Compliance by the Republic of Moldova with its obligations under the Convention

I. Introduction - decision IV/9d of the Meeting of the Parties

1. At its fourth session, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision IV/9d on compliance by the Republic of Moldova with its obligations under the Convention (included in ECE/MP.PP/20011/2/Add.1).
2. Review of the Republic of Moldova’s compliance had been triggered by communication ACCC/C/2008/30 in relation to refusing access to information on contracts for rent of land of the State Forestry Fund (Moldsilva). In its findings adopted on 25 September 2009 (ECE/MP.PP/C.1/2009/6/Add.3), the Committee had found that the Party concerned had failed to comply with article 3, paragraphs 1 and 2, article 4, paragraphs 1, 2, 4 and 7 and article 9, paragraph 1 of the Convention and, with the agreement of the Party concerned, recommended the Party concerned to:
   1. Ensure full execution of the final decision of the Civil Chamber of Chisinau Court of Appeal adopted on 23 June 2008 obliging Moldsilva to provide the communicant with the copies of the requested contacts;
   2. Take effective legislative and/or practical measures for better monitoring of the execution by public authorities of final court decisions under article 9, paragraph 1, of the Convention;
   3. Take effective measures (e.g. the development and implementation of adequate and effective regulations; the establishment, strengthening and/or enforcement of administrative penalties on public servants who do not comply with the legislative requirements on transparency of information; the involvement of representatives of the public in monitoring procedures; and the publication of statistics concerning requests for environmental information) for enhanced monitoring of the implementation by public authorities of the Convention and of the Moldovan legislation with regard to transparency of information, and for prevention of any future violation of the rights of the public under the Convention and the relevant Moldovan legislation by public authorities;
   4. Amend article 48 (e) of Regulation No. 187, so as to exclude its interpretation in contradiction with the requirements of article 4 of the Convention;
   5. Take effective measures, such as training activities, publications and conferences, with the objective of raising awareness of public servants, including representatives of Moldsilva and public servants of other public agencies responsible for the collection, maintenance and/or dissemination of environmental information, as well as the members of the judiciary, about requirements of the Convention;
   6. Examine the Moldovan regulatory framework on access to information in cooperation with representatives of the public and independent experts, in order to identify any provisions that may not be compatible with the provisions of the Convention, and accordingly decide on whether any amendments are necessary;
   7. Avoid inclusion in the contracts on the rent of lands administered by the State Forestry Fund of any clauses on confidentiality contradicting the requirements of article 4, paragraph 4, of the Convention;
   8. Develop and adopt an action plan for the implementation of the Convention, which would involve, inter alia, the measures recommended by the Committee under items (c), (e) and (f) above.
3. At the end of the intersessional period 2008-2011, the Committee invited the Party concerned to provide information, no less than four months before the fourth session of the Meeting of the Parties, on the measures taken and the results achieved in the implementation of its recommendations. Based on the information received the Committee made its report on the implementation of tis recommendations to the Meeting of the Parties (ECE/MP.PP/C.1/2011/2/Add.6).
4. Through decision IV/9d, the Meeting of the Parties endorsed the findings of the Committee, welcomed the recommendations made by the Committee to the Party during the intersessional period, welcomed the actions taken by the Party concerned to address the Committee’s recommendations thus far, and invited the Party concerned “to submit to the Committee the final version of the national action plan (including the recommendations made by the Committee in paragraph 42 of document ECE/MP.PP/C.1/2009/6/Add.3) upon their adoption, and to submit to the Committee periodically (in November 2011, November 2012 and November 2013) detailed information on further progress in implementing the national action plan”. The recommendations are repeated in paragraph 2(a)-(h) of the present document.

II. Summary of follow-up action

1. On 1 December 2011, the Party concerned submitted its progress report, as requested through decision IV/9d, informing the Committee of the range of actions it had taken to reach compliance with the Convention, including establishing two multi-stakeholder working groups to carry out actions to implement the pillars of the Convention, an analysis of legislation, informational campaigns and trainings and the opening of two Aarhus Centres. It also submitted its national action plan for the implementation of the Convention which had been adopted by the Government on 28 June 2011.
2. At its thirty-fifth meeting (13-16 December 2011), the Committee reviewed the progress report, which had been received on time. The Committee agreed to review the materials received in further detail at its thirty-sixth meeting.
3. At its thirty-sixth meeting (27-30 March 2012), the Committee noted with approval that the report submitted by the Party concerned was quite analytical and included a number of proposed actions. The Committee welcomed the willingness and cooperation of the Party concerned in following up with the recommendations of the decision. It instructed the secretariat to invite the communicant of ACCC/C/2008/30 to comment on the action plan and agreed to review the materials received in further detail at its thirty-seventh meeting. The communicant was invited to comment by letter of 9 May 2012.
4. At the Committee’s thirty-seventh meeting (26-29 June 2012), the secretariat informed the Committee that no comments had been received from the communicant. The Committee agreed that it would review the situation, after it had received the progress report due by the Party concerned in November 2012.
5. On 3 December 2012, the Party concerned submitted its progress report, as required through decision IV/9d, reporting upon the actions it had taken to reach compliance with the Convention including, amongst other things, preparing a draft law on access to environmental information and a new chapter on access to information and public participation in decision-making in the draft law on environmental protection; cooperating with international organizations such as REC in promoting the Convention and the rights of environmental NGOs; and undertaking campaigns to raise awareness on environmental issues.
6. At its thirty-ninth meeting (11-14 December 2012), the Committee noted the Party concerned had submitted its report within the deadline set by the decision. The Committee observed that that the Party’s action plan initially submitted in 2011 had addressed implementation of the Convention in general, and not the specific recommendations of the decision, while the follow-up report on the action plan submitted on 3 December 2012 included information about legislation and capacity-building activities that only related in part to specific actions targeting implementation of the plan. The Committee asked the secretariat to prompt the communicant to comment on the submissions by the Party concerned.
7. By email of 8 February 2013, the communicant informed the Committee that he agreed with the views expressed by the Committee about the report.
8. At its fortieth meeting (25-28 March 2013), the Committee took note of the email of the communicant. The Committee decided to send additional questions to the Party in order to clarify specific actions in its report and their relation to the recommendations of the Committee. It agreed to review the situation in detail at its forty-second meeting and requested the secretariat to explore the possibility of a videoconference with the Party concerned and interested observers. It would then also start considering its recommendations to the Meeting of the Parties at its fifth session in that regard.
9. Questions were sent to the Party on 17 May 2013, with a deadline to respond by 1 September 2013. The questions aimed to guide the Party concerned in its response on how it had addressed the specific recommendations of decision IV/9d. The Party was also asked to provide a translation in English of the relevant legal provisions.
10. On 27 August 2013, the communicant commented on the progress achieved by the Party concerned and informed the Committee that:
    1. The Water Act, the Act on ratification of the PRTR Protocol and the Amendment to article 48(a) of Regulation 187 had been adopted.
    2. Public consultations on the draft of the Act on Access to Environmental Information were carried out in December 2012, with the active involvement of NGOs and independent experts, but the law had not yet been adopted. The communicant understood that the Government planned to revise the legislative framework on general access to information and therein include provisions on access to environmental information. In the view of the communicant, such a general law could not fully respond to the requirements of the Aarhus Convention.;
    3. The draft Act on Environmental Protection included a chapter on the Convention and a section on environmental information. In the view of the communicant, it was not possible to fully reflect the Convention in such a general law. Most probably, the act would be adopted as a so-called “ordinary law”, meaning that other (specific) environmental laws would be applied with preference.
    4. Article 48(a) of Regulation 187 had been amended so that contracts of rent of lands were to be provided upon request, with the exception of personal data contained therein. The communicant welcomed the amendment, but it had yet to be seen how the provision would be applied in practice.
    5. No action had been undertaken with respect to Government Resolution 72 on public participation, but it was expected that a recently launched project supported by the German Federal Ministry on Nature Protection, Environment and Nuclear Safety and REC CEE would contribute to possible amendments.
    6. There were several mechanisms in place to challenge draft decisions at different government levels, namely according to the Law on Transparency in Decision Making, but these mechanisms were not always effective.
    7. There was as yet no statistics published concerning requests for environmental information.

In general, the communicant was of the view that the period of monitoring the implementation of the recommendations in decision IV/9d should be extended by the decision of Meeting of the Parties at its fifth session for another three years.

1. On 12 September 2013, the Party concerned submitted its answers on the questions sent on 17 May 2013. The Party also provided English translations of the Act on ratifying the PRTR Protocol, relevant provisions of the Water Act, the Amendment to article 48(a) of Regulation 187 and the draft Act on Access to Environmental Information and draft Act on Environmental Protection. The Party informed the Committee that:
   1. The Water Act (including provisions on access to information about water management), the Act on ratification of the PRTR Protocol and the Amendment to article 48(a) of Regulation 187 had been adopted.
   2. The Act on Access to Environmental Information and Act on Environmental Protection were not been yet approved. Prior to adopting the Act on Environmental Protection, the Party concerned intended to approve an Environmental Strategy, which would provide for reform of the state bodies responsible for environmental protection.
   3. All draft laws and regulations were published for public consultation and all the above legislative measures concerning access to environmental information were commented upon by NGOs. Public servants who did not comply with the legislative requirements on transparency of information could be subject to administrative penalties under the 2008 Act on the Public Offices and Status of Civil Servants .
   4. There had been no leases of the forestry fund since March 2012.

More generally, the Party concerned submitted that it had undertaken a great deal of work, including the development and approval of legislation and other activities, to implement the Convention and positive results had been achieved. It proposed that the monitoring of its implementation by the Committee should be concluded by Meeting of the Parties at its fifth session.

1. At its forty-second meeting (24-27 September 2013), the Committee held a telephone conference with the Party concerned and the communicant. The Party concerned provided a statement as to how it had addressed each subparagraph of that decision, and the communicant provided its comments. The Committee agreed on questions to be sent to the Party concerned for its written response after the meeting, and commenced preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of decision IV/9d.
2. Questions were sent to the Party concerned on 19 November 2013, with a deadline to reply by 10 December 2013. A reminder was sent by email on 16 December 2013.
3. On 17 December 2013, the Party concerned sent its reply to the questions sent to it on 19 November 2013, informing the Committee that:
   1. No specific regulations had been adopted for the enforcement of the court decisions on public access to environmental information. In December 2013, the Plenum of the Supreme Court had adopted an “Explicative Decision on application by the courts of the provisions of environmental legislation in examination of civil cases”. In that decision the Supreme Court, stated, amongst other things that the State shall guarantee access to environmental information according to the provisions of the Convention, that international agreements have precedence over national legislation and reminded the courts that they should protect members of the public against unjustified refusing of requests for environmental information.
   2. The civil servants could be held responsible for disciplinary offences according to the law, for breaching their obligations or for negligence in execution of their duties. This applied also for duties listed in the Code of behaviour of civil servants of 2008, which explicitly established the duty of civil servants to provide correct and timely information to the public.
   3. There were no statistics on requests for access to environmental information. The obligation to establish such statistics was included in the draft law on public access to environmental information, approved by the Government in November 2013.
   4. The decision to elaborate a specific law on public access to environmental information was taken namely because in the current Access to Information Act, there were no specific provisions concerning environmental information, and to accommodate the legislation of the Party concerned to the EU law.
   5. The Party was considering modification of the legislation concerning the area of forestry. The Committee’s recommendations on providing information about renting the forest land would be considered when drafting such amendments.
   6. The national action plan for the implementation of the Convention will be evaluated in 2014 and revised in 2015.
4. At its forty-third meeting (Geneva, 17-20 December 2013), the Committee took note of the information received and continued preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of that decision. It agreed to finalize its draft report using its electronic decision-making procedure and to then send the draft report to the parties for their comments.

III. Considerations and evaluation by the Committee

1. Recalling the agreement of the Party concerned to the recommendations made by the Committee in its findings on ACCC/C/2008/30, subsequently welcomed by the Meeting of the Parties through paragraph 2 of decision IV/9d, the Committee finds that, based on the information provided by the Party and the communicant in ACCC/C/2008/30 during the current intersessional period, the Party concerned has addressed those recommendations to the following extent (the numbering of the subparagraphs below corresponds to the numbering of the Committee’s recommendations as repeated in paragraph 2(a)-(h) of the current document):
   1. The communicant has been provided with the copies of the requested contacts by the public authority Modsilva.
   2. The Party has not adopted any legislative and/or practical measures directly intended to ensure better monitoring of public authorities’ execution of final court decisions under article 9, paragraph 1, of the Convention.
   3. The national action plan adopted in 2011proposes a number of measures for enhanced monitoring of the implementation of the Convention and Moldovan legislation with regard to transparency of information, and for prevention of any future violation of the rights of the public under the Convention. These include:
      1. Revision of the regulation on forest land renting;
      2. Training of public officials on access to information rights;
      3. Training programmes for judges;
      4. A new draft Act on Access to Environmental Information;
      5. Administrative penalties for public servants who do not comply with the legislative requirements on transparency of information.
      6. The adoption by the Plenum of the Supreme Court of an “Explicative Decision on application by the courts of the provisions of environmental legislation in examination of civil cases”.
      7. Pursuant to the new law on public access to environmental information (which draft was approved by the Government in November 2013), statistics on requests for access to environmental information shall be established and published.
   4. Article 48 (e) of Regulation No. 187, on forest lease, has been amended so that contracts of rent of lands shall be provided upon request, except for any personal data included in them. The Party submits that this should exclude the possibility of article 48(e) being interpreted in contradiction with the requirements of article 4 of the Convention.
   5. A number of training activities were organized with the objective of raising awareness of public servants responsible for the collection, maintenance and/or dissemination of environmental information regarding the requirements of the Convention.
   6. The Party concerned examined its regulatory framework on access to information and subsequently developed a draft of a new Act on Access to Environmental Information (approved by the government in November 2013), and an amendment to the Water Act on access to information about water management (adopted in December 2011). NGOs and independent experts participated in the preparation of the new legislation. The draft Act on Access to Environmental Information aims to transpose EU Directive 2003/4/EC on public access to environmental information into Moldovan law. As this Act has not yet been adopted by the Parliament, the Committee is not in the position to assess whether it is in full compliance with the Convention
   7. The Party concerned submitted that the amended Article 48 (e) of Regulation No. 187, on forest lease should prevent clauses on confidentiality contradicting the requirements of article 4, paragraph 4, of the Convention being included in contracts on rent of lands administered by the State Forestry Fund, as such clauses would be in breach of the amended Regulation. The Party concerned reported that it was considering further modifications to the legislation concerning the area of forestry, in which it would reflect the Committee’s recommendations on providing information about the rental of forestry land.
   8. An action plan for the implementation of the Convention for the period 2011-2015, involving inter alia the measures recommended by the Committee under items (c), (e) and (f) above, was adopted by the Party concerned on 28 June 2011. The Party concerned reported that it would be evaluated in 2014 and revised in 2015.
2. In the light of the above, the Committee finds that the Party concerned has complied with the recommendations set out in paragraph 42 (a), (c), (d), (e), (f), (g) and (h) of the Committee’s findings on ACCC/C/2008/30. The Committee welcomes the active engagement of the Party concerned throughout the intersessional period, and its constructive efforts to meet those recommendations.
3. With respect to the recommendation set out in paragraph 42 (b) of the Committee’s findings on ACCC/C/2008/30, the Committee notes that the Party has not provided any information on specific legislative and/or practical measures that it has taken for better monitoring of the execution by public authorities of final court decisions under article 9, paragraph 1, of the Convention. Rather, the Party concerned has reported that court decisions in this area are subject to enforcement (execution) under the provisions of the general civil law. The Committee notes that the Party’s action plan 2011-2015 includes several measures that, while not specifically addressed to “monitoring of the execution by public authorities of final court decisions”, should serve to improve the execution by public authorities of final court decisions in the area of access to information. These measures include the training of public officials on access to information rights, the administrative penalties for public servants who do not comply with the legislative requirements on transparency of information, and the centralized recording for statistical purposes of requests for environmental information envisaged in the draft Act on Access to Environmental Information. While it was recommended through paragraph 42(b) for the Party to take specific legislative and/or practical measures for better monitoring of the execution of final court decisions, the Committee considers that these other measures should also indirectly contribute towards this aim.
4. In the light of the above, the Committee finds that the Party concerned is no longer in a state of non-compliance with the provisions of article 3, paragraphs 1 and 2, article 4, paragraphs 1, 2, 4 and 7 and article 9, paragraph 1, of the Convention with respect to the points of non-compliance identified in those findings

IV. Conclusions and recommendations

1. The Committee welcomes the constructive engagement of the Party concerned in the compliance review process and appreciates the analytical nature of its progress reports provided during the intersessional period.
2. Having reviewed the information provided in the intersessional period, the Committee finds that the Party concerned has seriously and actively engaged to follow the recommendations set out in paragraph 42 of the Committee’s findings on ACCC/C/2008/30. Based on the information provided the Committee considers that the Party concerned is no longer in a state of non-compliance with the provisions of article 3, paragraphs 1 and 2, article 4, paragraphs 1, 2, 4 and 7 and article 9, paragraph 1, of the Convention with respect to the points of non-compliance identified in those findings.
3. The Committee recommends that, pursuant to paragraph 35 of the annex to decision I/7, the Meeting of the Parties endorses the above report with regard to compliance by the Republic of Moldova.