



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.PP/C.1/2007/4
31 July 2007

Original: ENGLISH

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

Sixteenth meeting
Geneva, 13–15 June 2007

REPORT OF THE COMPLIANCE COMMITTEE ON ITS SIXTEENTH MEETING

INTRODUCTION

1. The sixteenth meeting of the Compliance Committee took place in Geneva from 13 to 15 June 2007. All members were present. Representatives of the Governments of Lithuania and Jordan and of the non-governmental organizations (NGOs) Association Kazokiskes Community (Lithuania) and Earthjustice participated as observers during the open sessions.
2. The Chairperson, Mr. Veit Koester, opened the meeting.

I. ADOPTION OF THE AGENDA

3. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2007/3.

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

4. Members of the Committee exchanged information on various meetings and conferences related to the Convention or compliance issues that had taken place since its previous meeting.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

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

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

6. 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

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

VI. REFERRALS BY THE SECRETARIAT

8. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

9. The Committee finalized and adopted its findings and recommendations on communication ACCC/C/2005/12 (Albania) in a closed session taking into account comments provided by the Party concerned and the communicant as required under paragraph 34 of the annex to decision I/7 as well as those provided by two of the international financial institutions (IFIs) involved (ECE/MP.PP/C.1/2007/2, para. 12). The findings and recommendations of the Committee will be circulated, for practical reasons, in the form of an addendum to the present report. (ECE/MP.PP/C.1/2007/4/Add.1). The Committee requested the secretariat to ensure that its findings and recommendations be distributed to the Party concerned and the communicant, and made publicly available, as soon as was feasible.

10. The Committee noted that the communication had raised important issues concerning the relationship between the standards required by the IFIs with respect to projects that they finance and the standards required under the Convention. It welcomed the support from the IFIs in developing its findings and recommendations and noted that the involvement of the IFIs had tended to strengthen the degree of public participation in the relevant decision-making processes, and in this regard shared the general aims of the Convention. However, it also considered that

there would be some merit in engaging in further dialogue with the IFIs in order to discuss the details of the requirements under the Convention vis-à-vis those of the IFIs. Such a dialogue could have a value extending well beyond the particular case, and in this regard the Committee requested the secretariat to explore the possibilities for further dialogue with the IFIs. It also agreed to return to the issue of collaboration between the Convention bodies and the IFIs when preparing its next report to the Meeting of the Parties.

11. With regard to communication ACCC/C/2005/15 (Romania), further information had been received from the Party concerned in response to the Committee's inquiry (ECE/MP.PP/C.1/2007/2, para. 14). Having considered this information, the Committee expressed its concern with regard to the way the Party concerned had dealt with the disclosure of environmental impact assessment (EIA) studies. In this regard, the Committee made a general observation that the application of copyright laws to EIA studies (reports) by no means justified a general exclusion of such studies from disclosure, in particular in situations when they formed part of "information relevant to the decision-making" which, according to article 6, paragraph 6, of the Convention, should be made available to the public at the time of the public participation procedure. Although that provision allows that requests from the public for certain information may be refused in certain circumstances related to intellectual property rights, this may happen only where in an individual case the competent authority considers that disclosure of the information would adversely affect intellectual property rights. Even in such situations, the grounds for refusal should be interpreted in a restrictive way, taking into account the public interest served by disclosure. Thus, disclosure of EIA studies in their entirety should be considered as the rule, with the possibility for exempting parts of them being an exception to the rule. The Committee would regard a general exemption of EIA studies from disclosure as non-compliance with article 4 and with article 6, paragraph 6, of the Convention. The Committee requested the secretariat to communicate this general observation to the Party concerned, at the same time indicating that it would revisit the matter in the context of preparing its report to the Meeting of the Parties as well as its findings and conclusions with regard to the communication. As regards the other matters addressed in the communication, the Committee did not consider that it was necessary for it to change its earlier decision on how to proceed with its review of the communication (see ECE/MP.PP/C.1/2006/4, para. 19).

12. As had been agreed at its fifteenth meeting, the Committee entered into discussions on communication ACCC/C/2006/16 (Lithuania) submitted by Association Kazokiskes Community and concerning compliance by Lithuania with certain provisions of the Convention. Specifically, the communication alleges that the Lithuanian authorities failed to comply with provisions of article 6 of the Convention in decision-making on the establishment of a landfill near the village of Kazokiskes. The communicants further allege that they did not have the opportunity to appeal the administrative actions in court, in particular due to the fact that they had not received the relevant decisions.

13. In general, discussions on the communication proceeded in accordance with the form decided on by the Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 40). They included interventions by representatives of the Government of Lithuania and the communicant and by observers. The Committee then deliberated the communication in a closed session (decision I/7, annex, para. 33).

14. The Committee confirmed that the communication was admissible. However, it considered that while many issues had been clarified during the discussion, there were several issues, *inter alia* related to the relevant provisions of the Lithuanian legislation, which required further clarification. The Committee asked the representatives of the Party concerned to provide to it by 15 July 2007 the required information. Information requested by the Committee included translations of the relevant legislative provisions, information on the decision-making procedure for the regional waste management plan (including dates) and information on the validity of the EIA for the Kazokiskes landfill, in particular with regard to the requirements for the application for an Integrated Pollution Prevention and Control permit. It agreed to continue the deliberations on the matter at its next meeting (26-28 September 2007) with a view to finalizing draft findings and recommendations at that meeting. The draft findings would then be sent for comment to the Party concerned and the communicant in accordance with paragraph 34 of the annex to decision I/7. The Committee would take into account any comments received when finalizing and adopting the findings and recommendations.

15. With respect to communication ACCC/C/2006/17 (European Community), the Committee took note of the response provided by the European Commission on 2 May 2007 on behalf of the Party concerned. Following the receipt of the Party's response and taking into account the request by the Commission that English-French interpretation be made available during the discussion on the communication, the secretariat had made efforts to secure interpretation for the meeting. However, this had not been possible due to the busy schedule of meetings during that period, and it had not been possible to schedule the Committee meeting at a different time. It had therefore been agreed through electronic communication to schedule the discussion for the Committee's seventeenth meeting (26-28 September 2007) where interpretation would be available, and the Party concerned and the communicant had been notified accordingly.

16. The secretariat informed the Committee that no response had as yet been received from the Party concerned with regard to communication ACCC/C/2007/18 (Denmark). The deadline for responding was 2 September 2007. In accordance with the request made by the Committee at its previous meeting, the secretariat had sent a letter to the Party concerned forwarding the communication and transmitting certain questions raised by the Committee (ECE/MP.PP/C.1/2007/2, para. 22). A number of questions from the Committee had also been sent to the communicant. Additional information had been received from the communicant in response to the questions raised by the Committee and had been duly forwarded to the Party concerned.

17. Two new communications had been received since the previous meeting:

(a) Communication ACCC/C/2007/19 had been submitted by Mr. John D. Hall, a resident of the United Kingdom, regarding compliance by the United Kingdom with the provisions of article 6 of the Convention. The communicant alleged that he did not have sufficient opportunity to participate effectively in a meeting of the Council Speakers Panel discussing a planning application for a road construction project in Tameside, and that his written comments were not reflected in the summary of the results of the public participation in the minutes of the meeting leading eventually to the relevant decision by the Tameside Metropolitan Borough Council.

(b) Communication ACCC/C/2007/20 had been submitted by the NGO Green Salvation (Kazakhstan) with regard to compliance by Kazakhstan with the provisions of article 3, paragraph 1, and article 9, paragraph 3, of the Convention. The Communication alleged that the Party concerned had failed to develop, in accordance with the requirements of the national legislation and in particular the Law on Environmental Assessment, a regulation setting out public participation procedures. The communicants also alleged that the refusal by the courts to admit their appeals against the Government's failure to act was not in compliance with the requirements of article 9, paragraph 3, of the Convention.

18. In accordance with its procedures, the Committee agreed upon distribution of the following communications to curators:

(a) ACCC/C/2007/19, to Mr. Vadim Ni;

(b) ACCC/C/2007/20, to Mr. Merab Barbakadze.

19. With regard to communication ACCC/C/2007/19, the Committee noted that the information provided by the communicant indicated that the decision in question was now the subject of an independent inquiry and as such was still pending. It also noted that although the communication might meet all the formal admissibility criteria set out in paragraph 20 of the annex to decision I/7 of the Meeting of the Parties, there was no indication as to the use made of available domestic remedies (para. 21 of the annex to decision I/7). Taking these two considerations into account, the Committee agreed not to proceed with the preliminary determination on admissibility, pending further clarification from the communicant. The Committee requested the secretariat to inform the communicant accordingly.

20. With regard to communication ACCC/C/2007/20, while the Committee considered that the communication might be admissible, it believed that the matters raised in it could be addressed within the context of the strategy to implement the recommendations contained in decision II/5a. The Government of Kazakhstan was required to report to the Meeting of the Parties, through the Compliance Committee, on measures taken in response to decision II/5a. The Committee felt that if the new information provided could be addressed within that context, then a certain economy could be achieved. If not, then the Committee would proceed in the usual manner, by forwarding the communication to the Party concerned.

21. The Committee decided upon this approach in light of the need to prioritize its workload and make the best use of its limited resources. In this respect, the Committee felt a need to balance its obligation to deal with all communications in an expeditious manner in accordance with the procedures set out in decision I/7 with its duty to apply its limited resources in the most effective way so as to promote compliance with the Convention by all the Parties in a balanced manner.

22. The Committee requested the secretariat to relay these considerations to the communicant, inviting his comments, and to copy the correspondence to the Party concerned for information.

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

23. The Committee had received no additional information relevant to possible cases of non-compliance.

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

24. The Committee took note of two information notes provided to it by the NGO Green Salvation (Kazakhstan) with regard to implementation by Kazakhstan of the recommendations contained in decision II/5a of the Meeting of the Parties concerning compliance by Kazakhstan with the Convention. One of the notes addressed alleged problems with allocation by the Government of funds required for the national implementation strategy for the Convention. The second note provided an overview of various aspects of implementation. The Committee took note of this information and agreed to take it into account when reviewing the report to be submitted by Kazakhstan pursuant to decision II/5a, paragraph 8.

25. The Committee requested the secretariat to analyse the outstanding issues contained in the findings and recommendations adopted by the Committee since the second meeting of the Parties and where appropriate, to send reminders to the concerned Parties inviting them to submit their progress reports in due time.

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

26. The Chairperson reported on the discussion on reporting requirements that had taken place at the seventh meeting of the Working Group of the Parties to the Convention (2–4 May 2007). As agreed at the previous meeting of the Committee, he had presented to the Working Group the guidance on reporting requirements prepared by the Committee (ECE/MP.PP/C.1/2007/2, para. 28).

27. The Working Group had found the guidance to be a useful contribution to the reporting process and had noted in particular the proposed timeline for the preparation process and the proposed modalities of submitting both revision-mode and consolidated texts of reports as well as the non-prescriptive checklist of issues for possible consideration in the reports. It had endorsed the guidance, taking into account the clarification provided by the secretariat regarding the word limit, and thanked the Committee for its efforts in this regard.

XI. OTHER BUSINESS

28. The Committee discussed the questions of whether and in what capacity its members could participate in various capacity-building activities and projects related to the Convention, e.g. as expert consultants. The Committee agreed that participation of members in their individual

capacities in such activities did not in itself create a conflict of interest, but that it was possible that in specific individual cases involvement in some activities might lead to a conflict of interest at a later stage (e.g. expert assistance in the development of relevant legislation where the specific act subsequently becomes a subject of review by the Committee). It agreed, however, that should such situations arise, the standard procedures would apply and the individual member concerned would be expected to notify the Committee of any potential conflict of interest.

29. The Committee also discussed how it would address its findings and, where appropriate, recommendations, with regard to compliance by individual Parties in its report to the next meeting of the Parties (Riga, 11–13 June 2008). It requested the secretariat to develop a proposal on how the findings and recommendations adopted intersessionally should be presented to the Meeting of the Parties for consideration at its next meeting.

XII. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

30. The Committee confirmed that it would hold its seventeenth eighteenth, and nineteenth meetings in Geneva, from 26 to 28 September 2007, 28 to 30 November 2007, and 5 to 7 March 2008, respectively. Its twentieth meeting would be held in Riga from 8 to 10 June 2008. It provisionally agreed to schedule its twenty-first meeting from 17 to 19 September 2008 and its twenty-second meeting from 17 to 19 December 2008.

XIII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

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