

FINDINGS AND RECOMMENDATIONS ISSUED MOP-4 – PRESENT

Compliance Committee findings relating to the issue of standing¹
MOP-3 (2011) – MOP-4 (2014) intersessional period

FINDINGS ADOPTED BY THE COMMITTEE		
Communication	Issue relating to standing	Findings and recommendations
<p>ACCC/C/2010/48 Austria (ECE/MP.PP/C.1/2012/4)</p> <p>Coordination Office of Austrian Environmental Organizations (Oekobuero)</p> <p>Access to justice in environmental matters in general</p>	<p><i>Article 9(2)</i> The scope of standing for individuals to challenge a permit falling under art. 6, especially in the context of EIA or IPPC procedures, is limited to grounds related to “legal interest”. “Neighbours” may challenge the permitting procedure only to the extent that the activities affect their “private well-being”, health or their property, but not on the grounds of general considerations relating to the environment as such (e.g. nature protection, air quality and climate change)</p> <p><i>Article 9(3)</i> - Due to the requirement of “legal title or interest”, the law provides for limited standing <u>for individuals</u> to challenge acts and omissions of public authorities. Individuals do not have standing to challenge such acts and/or omissions to advocate a general public interest. - Sectoral laws and the administrative law in Austria do not provide for standing to NGOs. - There is no possibility/no standing for members of the public, including NGOs, to seek review against private persons’</p>	<p><i>Standing of individuals 9(2) and (3) (decisions acts and omissions)</i> no non-compliance (para. 64)</p> <p>In the view of the Committee the standing criteria for individuals set by Austrian legislation do not seem to run counter to the objectives of the Convention regarding wide access to justice. However, the definition of “neighbours” may be limiting the rights of “persons that temporarily stay in the vicinity of the project and do not have any in rem rights” (EIA Act, art. 19(1)1), such as tenants or individuals that work in the vicinity, unless they could claim that they “may be threatened or disturbed through the construction, the operation or the existence of a project” (EIA Act, art. 19(1)1). The information provided does not sufficiently substantiate the allegations, e.g., by reference to relevant case-law, to the extent that the Committee finds the Party not to comply with article 9, paragraphs 2 and 3, in these respects. Despite this, the Committee finds that the information before it raises some concern as to how this provision of the EIA Act may be interpreted and applied. Therefore, the Committee encourages courts of the Party concerned to interpret and apply the provisions relating to locus standi for individuals in the light of the Convention’s objectives</p> <p><i>Standing of NGOs (acts and omissions of public authorities and private persons)9(3)</i> non-compliance (para. 73)</p> <p>In the view of the Committee, outside the scope of the EIA and IPPC procedures and environmental liability, the conditions laid down by the Party concerned in its national law are so strict that they effectively bar NGOs from challenging acts or omissions that contravene national laws relating to the environment. [...] The fact that there is a possibility that the procedure laid down under the sectoral environmental laws may be consolidated in the framework of the EIA or IPPC procedure for the purposes of a large project or that environmental liability and civil law remedies may apply, under conditions, does not compensate for the failure to fulfil the requirements of article 9,</p>

¹ This table has been prepared by the secretariat and includes the main considerations, where available, made by the Committee with respect to the issue of standing. It also includes recent cases that include allegations with respect to standing, but are pending consideration before the Committee.

	acts and omissions.	<p>paragraph 3, concerning other acts and omissions.</p> <p>The Committee finds that the Party concerned, in failing to ensure standing of environmental NGOs to challenge acts or omissions of a public authority or private person which contravene provisions of national law relating to the environment, is not in compliance with article 9, paragraph 3, of the Convention (para.75).</p> <p>The Committee recommends [...] that the Party concerned</p> <p>(a) Take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:</p> <p>...</p> <p>(iii) Criteria for NGO standing to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3, of the Convention be revised and specifically laid down in sectoral environmental laws, in addition to any existing criteria for NGO standing in the EIA, IPPC, waste management or environmental liability laws. (para. 81)</p>
<p>ACCC/C/2010/50 Czech Republic (ECE/MP.PP/C.1/2012/11)</p> <p>Environmental Law Service (Ekologický právní servis)</p> <p>Access to justice in environmental matters in general</p>	<p><i>Article 9(2)</i> Since the criteria in Czech law determining the parties to environmental decision-making procedures subject to article 6 of the Convention are restrictive, members of the are not granted standing, for example in issues of health, nuclear matters and mining.</p> <p><i>Article 9(3)</i> There has been no direct transposition of article 9, paragraph 3, into Czech law, the situations of non - compliance with article 9, paragraph 2, may also be considered under article 9, paragraph 3. In particular, (a) Czech legislation does not allow members of the public to participate in certain permitting procedures and excludes them from review procedures; (b) Affected persons have limited rights to ask for review of</p>	<p><i>Standing of individuals 9(2)</i> No non-compliance In the absence of evidence of court jurisprudence to corroborate the communicant's submission, the Committee cannot conclude that the Party concerned fails to comply with the Convention with regard to standing of individuals under article 9, paragraph 2. (para. 76)</p> <p><i>9(2) as applicable to screening decisions</i> Non-compliance With respect to the communicant's allegations that the Czech legal system fails to provide for judicial review of EIA screening conclusions, article 6, paragraph 1 (b), of the Convention requires Parties to determine whether an activity which is outside the scope of annex I, and which may have a significant effect on the environment, should nevertheless be subject to the provisions of article 6. Therefore, when this is determined for each case individually, the competent authority is required to make a determination which will have the effect of either creating an obligation to carry out a public participation procedure in accordance with article 6 or exempting the activity in question from such an obligation. Under Czech law, that determination is in practice made through the EIA screening conclusions. As such, the Committee considers the outcome of the EIA screening process to be a determination under article 6, paragraph 1 (b). Article 9, paragraph 2, of the Convention requires Parties to provide the public access to</p>

	<p>land-use plans (including no access to the courts)</p>	<p>a review procedure to challenge the procedural and substantive legality of any decision, act or omission subject to the provisions of article 6. This necessarily also includes decisions and determinations subject to article 6, paragraph 1 (b). The Committee thus finds that, to the extent that the EIA screening process and the relevant criteria serve also as the determination required under article 6, paragraph 1 (b), members of the public concerned shall have access to a review procedure to challenge the legality of the outcome of the EIA screening process. Since this is not the case under Czech law, the Committee finds that the Party concerned fails to comply with article 9, paragraph 2, of the Convention. (para. 82)</p> <p><i>Standing of NGOs 9(2)</i> Non-compliance While Czech law may not be fully clear and consistent in all respects as regards standing of NGOs, the Committee notes that NGOs are not able to participate during the entire decision-making procedure, since for NGOs standing after the conclusion of the EIA stage is linked to the exercise of their rights during the EIA procedure or other procedures prior to the decision/authorization. The Committee finds that this feature of the Czech legislation limits the rights of NGOs to access review procedures regarding the final decisions permitting proposed activities, such as building permits. In this respect the Party concerned fails to comply with article 9, paragraph 2, of the Convention. (para. 78)</p> <p><i>Standing for members of the public, including NGOs 9(3)</i> Non-compliance While article 9, paragraph 3, of the Convention accords greater flexibility to Parties in its implementation as compared with paragraphs 1 and 2 of that article, the Committee has previously held [...] that the criteria for standing may not be so strict that they effectively bar all or almost all environmental organizations or members of the public from challenging acts of omissions under this paragraph. It is clear from the oral and written submissions of the parties, that if an operator exceeds some noise limits set by law, then no member of the public can be granted standing to challenge the act of the operator (private person) or the omission of the authority to enforce the law. In addition, it is evident that in cases of land-use planning, if an authority has issued a land-use plan in contravention of urban and land-planning standards or other environmental protection laws, a considerable portion of the public, including NGOs, cannot challenge this act of the authority. The Committee finds that such a situation is not in compliance with article 9, paragraph 3, of the Convention. (para. 85)</p> <p>[...]as decision-making for the construction and operation of nuclear installations is a much more complex procedure, the information submitted to the Committee does not sufficiently substantiate the allegations of non-compliance with article 9 of the Convention in this case. (para. 86)</p>
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<p>ACCC/C/2011/58 Bulgaria (ECE/MP.PP/C.1/2013/4)</p> <p>Balkani Wildlife Society</p> <p>Restricted access to review procedures in spatial planning</p>	<p><i>Article 9(2) and (3)</i></p> <p>The communication alleges that the Party concerned fails to implement article 9, paragraphs 2 and 3, of the Convention with respect to access to administrative or judicial review procedures for environmental non-governmental organizations and members of the public to challenge acts that contravene national environmental legislation. The communicant alleges it is not possible to appeal the outcomes of the strategic environmental assessment (SEA) of plans and programmes — “SEA statements” issued under the Environmental Protection Act (EPA). In addition, it alleges that members of the public do not have access to review procedures to challenge orders for the adoption of spatial plans or construction permits and exploitation permits issued under the Spatial Development that contravene European Union (EU) or</p>	<p><i>Standing for members of the public to challenge SEA Statements 9(3)</i></p> <p>No non-compliance</p> <p>The case-law of the Bulgarian courts concerning judicial review of SEA statements as presented to the Committee seems to be contradictory [...], since the courts do not seem to distinguish between the situations where an SEA statement substitutes an EIA decision for a specific activity and other cases in which SEA statements are issued. In this respect, the Committee is concerned that Bulgarian law does not make fully clear whether judicial reviews of SEA statements as such are admissible. (para. 59)</p> <p>At the same time, the fact that the SEA statement cannot be reviewed separately does not amount to non-compliance with the requirements of article 9, paragraphs 2 and 3, of the Convention, provided that members of the public can actually challenge the SEA statement together with the decision adopting the subsequent plan or programme (e.g. spatial plan). (para. 60)</p> <p><i>Standing for members of the public to challenge General Spatial Plans 9(3)</i></p> <p>Non-compliance</p> <p>[...] The [Spatial Development Act] explicitly prevents any person from challenging the General Spatial Plans in court [...]. Such explicit provision can hardly be overcome by jurisprudence. Therefore, the Committee concludes that Bulgarian legislation effectively bars all members of the public, including environmental organizations, from challenging General Spatial Plans. As a result, members of the public, including environmental</p>

	national environmental legislation.	<p>organizations, are also prevented from challenging the SEA statements for General Spatial Plans, as these statements are considered as “preliminary acts”, which are not subject to judicial review in a separate procedure [...]. Therefore, the Party concerned fails to comply with article 9, paragraph 3, of the Convention. (para. 66)</p> <p><i>Standing for members of the public to challenge Detailed Spatial Plans 9(3)</i> Non-compliance The SDA [Spatial Development Act] provides standing to challenge Detailed Spatial Plans to the directly affected owners of real estate. Environmental organizations and other members of the public do not have the possibility of challenging these plans in court. The case-law presented by the communicant confirms this approach [...]. Besides, members of public have no possibility to challenge the SEA statements for the Detailed Spatial Plans within the scope of an appeal challenging these plans: they can challenge neither the fact that an SEA statement was not issued prior to approval of the Detailed Spatial Plan nor the disrespect of conditions set out in the SEA statement. This situation constitutes non-compliance of the Party concerned with article 9, paragraph 3, of the Convention. (para. 70)</p> <p><i>Standing for members of the public to challenge EIA decisions (in the form of SEA statements) 9(2)</i> Non-compliance The communicant also alleges that, under certain conditions, the SEA statements for the “small scale” Detailed Spatial Plans can substitute individual EIA decisions for specific activities and that this includes activities listed in annex I. In such a situation, the SEA statement together with the small scale Detailed Spatial Plan has the legal function of a decision whether to permit an activity listed in annex I to the Convention. If such is the case, and the scope of persons entitled to challenge the Detailed Spatial Plan excludes environmental organizations, this also implies a failure to comply with article 9, paragraph 2, of the Convention. (para. 71)</p> <p>The Committee recommends that the Party concerned undertake the necessary legislative, regulatory and administrative measures to ensure that: (a) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans, Detailed Spatial Plans and (either in the scope of review of the spatial plans or separately) also with respect to the relevant SEA statements; (b) Members of the public concerned, including environmental organizations, have access to review procedures to challenge construction and exploitation permits for the activities listed in annex I to the Convention. (para. 84)</p>
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PENDING CONSIDERATION: DRAFT FINDINGS FINALIZED (findings to be adopted at CC-41, 25-28 June 2013)		
Communication	Issue relating to standing	DRAFT Findings and recommendations
<p>ACCC/C/2010/45 United Kingdom (joint draft findings with ACCC/C/2011/60)</p> <p>The Kent Environment and Community Network ('KECN')</p> <p>General non-compliance with the Convention in planning procedures, including access to justice</p>	<p><i>Article 9(2) or (3)</i></p> <p>Most third parties do not have access to a review procedure for the legal substance of the matter, because very few call-in applications are actually called in every year – and the superstore call-in application was not. Judicial review does not allow for review of the legal substance of the matter; and that the LGO looks at the substance of the matter, but rarely provides a suitable review in environmental planning matters. Therefore, the Party concerned fails to comply with article 9, paragraphs 2(b) and 3, of the Convention.</p>	<p><i>Standing for members of the public before the Planning Inspector 9(2)</i></p> <p>Summary proceedings (MOP dec. IV/9i)</p> <p>The Committee notes that the call-in procedures available at the Secretary of State for Communities and Local Government or her/his Planning Inspectors are not procedures under article 9, paragraph 2, of the Convention. They are instead procedures by way of which an applicant whose planning decision has been refused may appeal that decision before an executive body, not constituting a court of law or independent and impartial body established by law. This is so even though in the course of such an appeal members of the public concerned may be heard. If called-in, the procedure results in a retaking of the decision at stake, which depending on the proposed activity under consideration, may engage article 6 of the Convention (para. 83)</p>
<p>ACCC/C/2011/60 United Kingdom (joint draft findings with ACCC/C/2010/45)</p> <p>Mr T Ewing</p> <p>Third party rights regarding planning applications</p>	<p><i>Article 9(2) and (3)</i></p> <p>Lack of standing for third parties (i.e. other than the applicant for a permit or the authority) to challenge decisions; the only possibility is to seek judicial review procedures.</p>	
<p>ACCC/C/2012/61 United Kingdom</p> <p>Mr T Ewing</p> <p>Planning of the Crossrail project in the metropolitan</p>	<p><i>Article 9(2) and (3)</i></p> <p>The communicant alleges that it is not possible to judicially review or subject an Act of Parliament (such as the Crossrail Bill) to any legal challenge, unless there is claim through the 1998 Human Rights Act for breach of</p>	<p><i>Standing for members of the public 9(2)</i></p> <p>No non-compliance</p> <p>The Committee examines in particular the scope of the review procedures after the adoption of the Crossrail Act (or any act adopted further to Hybrid Bill procedure authorizing a specific activity). In the case of the Crossrail Act no such challenge was brought before a court of law. Thus, the Committee is not in position to determine whether the legal remedies available under the law of the Party concerned would have</p>

London area	“convention right” or “declaration of incompatibility.”	enabled members of the public concerned to challenge the Crossrail Act as required under article 9, paragraph 2, of the Convention. (para. 61)
ACCC/C/2012/62 Armenia Ecoera NGO standing in environmental matters	<i>Article 9(2) and (3)</i> Lack of compliance with these provisions of the Convention, due to lack of standing for the communicant to challenge a number of decisions relating to the Teghut mining project.	<i>Standing for environmental NGOs to challenge decisions under art 6 - 9(2)</i> Non-compliance In its decision of 24 March 2010, the Court of Cassation issued a reverse decision to the one of 30 October 2009 and decided that the communicant, an environmental NGO, did not have standing to pursue the review of decisions that fall within article 6. The Committee finds that while the wording of the legislation does not run counter to article 9, paragraph 2, the decision of the Court of Cassation of 1 April 2011 by declaring that the environmental NGO does not have standing, failed to meet the standards set by the Convention. Thus the Party concerned failed to comply with article 9, paragraph 2, of the Convention. (para. 37) <i>Standing for environmental NGOs – 9(3)</i> No non-compliance [...] the allegations of the communicant with respect to article 9, paragraph 3, of the Convention, were not substantiated (para. 38) The Committee [...] recommends the Meeting of the Parties [...] to recommend to the Party concerned: (a) to review the legislation, including considering whether it would be useful to introduce changes that do not leave room for different interpretation; and (b) to take the measures necessary to raise awareness among the judiciary to promote implementation of domestic legislation in accordance with the Convention. (para. 42)
PENDING CONSIDERATION (draft findings not available for the public)		
Communication	Issue relating to standing	Findings and recommendations
ACCC/C/2008/31 Germany ClientEarth German legislation on access to justice in environmental matters in general	<i>Article 9(2)</i> German legislation establishes criteria for standing of NGOs the scope of which is narrower than what is required by art. 9, para. 2. <i>Article 9(3)</i> Members of the public, including NGOs have limited access to justice under this provision mainly due to the application	

	of the “Normschutztheorie”	<i>NOT AVAILABLE</i>
<p>ACCC/C/2011/63 Austria</p> <p>Vier Pfoten – Stiftung für Tierschutz gemeinnützige Privatstiftung</p> <p>Access to justice in criminal proceedings regarding contravention of national environmental law</p>	<p><i>Article 9(3)</i> Members of the public, including environmental NGOs, do not have standing to challenge acts or omissions of public authorities or private persons, when such acts or omissions constitute contravention of national environmental law (such as the endangered species act or animal welfare laws), because the only avenue for challenging them is through criminal (administrative or judicial) proceedings, in which participation and standing is limited.</p>	
<p>ACCC/C/2012/71 Czech Republic</p> <p>Ms B Artmann</p> <p>Non-discrimination and public participation in the decision-making for the Temelin nuclear power project (allegation later expanded on access to justice)</p>	<p><i>Article 9(2)</i> According to the law, standing to challenge the EIA outcome documents is limited to members of the public who submitted written comments on a EIA notification, EIA documentation or EIA expert report</p>	