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Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

Twenty-fifth meeting

Geneva, 22–25 September 2009

Report of the Compliance Committee on its Twenty-fifth meeting

Addendum

Findings and recommendations with regard to communication ACCC/C/2008/30 concerning compliance by the Republic of Moldova

Adopted by the Compliance Committee on 25 September 2009

Summary

These findings were prepared by the Compliance Committee in accordance with its mandate as set out in paragraphs 13, 14, 35 and 36 of the annex to decision I/7 of the Meeting of the Parties. They concern communication ACCC/C/2008/30 submitted by the non-governmental organization Eco-TIRAS International Environmental Association of River Keepers regarding compliance by the Republic of Moldova with its obligations under the Convention in relation to access to information on contracts for rent of land of the State Forestry Fund.

I. Background

1. On 3 November 2008, the Moldovan non-governmental organization “Eco-TIRAS” International Environmental Association of River Keepers (hereinafter the communicant or Eco-TIRAS) submitted a communication to the Committee alleging a failure by Moldova to comply with its obligations under article 3, paragraph 2, and article 4, paragraphs 1 and 2, of the Convention.
2. The communication alleged that by failing to provide information on contracts for rent of land of the State Forestry Fund, the Republic of Moldova was not in compliance with article 3, paragraph 2, and article 4, paragraphs 1 and 2, of the Convention. The communication further alleged that by adopting Regulation No. 187 of 20 February 2008 “On approval of the Regulation on the rent of Forest Fund for Hunting and Recreational Activities” (hereinafter Regulation No. 187) that set out a broad rule with regard to the confidentiality of the information received from the rent holder, the Party concerned was not in compliance with article 3, paragraph 1, and article 4, paragraph 4, of the Convention.
3. At its twenty-second meeting (17–19 December 2008), the Committee determined on a preliminary basis that the communication was admissible.
4. The communication was forwarded to the Party concerned on 24 December 2008 along with a number of questions put forward by the Committee soliciting additional information from the Party on matters relating, inter alia, to: (a) the applicability of the Convention in the Republic of Moldova; (b) the entry into force of Regulation No. 187, its legal status in the hierarchy of “normative acts” in the Moldovan legal system, and its retroactive effect; (c) the meaning of “State registration procedure” and its availability in the public domain; (d) the Moldovan legislation and procedures concerning the confidentiality of information and their scope and applicability in the case at issue; (e) the volume of the information as a reason for refusing a request for environmental information; (f) the way the Moldovan legal system deals with potential conflicts between contractual provisions and domestic law or international conventions such as the Convention; and (g) the enforceability of final and binding court decisions.
5. Also on 24 December 2008, the secretariat forwarded to the communicant a number of questions put forward by the Committee with regard, inter alia, to the applicability of the Convention in the Republic of Moldova, the exhaustion of domestic remedies and the enforceability of domestic decisions, and the disclosure of environmental information under Moldovan legislation.
6. At its twenty-third meeting (31 March–3 April 2009), the Committee agreed to discuss the content of the communication at its twenty-fourth meeting (30 June–3 July 2009).
7. On 20 May 2009, the communicant responded to the questions raised by the Committee clarifying several points of its communication.
8. On 22 May 2009, the Party concerned responded to the questions raised by the Committee, and provided additional information, inter alia, on the Moldovan legal system, including the direct applicability of the Convention in the Republic of Moldova, the retroactive effect of new legal provisions, the hierarchy of norms, the validity of contracts, and the enforceability of court decisions.
9. In addition, on 24 June 2009, the Party concerned sent a letter to the Committee, where it confirmed the supremacy of the norms of environmental treaties over national legislation, but argued that Eco-TIRAS had not exhausted all available means foreseen by

national legislation on access to information. The Party concerned also informed the Committee that its representatives would not be able to be present at the discussion of the case, scheduled to be held at the Committee's twenty-fourth meeting (30 June–3 July 2009).

10. The Committee discussed the communication at its twenty-fourth meeting (30 June–3 July 2009), with the participation of representatives of the communicant. At the same meeting, the Committee confirmed the admissibility of the communication and prepared the draft findings. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comments to the Party concerned and to the communicant on 18 August 2009. Both were invited to provide comments by 15 September 2009.

11. The Party concerned and the communicant provided comments on 16 September 2009.

12. At its twenty-fifth meeting, the Committee proceeded to finalize its findings in closed session, taking account of the comments received. The Committee then adopted its findings and agreed that they should be published as an addendum to the report. It requested the secretariat to send the findings to the Party concerned and the communicant.

II. Summary of facts, evidence and issues¹

13. On 9 January 2008, Eco-TIRAS submitted a request to Moldsilva State Forestry Agency (hereinafter Moldsilva), the Moldovan agency responsible for the management of the state forestry fund pursuant to the 1997 Forestry Code, to receive copies of all contracts, valid as of 1 January 2008, for the rent of lands administered by the State Forestry Fund.

14. On 31 January 2008, Moldsilva sent a written response to Eco-TIRAS reporting, inter alia, that there were at the time 57 signed contracts for the rent of lands administered by the Forestry Fund for recreation purposes on a total area of about 322 hectares, and twenty-two contracts for the rent of lands administered by the Forestry Fund for hunting purposes on a total area of about 15,941 hectares, and that State-protected natural areas were not included in these lands. Also, Moldsilva in its letter refused the request of the communicant to receive copies of the contracts, on the grounds of the large volume of the requested information, and asked the communicant to indicate its interest in the requested information and to prioritize the request. According to the communication, the letter by Moldsilva refusing the request for information submitted by Eco-TIRAS did not include any information on access to a review procedure according to article 9 of the Convention, as required by article 4, paragraph 7, of the Convention.

15. On 21 February 2008, Eco-TIRAS sent a second letter to Moldsilva repeating, with additional supporting arguments, its request for access to information. The letter was also addressed to the Government and the Ministry of Ecology and Natural Resources of the Republic of Moldova.

16. On 20 February 2008, the Government of the Republic of Moldova adopted Regulation No. 187, which in its paragraph 48 (e) sets out new requirements of confidentiality for any information the landowners may receive from the rent holders. Regulation No. 187 entered into force on 29 February 2008, the date of its publication in the Official Monitor No 42-44/254.

¹ This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

17. According to the communication, after having examined, pursuant to the Instruction of Government of the Republic of Moldova No. 1026-180 of 29 February 2008, the second request for access to information submitted by Eco-TIRAS on 21 February 2008 (see para. 12 above), Moldsilva again refused Eco-TIRAS' request by way of letter No. 01-07/362 of 14 March 2008, on grounds relating to the requirements of paragraph 48 (e) of Regulation No. 187 on the confidentiality of information submitted by the rent holders to the landowners. According to the communication, the letter by Moldsilva refusing the request for information submitted by Eco-TIRAS did not include any information on access to a review procedure according to article 9 of the Convention, as required by article 4, paragraph 7, of the Convention.

18. On 27 March 2008, Eco-TIRAS filed an administrative action before the Chisinau Court of Appeal (Curtea de Apel Chisinau) and made the claim that Moldsilva be obligated to provide copies of all contracts for rent of lands administered by the Forestry Fund of the Republic of Moldova valid as of 1 January 2008, as already requested by Eco-TIRAS. The administrative action was founded on the relevant provisions of Moldovan legislation, namely articles 21 and 25 of the Law on Access to Information and articles 5, 14, 16, 24 and 25, paragraph 1 (b), of the Law on Administrative Courts, and also referred to the definition of "environmental information" contained in article 2, paragraph 3, of the Convention.

19. On 23 June 2008, the Civil Chamber of Chisinau Court of Appeal issued a decision in favour of Eco-TIRAS and accordingly requested Moldsilva to provide to Eco-TIRAS the copies of all contracts for rent of lands of the State Forestry Fund, as previously requested by Eco-TIRAS, and to compensate the communicant's/plaintiff's lawyer fees.

20. On 16 August 2008, Eco-TIRAS forwarded by registered mail a copy of the Court's decision to Moldsilva, accompanied by a letter requesting compliance with the decision. In the beginning of January 2009, Eco-TIRAS sent a letter to Moldsilva reiterating its request to receive copies of all contracts on rent of lands administered by the State Forestry Fund, as of 1 January 2009. The communicant did not receive any response to these last two requests.

21. On 1 April 2009, the communicant asked the Chisinau Court of Appeal to execute its decision by issuing an enforcement order. On 10 April 2009, Eco-TIRAS received a response from the Court of Appeal notifying it that Moldsilva had been informed about the court decision in September 2008. On 13 April 2009, the communicant sent a copy of the Court's response, together with a copy of the Court's decision, to Moldsilva inquiring about compliance by Moldsilva with the Court decision. According to the communicant, Moldsilva received this letter on 14 April 2009, but has not yet responded.

22. The communicant claims that Moldsilva ignored not only the communicant's letters relating to the execution of the Court decision, but also the portion of the Court decision ordering disclosure of the rental contracts, as requested by the communicant (and plaintiff). Moldsilva has, however, complied with the portion of the Court decision relating to the reimbursement of the Eco-TIRAS lawyers' fees.

23. According to the communication, the Court Executors were not actively involved in the execution of the final decision of the Civil Chamber of Chisinau Court of Appeal. Pursuant to 149 of the Execution Code of the Republic of Moldova, the Court Executors' involvement would entail the order of a pecuniary penalty on Moldsilva and also the reimbursement of additional expenses incurred by the communicant. According to the communication, the execution of the Court decision depends exclusively on the willingness of Moldsilva to comply with the Court's decision; for this reason, and also in order to avoid additional expense, the communicant did not attempt to pursue another Court ruling to involve the Court Executors and enforce the Court's final decision.

24. All the facts, as outlined in the previous paragraphs, took place after Convention entered into force in the Republic of Moldova.

III. Consideration and evaluation by the Committee

25. The Republic of Moldova deposited its instrument of ratification of the Convention on 9 August 1999. The Convention entered into force for the Republic of Moldova on 30 October 2001.

26. The Convention, as an international treaty ratified by the Republic of Moldova, has direct effect in the legal system of the Republic of Moldova, and hence the provisions of the Convention are directly applicable by the courts.

27. The communicant is a non-governmental organization active in the field of environmental protection and falls under the definitions of “the public” and “the public concerned” as set out in article 2, paragraphs 4 and 5, of the Convention.

28. Moldsilva is a public authority within the definition of “public authority” in article 2, paragraph 2, of the Convention.

29. The contracts for rent of lands of the State Forestry Fund, to which access was requested by the communicant, constitute “environmental information” as defined in article 2, paragraph 3 (b), of the Convention.

30. As required by Moldovan legislation, the communicant was entitled to obtain copies of the contracts of rent of lands of the State Forestry Fund. However, the communicant’s requests for access to information were refused by Moldsilva on the grounds that the requested information was of very large volume or of a confidential character or, in some instances, without specifying any grounds for refusal. The final decision of the Civil Chamber of Chisinau Court of Appeal of 23 June 2008 confirmed the failure of Moldsilva to comply with Moldovan law and respect the communicant’s right to access environmental information.

31. The large volume of the information to which the communicant requested access and the confidential character attributed to this information, by a law that came into force after the submission of the request by the communicant, are reasons for refusal of access to information that go beyond the limits established by article 4, paragraphs 3 and 4, of the Convention. By refusing access to the contracts, as requested by the communicant, Moldsilva did not take into account the public interest served by disclosure.

32. Despite the direct effect of the Convention in the Moldovan legal system and the existing domestic laws providing for the rights of the public to have access to environmental information, Moldsilva based its refusal to grant access to information on Regulation No. 187 of 20 February 2008 and on Instruction of Government of the Republic of Moldova No. 1026-180 of 29 February 2008, namely on two lower-level rules in the Moldovan legal system. This fact confirms the need for, and the importance of, enhanced implementation of the requirements of the Convention at all levels of the Moldovan legal system.

33. Moldsilva refused the communicant’s request for information twice and the two letters notifying the communicant of the refusal, namely letters No. 01-07/130 and No. 01-07/362 of 31 January 2008 and 14 March 2008 respectively, did not provide the communicant with information on access to a review procedure in line with article 9 of the Convention.

34. By not addressing the third request of the communicant submitted at the beginning of January 2009 for access to the contracts for rent of lands of the State Forestry Fund valid

as of 1 January 2009, Moldsilva ignored the communicant's request and failed to comply with article 4, paragraph 7, of the Convention, which requires that a refusal of a request shall be in writing if the request was in writing and sets the time limits within which such a response is due.

35. Moldsilva did not comply with the final decision of the Civil Chamber of Chisinau Court of Appeal, adopted on 23 June 2008, which ruled that Moldsilva had to provide the communicant with the copies of the requested contracts. If a public agency has the possibility not to comply with a final decision of a court of law under article 9, paragraph 1, of the Convention, then doubts arise as to the binding nature of the decisions of the courts within a given legal system. Taking into account article 9, paragraph 1, which implies that the final decisions of a court of law or other independent and impartial body established by law are binding upon and must thus be complied with by public authorities, the failure of Moldsilva to fully execute the final decision of the Civil Chamber of Chisinau Court of Appeal, adopted on 23 June 2008, implies non-compliance of the Party concerned with article 9, paragraph 1, of the Convention.

IV. Conclusions and recommendations

36. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

37. The Committee finds that the failure of the public authority Moldsilva to provide copies of the requested contracts of rent of lands of the State Forestry Fund to the communicant constitutes a failure by the Party concerned to comply with article 4, paragraphs 1 and 2, of the Convention.

38. The Committee finds that the adoption of article 48 (e) of the Government Regulation No. 187 of 20 February 2008 on Rent of Forestry Fund for Hunting and Recreational Activities setting out a broad rule with regard to the confidentiality of the information received from the rent holders and the refusal for access to information on the grounds of its large volume constitute a failure by the Party concerned to comply with article 3, paragraph 1, and article 4, paragraph 4, of the Convention.

39. The Committee finds that the failure of the public authority Moldsilva to state lawful grounds for refusal of access to information in its letters No. 01-07/130 and No. 01-07/362 of 31 January 2008 and 14 March 2008 respectively, and the failure of the same public authority to give in its letters of refusal information on access to the review procedure provided for in accordance with article 9, constitute a failure by the Party concerned to comply with article 3, paragraph 2, and article 4, paragraph 7, of the Convention.

40. The Committee also finds that the failure of the public authority Moldsilva to respond in writing and in a timely manner to the last request for information submitted by the communicant to Moldsilva in the beginning of January constitutes a failure by the Party concerned to comply with article 4, paragraph 7, of the Convention.

41. The Committee also finds that the failure of the public authority Moldsilva to fully execute the final decision of the Civil chamber of Chisinau Court of Appeal, adopted on 23 June 2008, implies non compliance of the Party concerned with article 9, paragraph 1, of the Convention.

B. Recommendations

42. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 and noting the agreement of the Party concerned that the Committee take the measure referred in paragraph 37 (b) of the annex to decision I/7, recommends to the Government of the Republic of Moldova that it:

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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.