



# Economic and Social Council

Distr.: General  
8 February 2011

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

#### Twenty-sixth meeting

Geneva, 15–18 December 2009

## Report of the Compliance Committee on its Twenty-sixth meeting

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## **I. Introduction**

1. The twenty-sixth meeting of the Compliance Committee was held from 15 to 18 December 2009 in Geneva.

### **A. Attendance**

2. All members were present, with the exception of Mr. Gerhard Loibl. In addition, representatives of the Governments of Georgia, Romania, Spain, and Ukraine participated. The following non-governmental organizations (NGOs) participated as observers: European ECO Forum/Oekobuero (Austria); Green Alliance (Belarus); Caucasus Environmental NGO Network (CENN) (Georgia); International Discussion Club (IDC)-Moscow/the Northern Alliance for Sustainability (ANPED)/Ecodefense (Russian Federation); Plataforma Contra la Contaminación de Almendralejo (Spain); Earthjustice (Switzerland); Environment People Law (EPL, formerly Ecopravo-Lviv) (Ukraine); and Resource and Analysis Center "Society and Environment" (Ukraine). Representatives from the Universities of Utrecht (Netherlands) and Oregon (United States of America) also participated.

### **B. Organizational matters**

3. The Chair of the Compliance Committee, Mr. Veit Koester, opened the meeting.
4. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2009/7.

## **II. Matters arising from the previous meeting**

5. The Committee agreed that in the light of the issues concerning conflict of interest that were discussed at its twenty-fifth meeting, it could be useful to prepare some guidelines on the independence and impartiality of Committee members. After a preliminary discussion on the topic, it mandated the Chair, with the assistance of the secretariat, to prepare a draft for consideration at its twenty-seventh meeting.

6. On the eve of its meeting, the Committee had been sent and invited to react to a statement made on 14 December 2009 by some 50 civil society organizations regarding restrictions on civil society participation at the fifteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC CoP-15; Copenhagen, 7–18 December 2009). The statement, which had been carried on a number of websites, alleged that the restrictions represented a breach of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). A representative of Earthjustice stated that the restrictions on NGO participation at CoP-15 raised the issue of how Parties should fulfil their obligations under article 3, paragraph 7, of the Convention. He called for a discussion on the issue in all relevant Aarhus bodies and urged the Compliance Committee to contribute to such a discussion and to take up the issue in its report on compliance to the Meeting of the Parties at its fourth session.

7. The Committee took note of the information provided. It noted that while its mandate was to review compliance, it had specific procedures for examining allegations of non-compliance and that in the light of those procedures it would not be appropriate for it to support or oppose the statement issued by the NGOs.

8. The secretariat informed the Committee that the problems with the publication of the reports of the past three meetings of the Committee and the five sets of findings adopted at those meetings had still not been resolved. Representatives of the Convention secretariat had met with representatives of Conference Services from Geneva and New York on 7 October 2009 to try to find a workable solution, but the latter had indicated that the United Nations rules did not give them the possibility to grant a general waiver of the length limit for the Committee's findings. This effectively meant that if the current practice of producing the Committee's findings as addenda to the meeting reports were to continue, the United Nations Economic Commission for Europe (UNECE) Executive Secretary would need to submit a waiver request after more or less every meeting of the Committee. Following this, the matter had been referred to the senior management of UNECE, which had reached the conclusion that each set of findings should be produced as a separate document, rather than as an addendum to the report. However, this approach had been rejected by the United Nations Conference Services, which had even raised the question as to whether there was a mandate for any of the Committee's documentation to be produced as official United Nations documentation.

9. The Committee expressed its deep concern at the fact that none of the reports or findings from its past three meetings were yet published, and requested the secretariat on its behalf to explore with the Chair of the Meeting of the Parties the possibility that the matter be referred to the extraordinary session of the Meeting of the Parties that was expected to be convened in April 2010. The Committee considered that it would be completely unacceptable if the outcomes of the Committee's work could not be published as official United Nations documents nor be available to the parties concerned in the official UNECE languages in which they generally worked, i.e., in French and in Russian as well as in English. In that respect, it noted with particular concern the delay in translating into the Russian language its findings and recommendations with regard to communication ACCC/C/2008/30 concerning compliance by the Republic of Moldova with its obligations under the Convention, adopted by the Committee at its twenty-fifth meeting on 25 September 2009.

### **III. Submissions by Parties concerning other Parties**

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

### **IV. Submissions by Parties concerning their own compliance**

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

### **V. Referrals by the secretariat**

12. No referrals had been made by the secretariat.

### **VI. Communications from members of the public**

13. As agreed at its twenty-fifth meeting (ECE/MP.PP/C.1/2009/6, para. 15), the Committee continued its deliberations on the draft findings on communication ACCC/C/2008/23 (United Kingdom) in closed session, in which Ms. Kravchenko did not participate (see ECE/MP.PP/C.1/2009/6, paras. 6–11 and 15). The Committee completed its

work on the preparation of draft findings in closed session. It requested the secretariat to send the draft to the Party concerned and the communicant for comment in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The Committee would take into account any comments when finalizing the findings at its twenty-seventh meeting.

14. Further to its agreement at its twenty-fifth meeting, the Committee had used its electronic decision-making procedure during the intersessional period to complete the draft findings on communication ACCC/C/2008/24 (Spain). The draft had been sent to the Party concerned and the communicant for comments on 13 November 2009 in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The Committee more or less completed the preparation of its findings in closed session, taking into account the comments received from the Party concerned on 11 and 15 December 2009, and from the communicant on 11 and 17 December 2009. However, it noted that the Party concerned, while commenting on some of the specific draft recommendations, had not been asked whether it agreed to the Committee making recommendations at all. The Committee therefore requested the secretariat to write to the Party concerned seeking its agreement that the Committee make recommendations. The Committee agreed to use its electronic decision-making procedure to finalize and adopt the document in the light of the response received from the Party concerned. The findings would thereafter be published as a post-session document of the twenty-sixth meeting and circulated to the Party concerned and the communicant.<sup>1</sup>

15. With regard to communication ACCC/C/2008/27 (United Kingdom), the Committee continued its deliberations on the draft findings in closed session, in which Ms. Kravchenko did not participate (see ECE/MP.PP/C.1/2009/6, paras. 6–11 and 19). The Committee advanced its work on the preparation of draft findings in closed session and agreed to continue its deliberations on the matter at its twenty-seventh meeting with a view to completing the preparation of draft findings and, if appropriate, recommendations at that meeting. The draft findings would then be sent for comment to the Party concerned and to the communicant, in accordance with paragraph 34 of the annex to decision I/7.

16. With regard to communication ACCC/C/2008/28 (Denmark), the Committee took note of a letter dated 13 November 2009 from the Danish Ombudsman's Office indicating that the Ombudsman would continue his review of the matter and confirmed the decision made at its twenty-fifth meeting (ECE/MP.PP/C.1/2009/6, paras. 20–23) to postpone any further deliberation of the case until the Danish Ombudsman had carried out his review of the matter.

17. With regard to communication ACCC/C/2008/32 (European Community), the Committee began to prepare draft findings in closed session. At its twenty-fifth meeting, the Committee had agreed to defer a decision on whether draft findings would be prepared at its twenty-sixth meeting or at a later stage following the judgment of *Stichting Natuur en Milieu and Pesticide Action Network Europe v. Commission* (Case T-338/08). The Committee noted that since the discussion of the communication at its twenty-fifth meeting, the Lisbon Treaty had entered into force on 1 December 2009. It requested the secretariat to write to the Party concerned, the communicant and the amicus soliciting their views on how the new legal and institutional framework in the European Union (EU) (such as the new article 263, replacing article 230, the new provisions on democratic principles and the entry into force of the EU Charter of fundamental rights) would impact on the merits of the communication. It agreed to continue its deliberations on the matter at its twenty-seventh meeting, with a view to completing its draft findings and, as appropriate, recommendations which would then be sent for comment to the Party concerned and the communicant.

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<sup>1</sup> The document was subsequently published as addendum to the report.

18. With regard to communication ACCC/C/2008/33 (United Kingdom), the Committee began to prepare draft findings in closed session, in which Ms. Kravchenko did not participate (see ECE/MP.PP/C.1/2009/6, paras. 6–10). As a result of its deliberations, the Committee decided to write to the Party concerned, the communicant and the observer, Coalition for Access to Justice for the Environment, to seek further clarification on certain points of United Kingdom law. The Committee agreed to continue its deliberations on the matter at its twenty-seventh meeting with a view to completing its draft findings and, as appropriate, recommendations, which would then be sent for comment to the Party concerned and the communicant.

19. The Committee entered into discussion in open session on communication ACCC/C/2008/35 (Georgia), submitted by the Caucasus Environmental NGO Network concerning compliance by Georgia with article 6, paragraphs 1 and 4, of the Convention. The communication alleged that the Party concerned failed to adequately inform the public and to ensure effective public participation in decision-making with regard to the auctions carried out and the licences awarded for long-term forest use.

20. At the beginning of the discussion, Mr. Merab Barbakadze, a member of the Compliance Committee, announced that he was personally acquainted with the representatives of both the Party concerned and the communicant and had published several articles on Georgian forestry law, most recently in 2005. The Committee took note of the information. The Party concerned and the communicant indicated that they had no objection to Mr. Barbakadze's full participation in the Committee's decision-making on the communication.

21. The Committee confirmed that the communication was admissible. The Committee then deliberated upon the communication in closed session. The Committee agreed to continue its deliberations on the matter at its twenty-seventh meeting with a view to completing the preparation of draft findings and, if appropriate, recommendations at that meeting. The draft findings would then be sent for comment to the Party concerned and to the communicant, in accordance with paragraph 34 of the annex to decision I/7.

22. The Committee then entered into discussion in open session on communication ACCC/C/2009/36 (Spain), submitted by the Spanish NGO Plataforma Contra la Contaminación de Almendralejo concerning compliance by Spain with article 3, paragraph 8, article 4, paragraphs 1 and 2, article 6, paragraphs 4 and 5, and article 9, paragraph 1, of the Convention. The communication alleged failure of the public authorities in the autonomous region of Extremadura, Spain, to provide environmental information to the public concerned with regard to the activities of a wine distillery in Almendralejo and to ensure public participation and access to justice with regard to the decision-making on proposals for an oil refinery and three thermal power stations in the area of Sierra de San Jorge.

23. The Committee confirmed that the communication was admissible. The Committee then deliberated upon the communication in closed session. The Committee agreed to continue its deliberations on the matter at its next meeting with a view to completing the preparation of the draft findings and, if appropriate, recommendations at that meeting. The draft findings would then be sent for comment to the Party concerned and to the communicant, in accordance with paragraph 34 of the annex to decision I/7.

24. With regard to communication ACCC/C/2009/37 (Belarus), the Committee noted that, on 8 October 2009, it had received an amicus memorandum from the European ECO Forum in support of the communication. The memorandum concerned issues of access to information and public participation in connection with a proposed nuclear power plant. On 24 November 2009, the Committee had received a further letter from the Belarusian public association Ecohome and the Belarusian Party "The Greens" indicating their intent to join

the amicus memorandum and enquiring about the scope of the discussion of the Committee at its twenty-sixth meeting. Using its electronic decision-making procedure after considering the information submitted in the amicus memorandum and the supporting letter, and also the procedural rights of the Party concerned and of the communicant, the Committee had decided to only discuss the issues raised by the amicus memorandum and supporting letter to the extent that these fell within the scope of the original communication. The Committee noted that the amicus had subsequently submitted a separate communication on the same subject matter as its amicus memorandum to communication ACCC/C/2009/37 (see para. 34 below).

25. The Committee then entered into discussion in open session on the communication which had been submitted by a communicant which had requested that its identity remain confidential and which had assigned Mr. Andriy Andrusevych from the NGO Resource and Analysis Center "Society and Environment" to represent it in the discussion. The representative of the communicant participated in the discussion. The Committee regretted that no representative of the Party concerned was present, despite it having been duly notified and invited. The communication concerned compliance by Belarus with article 4, paragraph 1, and article 6, paragraphs 2, 3, 6, 7, 8, and 9, of the Convention. Specifically, the communication related to the alleged failure by the public authorities in Belarus to make information available to the public and to ensure public participation in decision-making with regard to the hydropower plant project on Neman River in Belarus, the first phase of which was currently under implementation.

26. At the beginning of the discussion, Ms. Svitlana Kravchenko, a member of the Compliance Committee, announced that she was personally acquainted with the representative of the communicant, including having had a professional relationship several years ago. The Committee took note of the information and considered that there was no conflict of interest.

27. The discussion included interventions by the representative of the communicant, the amicus and observers. The Committee confirmed that the communication was admissible. The Committee then deliberated upon the communication in closed session. The Committee agreed to continue its deliberations on the matter at its next meeting with a view to completing the preparation of draft findings and, if appropriate, recommendations at that meeting. The draft findings would then be sent for comment to the Party concerned and to the communicant, in accordance with paragraph 34 of the annex to decision I/7.

28. With regard to communication ACCC/C/2009/38 (United Kingdom), the Committee noted that the deadline of five months after the forwarding of the communication, 27 December 2009, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses to the questions posed by the Committee. The Committee confirmed that it would discuss the substance of the communication at its twenty-seventh meeting.

29. With regard to communication ACCC/C/2009/39 (Austria), the Committee noted that, similarly, the deadline of five months after the forwarding of the communication, 29 March 2010, had not elapsed, and that neither the Party concerned nor the communicant had submitted further information or responses to the questions posed by the Committee. The Committee provisionally scheduled its discussion of the substance of the communication to take place at its twenty-eighth meeting.

30. With regard to communication ACCC/C/2009/40 (United Kingdom), the Committee noted similarly that the deadline of five months after the forwarding of the communication, 27 December 2009, had not elapsed, and took note of some additional information submitted by the communicant, dated 1 November 2009. The Committee noted the letter received from the United Kingdom dated 1 December 2009 requesting a deferral of the

deadline for its response for a further three months, until 27 March 2009, and the letter received from the communicant dated 12 December 2009, objecting to the request for a deferral that would result in the discussion of case being postponed until after the Committee's twenty-seventh meeting. After considering the letters of both the United Kingdom and the communicant, the Committee decided to agree to a deferral of the deadline for the United Kingdom's response to a date three months from the date of the United Kingdom's letter, namely 1 March 2009, which would enable the Committee to discuss the substance of the communication at its twenty-seventh meeting as planned.

31. With regard to communication ACCC/C/2009/41 (Slovakia), the Committee noted that the response of the Party concerned, dated 2 December 2009, had been received shortly before the meeting. No response had been received from the communicant. In its response, the Party concerned had only addressed the specific questions posed by the Committee and had not commented on the allegations in the communication themselves. The Committee requested the secretariat to invite the Party concerned to comment on the allegations in the communication as soon as possible, and also to remind the communicant of the invitation to respond to certain questions posed by the Committee. The Committee also confirmed that it would discuss the substance of the communication at its twenty-seventh meeting.

32. With regard to communication ACCC/C/2009/42 (Hungary), the Committee considered a letter from the communicant concerning the matter of confidentiality and the request for additional time for submission of translations of documentation relating to the communication. The Committee had a lengthy discussion on the case and decided to defer its decision of the preliminary admissibility of the case. It requested the secretariat to inform the communicant, urging it to submit any clarifying information by 1 March 2010.

33. With regard to communication ACCC/C/2009/43 (Republic of Armenia), the Committee noted that, despite the fact that the deadline of five months after the forwarding of the communication was not due to elapse until 29 March 2010, the Party concerned had responded on 15 December 2009. The Committee noted that the response had addressed the specific questions posed by the Committee to the communicant and had not addressed the questions posed to the Party concerned or commented on the allegations in the communication. By letter of 9 December 2009, the communicant had provided further information in response to the questions posed by the Committee. The Committee provisionally scheduled discussion of the substance of the communication for its twenty-seventh meeting.

34. One new communication had been received since the previous meeting. Communication ACCC/C/2009/44 (Belarus) had been submitted by the NGO European ECO Forum concerning non-compliance by Belarus with the provisions of article 3, paragraph 1, article 6, paragraphs 2, 3, 8, and 9, and article 7 of the Convention with regard to the construction of a nuclear power plant. Following the receipt of the communication, Mr. Jerzy Jendroška had been designated as curator for the case. The Committee determined on a preliminary basis that the communication was admissible and agreed to mandate the curator and Chair to prepare questions seeking further clarification from the communicant.

## **VII. Follow-up on specific cases of non-compliance**

35. With respect to decision III/6a of the Meeting of the Parties (Albania), the Committee took note of correspondence from the Party concerned requesting an extension of the deadline for the submission of its progress report, which had been due by the end of November 2009, to the end of December 2009. The Committee requested the secretariat to acknowledge receipt of the notification and to urge the Albanian Government to ensure that

the report was submitted by the extended deadline. It decided to review the progress report of Albania at its twenty-seventh meeting.

36. With respect to decision III/6b (Armenia), the Committee took note of the information provided on 8 December 2009 by Armenia on the progress in implementing the recommendations set out in paragraph 8 of the decision. It welcomed the submission of the progress report by the Armenia in time to be considered at the Committee's twenty-sixth meeting and also the progress made by the Armenia during the last year. It requested the secretariat to send a further letter to the Party concerned seeking clarification on several issues relating to the legislation and the training programmes described in the report by 1 March 2010.

37. With respect to decision III/6d of the Meeting of the Parties (Lithuania), the Committee noted that, by correspondence of 9 December 2009, Lithuania had requested clarification on the Committee's request for clarification on some issues and the intended timeline concerning Resolution No. 979 of 26 August 2009 approving the action plan for the implementation of the recommendations in decision III/6d. The secretariat had provided the requested clarification on the same date. The Committee requested the secretariat to encourage the Party concerned to provide the requested information at the earliest opportunity and in any case by 1 February 2010.

38. With respect to decision III/6e (Turkmenistan), the Committee took note of the report provided by the Government of Turkmenistan dated 6 November 2009 and its subsequent correspondence of 9 December 2009 in response to the secretariat's letter of 25 November 2009 requesting more detailed information on concrete proposals for changes to the Act of Public Associations referred to in the report. The Committee also took note of correspondence received from the European ECO Forum dated 18 December 2009 and an oral statement made in open session by Earthjustice regarding the situation for environmental NGOs in Turkmenistan. The Committee welcomed the progress that appeared to have been made towards amending the Act on Public Associations in accordance with decision III/6e, as well as the other activities referred to in the Government's report. The Committee asked the secretariat to write to the Government requesting the full text of the draft revised Act on Public Associations in both the national language and the Russian language and, if possible, in an English translation. The Committee asked to receive the draft revised Act on Public Associations by 1 February 2010 to enable it to review the legislation in advance of its twenty-seventh meeting. The Committee welcomed the Government's confirmation of its previous invitation to host a visit by the Committee to review progress in the implementation of the Convention. The Committee asked the secretariat to liaise with the Government of Turkmenistan regarding arrangements for such a visit.

39. With respect to decision III/6f (Ukraine), the Committee took note of the progress report submitted by the Government of Ukraine, dated 30 November 2009, on the state of implementation of the decision and also information provided by Environment People Law (EPL), dated 20 November 2009. There was a discussion in open session that included interventions by representatives of the Governments of Ukraine and Romania, as well as EPL. The Committee welcomed the report received from the Government of Ukraine, while noting the concerns expressed by the Government of Romania and EPL.

40. After hearing the interventions, the Committee requested Ukraine to immediately provide the secretariat with the full texts of the draft Law of Ukraine "On amendment to article 25 of the Law of Ukraine on Environmental Protection" and the draft Decree of Cabinet Ministers of Ukraine "On approval of the provision and dissemination of environmental information" in the Ukrainian language and to provide an English translation of the full texts by 1 January 2010. The Committee also requested the Government of Ukraine to provide the full text of the draft Decree of Cabinet Ministers of Ukraine "On

approval of public participation in decision-making in the field of environmental protection” in both Ukrainian and English language versions by 1 February 2010. The secretariat would circulate the correspondence without delay to the Committee and to the other parties concerned. Ukraine should also post the Ukrainian texts of the three draft laws on its website on or before the date they provided them to the secretariat. The Committee noted that it would be good practice for the Government of Ukraine to make draft legislation available on its website as a matter of course. The Committee asked the Government of Romania and EPL to provide any comments they might have on the draft legislation to the secretariat by 14 January 2010 in respect of the draft Law of Ukraine “On amendment to article 25 of the Law of Ukraine on Environmental Protection” and the draft Decree of Cabinet Ministers of Ukraine “On approval of the provision and dissemination of environmental information” and by 14 February 2010 with respect to the draft Decree of Cabinet Ministers of Ukraine “On approval of public participation in decision-making in the field of environmental protection”. Again, the secretariat would circulate the correspondence without delay to the Committee and to the other parties concerned. The Committee agreed to consider the draft legislation and any comments received at its twenty-seventh meeting.

### **VIII. Programme of work and calendar of meetings**

41. The Committee confirmed that it would hold its twenty-seventh meeting from 16 to 19 March 2010, the twenty-eighth from 15 to 18 June 2010, the twenty-ninth from 21 to 24 September 2010 and the thirtieth from 14 to 17 December 2010.

### **IX. Any other business**

42. The Committee noted that its aspiration to prepare draft findings on a given communication at the same meeting as the one at which the substantive discussion on the communication took place was becoming increasingly difficult to realize, due to the number of cases being dealt with and the frequent need to seek further information following the discussion. It agreed that the modus operandi should be modified to reflect more closely the real situation and mandated the secretariat to make the necessary changes.

43. The secretariat informed the Committee that the Guidance Document including the modus operandi was being edited in preparation for publication. The secretariat noted that, in response to a request from the United Nations Environment Programme (UNEP), the Guidance Document was to be included as an annex to the updated version of the 2007 UNEP publication, *Compliance Mechanisms under Selected Multilateral Environmental Agreements*.

### **X. Adoption of the report and closure of the meeting**

44. The Committee adopted the report of the meeting on the basis of a draft prepared by the Chair and the secretariat. The Chair then closed the meeting.

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