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ECONOMIC COMMISSION FOR EUROPE

MEETING OF THE PARTIES TO THE
CONVENTION ON ACCESS TO INFORMATION,
PUBLIC PARTICIPATION IN DECISION-MAKING AND
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Compliance Committee

Fifteenth meeting
Geneva, 21-23 March 2007

REPORT OF THE FIFTEENTH MEETING OF THE COMPLIANCE COMMITTEE

1. The fifteenth meeting of the Compliance Committee took place in Geneva from 21 to 23 March 2007. All members were present. A representative of the non-governmental organization (NGO) Earthjustice and two independent experts participated as observers during the open sessions.
2. The Chairperson, Mr. Veit Koester, opened the meeting.
3. During the meeting, the Committee was informed that Professor Alexandre Kiss, a renowned expert in international environmental law, had passed away on 22 March 2007. The Committee observed a minute of silence in recognition of Professor Kiss' important contribution to the development of international environmental law, and his warm personality.

I. ADOPTION OF THE AGENDA

4. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2007/1.

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

5. Members of the Committee exchanged information on various meetings and conferences related to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) or compliance issues that had taken place since its previous meeting.

6. Ms. Francesca Bernardini (Secretary to the Convention on the Protection and Use of Transboundary Watercourses and Lakes, UNECE) informed the Committee of the outcomes of the Meeting of the Parties to the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and Lakes which had taken place from 17 to 19 January 2007 in Geneva. The Meeting of the Parties had adopted a compliance review mechanism under the Protocol. The mechanism bore important similarities to the Aarhus Convention compliance mechanism, involving an independent committee and the possibility for communications from the public.

7. Mr. Wiecher Schrage (Secretary to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), UNECE) recalled the outcomes of the Inquiry Commission under the Espoo Convention, which had established the likelihood of a significant transboundary environmental impact arising from the project on construction of the deep-water navigation canal in the Danube delta (ECE/MP.PP/C.1/2006/4, para. 7). He reported to the Committee that a submission concerning the project had subsequently been made to the Implementation Committee under the Espoo Convention by Romania with regard to compliance by Ukraine. A response from the Government of Ukraine was due on 23 April 2007.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

8. There were no outstanding matters from the previous meetings.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

9. The secretariat informed the Committee that no new submissions had been made by Parties concerning compliance by other Parties.

V. SUBMISSIONS BY PARTIES CONCERNING THEIR OWN COMPLIANCE

10. The secretariat informed the Committee that no submissions had been made by Parties concerning problems with their own compliance.

VI. REFERRALS BY THE SECRETARIAT

11. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

12. The Committee discussed the draft findings and recommendations on communication ACCC/C/2005/12 (Albania) in a closed session. It agreed that the draft findings and recommendations would be sent to the Party concerned and the communicant for comment (decision I/7, annex, para. 34) as well as to the relevant international financial institutions (the World Bank, the European Bank for Reconstruction and Development (see ECE/MP.PP/C.1/2006/8, para. 13) and the European Investment Bank). The Committee agreed that it would be appropriate to propose measures directly to the Party concerned, in accordance with paragraph 36 of the annex to decision I/7, and to seek the Party's agreement in this respect. The Committee would take into account any comments when finalizing the draft findings and recommendations, either intersessionally using its electronic decision-making procedure, or at its next meeting.

13. With regard to communication ACCC/C/2005/15 (Romania), further information had been received from the communicant in advance of the meeting through an open letter of 17 January 2007 to the Romanian Minister of Environment copied to the Committee and a supplementary submission to the Committee dated 20 February 2007. The information concerned the alleged inadequacy of the public consultation in the relevant decision-making procedure on the Rosia Montana gold mine as well as some issues related to access to information. The communicant had requested the Committee to decide, in light of the information provided, how to proceed with further consideration of the communication.

14. Having considered the additional information provided by the communicant, the Committee confirmed its earlier decision made at the twelfth meeting (ECE/MP.PP/C.1/2006/4, para. 19), not to proceed with the development of findings and recommendations on the communication until the environmental agreement procedure had been completed. However, bearing in mind that the role of the compliance review mechanism was to facilitate compliance by Parties, the Committee agreed to write to the Party concerned, drawing its attention to the additional information provided by the communicant and inviting it to comment on it.

15. Further information had been provided by the communicant with regard to communication ACCC/C/2006/16 (Lithuania) on 5 January 2007 addressing some of the issues raised in the response from the Party concerned. Following the receipt of this additional information, the Chairperson, in consultation with the curator, had decided not to schedule the discussion on this communication for the Committee's fifteenth meeting (ECE/MP/PP/C.1/2006/8, para. 16), but to discuss at this meeting how to proceed with consideration of the communication. A further letter from the communicant was received on 6 March 2007, providing a brief update on the status of the relevant administrative proceedings. Having considered the information, the Committee agreed to enter into discussion on the substance of the communication at its sixteenth meeting. It requested the secretariat to notify the Party concerned and the communicant of this, and of their right to participate (decision I/7, annex, para. 32).

16. With respect to communication ACCC/C/2006/17 (European Community), pursuant to paragraph 23 of the annex to decision I/7 of the Meeting of the Parties, a response from the Party concerned had been due on 11 January 2007. The Party concerned had addressed the Committee

in a letter dated 10 January 2007 indicating that it needed additional time, until the end of April 2007, to provide the response. The Committee took note of this information. It agreed that it should aim to hold a discussion on the communication at its sixteenth meeting and requested the secretariat to notify the Party concerned and the communicant of this and of their right to participate (decision I/7, annex, para. 32).

17. One new communication had been received since the previous meeting. Communication ACCC/C/2006/18 had been submitted by Mr. Søren Wium-Andersen (Denmark) regarding compliance by Denmark with the provisions of article 9, paragraph 3, of the Convention. The communication alleged that the local police, the office of the public prosecutor and the Nature Protection Board of Appeals had refused his appeals against the decision by the local municipality, acting in its capacity of a landowner, to cull rooks in a particular nesting period. Thus, according to the communicant, he did not have proper access to review and appeal procedures concerning the alleged non-compliance of the Danish legislation with the EC directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

18. The Committee noted that information regarding this issue had been provided to it earlier. In that instance, the communicant had asked the Committee to assess the compliance of Danish legislation with the EC Directive. At the time, the correspondence had not been considered as a communication (ECE/MP.PP/C.1/2006/8, para. 18).

19. Mr. Veit Koester made a statement concerning his responsibilities within the Danish Nature Protection Agency prior to his retirement and any possible link to the matters addressed in the communication. However, as these did not relate to the development of the national legislation in question he did not feel that he had a conflict of interest in consideration of this communication. The Committee took note of this information.

20. In accordance with its procedures, the Committee agreed to ask Mr. Jonas Ebbesson to be the curator for the communication.

21. The Committee discussed the communication, addressing the following points:

- (a) Whether, on preliminary examination, the communication appeared to meet the criteria for admissibility; and
- (b) Which points should be raised with the Party concerned or with the communicant.

22. The Committee determined on a preliminary basis that the communication was admissible, but it did not, at this stage, draw any conclusions regarding the compliance issues raised in it. The Committee also agreed on a set of issues to be raised with the communicant and the Party concerned.

VIII. OTHER INFORMATION RECEIVED BY THE COMMITTEE RELEVANT TO POSSIBLE CASES OF NON-COMPLIANCE

23. The secretariat reported that on 3 February 2007 it had received correspondence addressed to the Compliance Committee from the Committee for Better Urban Development of

Amager (Denmark). The entire correspondence, which included a cover letter and four attachments, had been in Danish. The secretariat had written back to the correspondent, pointing out that the official languages of the UNECE are English, French and Russian, and that correspondence submitted in other languages could not be processed.

IX. FOLLOW-UP ON SPECIFIC CASES OF NON-COMPLIANCE

24. The Committee noted with regret that the Government of Ukraine had not provided the strategy for implementing the Convention requested by the Meeting of the Parties through decision II/5b (para. 3). The Government had earlier made a request for a one-year delay in submission of the strategy referred to in that decision, until the end of 2006 (ECE/MP.PP/C.1/2006/6, para. 30).

25. The Committee took note of information with regard to developments on implementation of decision II/5a in Kazakhstan. These included the adoption of the Environmental Code, with a special chapter on access to environmental information and the Law on Procedure for Review of Appeals from Individuals and Entities, which included appeals related to acts or omissions contravening provisions of national legislation. Furthermore, a draft regulation on public participation in environmental impact assessment procedure was being prepared.

26. The secretariat reported that it had had no communication with the Government of Turkmenistan concerning the follow-up to decision II/5c of the Meeting of the Parties. However, it informed the Committee that in February 2007 it had received a report from the Government on its implementation of the Convention, prepared pursuant to decision I/8 on reporting requirements.

X. REVIEW OF COMPLIANCE WITH REPORTING REQUIREMENTS AND PROCEDURES FOR ADDRESSING COMPLIANCE ISSUES ARISING FROM THE IMPLEMENTATION REPORTS

27. The secretariat informed the Committee that the guidance on reporting requirements finalized by the Committee through its electronic consultation procedure in February 2007 had been submitted as an official input document for the upcoming seventh meeting of the Working Group of the Parties (2-4 May 2007). The document had been brought to the attention of the national focal points in advance of that meeting. The Committee mandated the Chairperson to present the guidance document at the seventh meeting of the Working Group of the Parties.

28. The Committee briefly discussed the issue of any possible overlaps in the reporting obligations that Parties have under the Convention, as well as the reporting obligations the Parties which are Member States of the European Union have under the EC Directive 2003/4/EC on public access to environmental information. The Committee noted that while some overlaps were possible, the reporting under the Directive was a one-time event. Some members considered that the fact that information would be collected and analysed by the Parties in the preparation of both reports might be mutually beneficial for both reporting processes. The

Committee mandated the Chairperson to bring this issue to the attention of the Parties at the seventh meeting of the Working Group of the Parties.

XI. OTHER BUSINESS

29. The Committee discussed the draft paper on Implementation of the UNECE Multilateral Environmental Agreements (MEAs), developed by the UNECE in preparation for the Belgrade Ministerial Conference. It expressed some concern about the limited extent to which the issue of compliance with MEAs was covered in the paper, in particular taking into account that the overall purpose of the paper was to address issues of implementation and compliance. Some members felt, in particular, that features such as the public trigger and the principle of openness of meetings were worth mentioning in such a document. The Committee requested the secretariat to convey the Committee's concerns to the Bureau of the Convention in the hope that the Bureau would take up the matter.

30. The secretariat provided the Committee with an update about the preparatory process for the sixth Ministerial Conference "Environment for Europe", scheduled to take place in Belgrade from 10 to 12 October 2007 (ECE/MP.PP/C.1/2006/6, para. 5). The Committee discussed several ideas for a possible side-event on review of compliance to be organized at that conference, including an event addressing achievements of the compliance review mechanisms under the UNECE conventions.

31. The secretariat also informed the Committee about draft elements for a long-term strategic plan for the Aarhus Convention, prepared by the Convention's Ad Hoc Expert Group on Long-Term Strategic Planning. The draft elements, which were a part of a process expected to lead to the adoption of a long-term strategic plan for the Convention by the Meeting of the Parties to the Convention at its third meeting (June 2008), had been posted on the Convention's website for comment (www.unece.org/env/pp/ltsp.htm).

32. The Committee considered the draft elements and made several general comments. Some members pointed out the importance of integrating environmental considerations in governmental decision-making on related sectoral issues. The principle of integration reflected in the preamble to the Convention had to be addressed in the document, in particular with regard to application of access to information and public participation procedures to decision-making by authorities of all relevant sectors and at all levels of government whenever they might lead to an impact on the environment. Another issue raised concerned the exercise of public participation rights by organizations representing business or political interests, but formally covered by the term "non-governmental organizations". Some members considered that for such organizations to benefit from the special procedural rights afforded to NGOs by the Convention, taken in combination with the financial or political advantages already enjoyed by business organizations, could potentially result in an unjust social situation, and discredit the institutions of environmental democracy.

33. With regard to Focal Area I of the draft elements, some members pointed out that the title of Strategic Goal 1 had to reflect the need to improve implementation, rather than presume lack of full implementation by all Parties. It was also pointed out that while Objective 1 correctly

identified the need to ensure operational procedures and mechanisms required for practical application, the most important aspect of this objective was the importance of simultaneously addressing institutional, procedural and budgetary arrangements at the national level. Objectives 5, 10, 11 and 12 under this Focal Area needed to address the issue of capacity-building, in particular to ensure responsible participation.

XI. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

34. The Committee confirmed that it would hold its nineteenth meeting from 5 to 7 March 2008 in Geneva and its twentieth meeting from 8 to 10 June 2008 in Riga, Latvia.

XII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

35. The Committee adopted the draft report prepared by the Chairperson and the secretariat. The Chairperson then closed the meeting.