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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

Twenty-fifth meeting

Geneva, 22–25 September 2009

Report of the Compliance Committee on its Twenty-fifth meeting

Addendum

Findings with regard to communication ACCC/C/2008/29 concerning compliance by Poland

Adopted by the Compliance Committee on 25 September 2009

Summary

These findings were prepared and adopted by the Compliance Committee in accordance with its mandate as set out in paragraphs 13, 14 and 35 of the annex to decision I/7 of the Meeting of the Parties. They concern communication ACCC/C/2008/29 submitted by Zabianka Housing Cooperative and Ms. Maria Cholewińska, president of the Protest Committee, regarding compliance by Poland with its obligations under the Convention in relation to access to information and decision-making processes for the construction of a multifunctional sports hall in the city of Gdansk.

I. Background

1. On 20 October 2008, the management board of the Zabianka Housing Cooperative and Ms. Maria Cholewińska, president of the Protest Committee, (hereinafter collectively the communicant) submitted a joint communication to the Compliance Committee alleging non-compliance by Poland with its obligations under article 1, article 4 and article 6, paragraphs 2 (a), 2 (b) and 8, of the Convention.
2. Specifically, the communication alleged that by failing to ensure effective participation in the decision-making procedure concerning the construction of a multifunctional sports hall in the city of Gdansk and to make publicly available accurate and comprehensive information relating to the environmental impact assessment (EIA) of the project at issue, the Party concerned was not in compliance with article 1, article 4, and article 6, paragraphs 2 (a), 2 (b) and 8, 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 15 January 2009 along with a number of questions put forward by the Committee in order to clarify the EIA procedure and the provisions on public participation under Polish legislation. On the same date, the secretariat forwarded to the communicant a number of questions posed by the Committee, requesting additional information on the EIA-related procedures for the project at issue.
5. The Party concerned responded by letter of 26 May 2009 to the questions of the Committee and stressed that the EIA procedures for the project were conducted according to the applicable law.
6. The Committee discussed the communication at its twenty-fourth meeting (30 June–3 July 2009). According to the normal practice, both the Party concerned and the communicant were invited to participate in the meeting, but no representative of either attended. Having reviewed the arguments put forward by the Party concerned in its response of 26 May 2009, at the same meeting the Committee confirmed the admissibility of the communication, deeming the points raised by the Party to be related to the substance of the case, rather than to its admissibility.
7. The Committee deliberated on the communication and completed the preparation of draft findings at its twenty-fourth meeting.
8. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comment to the Party concerned and to the communicant on 18 August 2009. Both were invited to provide any comments by 15 September 2009.
9. The communicant provided comments on 30 August 2009. It also addressed the questions posed by the Committee in its letter of 15 January 2009.
10. At its twenty-fifth meeting, the Committee proceeded to finalize its findings in closed session. The Committee decided not to consider the communicant's response of 30 August 2009 to the Committee's letter of 15 January 2009, because the comments were submitted with a great delay, after the date of the discussion of the communication at the Committee's twenty-fourth meeting (30 June–3 July 2009). 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

11. The communication concerns the construction of a multifunctional sports hall of a total area of approximately 22,641 m², including infrastructure works and access roads network, located at the limits of the towns Sopot and Gdansk, Poland, in close vicinity to the coast of Gdanska Bay and to the residential areas of the districts of Zabianka and Wejchera.

12. According to the communication, the implementation of the project, which is already under construction, involves a number of environmental risks, such as increased road traffic, land interface vibrations and increased water and air pollution levels, leading to the environmental degradation of the project area. The communicant claims that the EIA, which the developer prepared, failed to address the risks associated with the project in a comprehensive manner and that the public was excluded from the decision-making proceedings, in breach of the provisions of the 2001 Environmental Protection Law, as amended in 2005.² Following a complaint filed by the communicant on 5 February 2007 before the Voivodship Sanitary Inspector and the Voivodship Administrative Court, the developer was instructed by the Court to elaborate the EIA report; however, according to the communication, the developer did not comply with the Court's instructions. The communicant further stated that in June 2008, it was granted the status of the "party concerned" by the Voivodship Administrative Court, allowing for the reopening of the proceedings relating to the EIA report.

13. Hence, the communication argues that by not effectively involving the public in the decision-making process and by providing inaccurate and incomprehensive information on the EIA for the project, the Party concerned failed to comply with article 1, article 4 and article 6, paragraphs 2 (a), (b) and 8, of the Convention.

14. The Party concerned, in its letter of 26 May 2009, did not clearly dispute the above allegations, but limited itself to replying to the questions posed by the Committee. It generally maintained that the entire procedure was conducted in accordance with the applicable laws.

III. Consideration and evaluation by the Committee

15. Poland deposited its instrument of ratification on 15 February 2002. The Convention entered into force for Poland on 15 May 2002.

16. The Committee regrets that the Party concerned, although it replied by its letter of 26 May 2009 to the specific questions of the Committee, did not make any observations concerning the communicant's allegations on non-compliance.

17. As of the day of the scheduled discussion of the communication at the Committee's twenty-fourth meeting, the communicant had not provided the additional information requested by the Committee by letter of the secretariat dated 15 January 2009 (see para. 4 above).

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.

² See the Act of 27 April 2001 on the Environmental Protection Law (Journal of Laws of 2001, No. 62, item 627) and the Act of 18 May 2005 on amendments to Act on the Environmental Protection Law and in certain other Acts (Journal of Laws of 2005, No. 113, item 954).

18. Moreover, the Committee regrets that neither the Party concerned nor the communicant responded to the invitation to discuss the communication with the Committee at its twenty-fourth meeting (30 June–3 July 2009).

IV. Conclusions

19. Due to the lack of sufficient information made available to the Committee by the parties and in particular by the communicant before the draft findings were prepared, and also to the fact that neither the communicant nor the Party concerned were present at the scheduled discussion of the communication at the Committee's twenty-fourth meeting, the Committee was not able to consider whether the allegations relate to the issues regulated by the Convention. Under these circumstances, the Committee was not able to reach a conclusion regarding the alleged failure by Poland to comply with its obligations under the Convention in relation to the project in question.
