20,000 in compensation. The case was brought before the court, and, after a long hearing, was closed without the issue being resolved for either party. The purpose of such law-

suits is usually not so much to seek compensation as to:

- a) burden a participating member of the public with lengthy and complicated judicial procedures to draw their attention from any decision making in which they are attempting to participate; or
- b) create a chilling effect or atmosphere in which others willing to participate in this or any future process will think twice about their involvement for fear of being sued for speaking up or questioning a decision or proposal.

### What can the government do?

Although not yet widespread in the CEE and EECCA regions, SLAPPs are quite common in other regions. They are, in fact, attempts to prevent public participation and silence public opinion. All countries should develop legislation with clear guidelines, helping judges to decide early in the proceedings whether a case is admissible if it abuses the process and is unfounded.

### What can the public do?

The only effective way to prevent SLAPPs is to SLAPP back: to bring a counter-lawsuit — a lawsuit brought by the defendant against the plaintiff — claiming that the SLAPP lawsuit's main purpose is to prevent public participation and claim compensation for costs (such as expert fees and legal aid).

### What can the courts do?

Courts can do the most to prevent private parties, and occasionally authorities, from abusing the judicial system and public participation. Indeed, SLAPP lawsuits are an abuse of the court system and disrespectful of the courts. If this is recognised clearly in the judicial decisions related to SLAPP cases, the practice will not be able to develop.

## 5. Barriers to going to court

While going to court is not as frightening or difficult as many think, there are certain things that can complicate the process and obstruct access to justice.

Two main problems are: lack of judicial independence, and lack of trust in the justice system. The two are related. The first should be dealt with at an institutional level. And while it is an existing problem, it is also sometimes over-emphasised. The second problem is more dangerous. If you compare the number of goodwill judges with the number of citizens that go to court with an open mind, the former may in fact be larger.

The only effective way to face both problems is to bring cases to court, thereby educating judges in the environmental field and also creating precedents.

Several other obstacles, detailed below, exist at a more practical level.

### 5.1 Counter-lawsuits

As the saying goes, "Attack is often the best form of defence." It is not surprising that counter-suits do occur in the context of environmental cases.

A counter-suit is both a big obstacle and a useful technique. Its greatest relevance to public participation litigation lies in the area of SLAPP suits (strategic lawsuits against public participation), as discussed above.

### 5.2 Costs

Despite low court fees in administrative cases, costs are a persistent problem where civil law cases are heard.

The first problem appears where damages are claimed (torts) and the court fee is calculated

as a percentage of the total value of the claim. In the famous Veles smelter case, the Green Coalition of Veles appealed against the ruling of the court of first instance in the case "The People of Veles vs. the former Yugoslav Republic of Macedonia". On their way to justice, the people of Veles "stumbled" over a "heavy" court fee of MKD 151,000 (approximately EUR 2,500). The fee was collected through various charity events organised by the coalition.

The second problem is related to the costs of experts and, sometimes, legal aid. These costs might be very high indeed if the case is technically complicated and requires extensive investigation.

### 5.3 Social factors

Where decisions concern the suspension or termination of activity, or when challenging decisions on permits for facilities and installations, the factor of social benefits often outweighs concerns regarding environmental damage. One such example is the lignite power plant in Bitola, a 699 MW plant providing 70 percent of electricity production in the former Yugoslav Republic of Macedonia. The plant requires an A-IPPC permit and should have implemented an operational plan for improving its technology in line with best available techniques by 2014. Implementation of the operation plan would involve reducing the plant's air, water and soil pollution. However, due to the strategic importance of the plant, the Macedonian Government decided to prolong the deadline for implementation of the operational plan until 2019.

Another example is when residents near the Veles smelter, most of whom had earlier worked at the smelter, had to choose between losing income and opposing the reopening of the smelter (at the time, Veles had the country's second-highest unemployment rate). Such a choice is difficult to make, especially if one

takes into account elements of mistrust of the judiciary and complicated technical features of the case.

### 5.4 NGO standing

The Aarhus Convention gives environmental NGOs standing in court (i.e. the right to bring a case). To challenge public participation procedures in the decision-making process, an NGO does not need to be directly affected by the decision in the same way as an individual. It is usually enough for the NGO to be concerned with environmental protection. This can be easily proved by reference to environmental protection in the by-laws of the organisation or by providing proof of continuous activity in the field. Problems might arise from the convention's reference to national legislation.

Article 9.2, which refers to Article 2.5 of the convention, defines NGOs that can be recognised as the public concerned. These are "non-governmental organisations promoting environmental protection and meeting any requirements under national law". This last reference to national law may lead to a situation where only registered NGOs can use the rights granted by the convention, including the right of access to justice and standing in a court. Where registration of civil associations is a pure formality, such requirements under national legislation are rarely an obstacle.

However, a serious challenge to public access to justice is presented in countries where registration of civil associations is a complicated procedure. In fact, one might argue that if registering an NGO takes an unreasonably long time, is expensive, or is conditional on unreasonable requests, these facts in themselves make a party to the convention non-compliant.

The registration of NGOs is usually conditional on the following: the organisation must have at least five founding members; statutes that set

the goals and objectives of the organisation in accordance with the Constitution; a non-profit status; and a decision as to the competent authority (executive director, president, or similar).

However, in the former Yugoslav Republic of Macedonia, the issue with NGOs is not in the process of registration, but in the process of operation. The Law on Associations and Foundations regulates their establishment, registration and termination. When it comes to operations and finances, some of the provisions of the Company Law and the Law on Accounting are applicable. This creates substantial burdens for the day-to-day operations of NGOs in the country, in terms of both human capacity and financial cost.

## 6. International appeal process

To ensure that governments comply with Aarhus Convention requirements, and where the domestic access to justice process fails citizens, other options are available. There are several possibilities to appeal violations at an international level. There are both judicial and non-judicial options to choose from and, as with domestic options, each has its pros and cons.

There is, however, one common precondition for both, this is the exhaustion of domestic remedies. Before one goes to an international court or committee, one should have tried all means of recourse available domestically. What this means in practice, is that if Ms. Doe is refused access to information by an environmental agency, she should try appealing to a higher authority and/or to the court system, all the way until the court of final instance. If she loses in court, she can then try to submit her complaint to the Compliance Committee.

Another example would be if Ms. Doe appeals to the domestic courts and her case, although

well grounded, is not admitted. Or, if a hearing is so unreasonably delayed and prolonged as to render the decision meaningless, she could bring her case to the European Court of Human Rights. At this stage, however, she could not challenge a refusal of information, since the European Court only hears cases stemming from the European Convention on Human Rights. She could, however, obtain standing in the court regarding her right to due process — a fair and equitable hearing and meaningful access to justice.

These options are described in more detail below.

### 6.1 Compliance Mechanism and review of implementation

Article 15 of the Aarhus Convention provides that the Meeting of the Parties to the convention establish a Compliance Mechanism to help the meeting to assess how individual parties are complying with the treaty.

The Aarhus Convention Compliance Mechanism was developed and adopted at the first Meeting of the Parties in 2002. The mechanism is progressive and innovative, partly due to the specific character of the convention itself.

By ratifying the convention, the parties accept obligations vis-à-vis their public, rather than each other. A mechanism to evaluate how they perform domestically was thus called for.

The existing mechanism has two main parts: a review of implementation, and the Compliance Mechanism.

#### Reporting on implementation

A list of criteria was developed consisting of several questions, based on which each party must evaluate its own performance. This evaluation report is then presented at each Meeting of the Parties and disseminated to all the parties, the public, and anyone else who is interested.

## Public involvement

The process agreed to by the convention's governing body requires that parties involve the public in the preparation of their implementation reports for each Meeting of the Parties.

The most beneficial and efficient approach is for the relevant public authorities (usually ministries of environment through the Aarhus Convention focal points) to consult the public while working on the report. As in the process of compliance, this can be done by:

- a. encouraging submissions of public comments on how domestic legislation and practice comply with the convention; and
- b. providing a draft official report for public comments.

## Effect of visibility

Regular reporting on implementation and publication of the reports are meant to prompt the parties to improve domestic implementation of the convention regarding both the necessary legislation and practical implementation.

## Compliance Committee

In addition to hearing regular implementation reports on compliance from the parties, the Meeting of the Parties has also established a Compliance Committee.

The Committee consists of eight individual experts nominated by the parties, as well as environmental NGOs. Members are selected from a list of proposed candidates at the ordinary Meeting of the Parties, and four members rotate every four years. A list of current members can be found at [www.unece.org/env/pp](http://www.unece.org/env/pp).

## How to nominate a member of the Compliance Committee

### Who can nominate?

A government or an environmental NGO (meeting the requirements of Article 2 of the convention for recognition as an environmen-

## PRACTICAL TIP

If, for some reason, your NGO or group does not meet the requirement of Article 2, but you know of a good potential candidate from your country, you can discuss this with your Aarhus Convention focal point from the ministry and see if the ministry might be willing to propose your candidate.



tal NGO, in accordance with national legislation). Most countries require registration for eligibility to be nominated.

### Who can be nominated?

- A national of the state that has signed, ratified, approved or acceded to the convention (a signatory or a party state) may be nominated.
- The nominee is expected to have a high reputation in a field related to the convention.
- It is preferable, although not necessary, for the nominee to have legal experience.

### How to nominate

Submit the candidate's CV (no longer than 600 words), and any supporting materials you might think useful, to the secretariat of the convention at least three months prior to the ordinary Meeting of the Parties.

### Functions of the Compliance Committee

- It examines and considers submissions from:
  - parties;
  - individuals or NGOs; and
  - the secretariat of the convention.
- As a non-judiciary body, it makes recommendations regarding compliance by a particular party in a particular case, or as a result of non-compliance with the convention in general.
- It consists of individual experts. Although nominated by the parties and NGOs, the members are normally respected and well-

known legal professionals who do not represent their governments and act in an individual capacity.

- The compliance procedure is designed to improve compliance with the convention and is not a redress procedure for violations of individual rights.

#### Communication from the public

One or more members of the public can communicate via the Secretariat in writing (hard copy or electronic form) to the Committee regarding compliance by one of the parties. The communication should be accompanied by corroborating documentation (proof of alleged failure to comply). In other words, it is similar to filing a lawsuit with a court. Several communications have already been submitted to the newly established Committee.

Detailed information on communications can be found at

[www.unece.org/env/pp/pubcom.htm](http://www.unece.org/env/pp/pubcom.htm)

#### Direct communication from the public

Communication from the public:

- must be made in other than written form;
- may be anonymous (individuals making a communication may request the Compliance

Committee to keep their identity confidential if they fear persecution or harassment);

- must not abuse the right to make such communications;
- must not be manifestly unreasonable;
- must follow requirements related to form or subject matter set out in the parties' decision on the Compliance Mechanism; and
- must be compatible with the Aarhus Convention.

#### Exception

A party may notify the depositary (UN office in New York) that it is unable to accept a compliance review on behalf of the committee for up to four years. This so-called opt-out provision was made to allow parties to bring their legislation and practice into compliance with the convention. They are given a fixed period of time in which to do so. This is, however, an exceptional provision — and it is, of course, a de facto acknowledgement that the state is not in compliance with the treaty. The temporary opt-out notification should be made, in writing, to the UN Treaty Office in New York (the same office where ratification, acceptance or approval documents are usually submitted). The party may withdraw the opt-out at any time.



#### PRACTICAL TIP

**It is probably a good idea to involve legal experts who can help you prepare the documents.**

**The Committee operates in English. And, while communications will be translated from either Russian or French, submitting a communication, or at least its summary, in English will significantly speed up the review procedure.**

#### Process

- The Compliance Committee notifies the party alleged to be in non-compliance.
- The party then has up to five months to provide explanations.
- Following the expiry of the five-month term, the Compliance Committee, as soon as practicable (most likely at its next regularly scheduled session), considers both the communication and the explanation.
- The committee may hold hearings (similar to those of courts).

### What can a Meeting of the Parties accomplish?

Based on the report and/or recommendations of the Compliance Committee, the Meeting of the parties may take the following measures regarding the party in question:

- provide advice, recommendations or assistance;
- request that the party concerned submit its strategy to the Compliance Committee, including the timing of how it plans to achieve compliance;
- recommend particular measures to be taken;
- declare the party to be in non-compliance;
- caution the party; and
- suspend a party's privileges under the convention (this is more of a standard provision and does not greatly affect the party): this provision, however, can informally be extended to technical assistance provided to the party in connection with the convention, such as project funding).

While all these measures are non-judicial and non-confrontational in nature, non-compliance is a serious matter and should be taken seriously by states. The Compliance Mechanism, therefore, is a good tool through which to address compliance under the convention.

## 7. European Court of Human Rights

The European Convention on Human Rights does not deal directly with environmental or participation rights. It has, however, taken several decisions that have established precedent, and has also interpreted some of the convention's provisions related to environmental rights, as well as the right to privacy, the right of access to justice, and the right to due process.

Going to the Strasbourg Court is a difficult matter and usually takes years, but it is the ultimate resort and has the most impact in terms of individual cases, national court practices and international interpretation.

The procedures of the European Court of Human Rights are very precise, and the exhaustion of all available domestic remedies is an absolute precondition.

### Useful links

- UNECE Environmental Policy page**
- EC International Cooperation and Development: European Instrument for Democracy and Human Rights**
- Guide to Environmental Law (in Macedonian)**
- Constitutional Court of the former Yugoslav Republic of Macedonia**
- Judicial Portal of the former Yugoslav Republic of Macedonia**
- Office of the Public Prosecutor of the former Yugoslav Republic of Macedonia (in Macedonian)**
- Ministry of Environment and Physical Planning (in Macedonian)**
- Access to Justice information website (in Macedonian)**

### Notes

- 1 ACCC/C/2005/11 (Belgium)
- 2 Access to Justice Handbook: Hungary Case 2 (p.151).
- 3 Access to Justice Handbook: Ukraine Case 4 (p. 203).
- 4 Access to Justice Handbook: Belgium Case 1 (p. 97); Germany Case 3 (p. 139).
- 5 [www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/55fb319bc93a044ac1257b44003bd4df?OpenDocument](http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/55fb319bc93a044ac1257b44003bd4df?OpenDocument)