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## 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-ninth meeting

Geneva, 21–24 September 2010

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

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## **Introduction**

1. The twenty-ninth meeting of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was held from 21 to 24 September 2010 in Geneva.

### **A. Attendance**

2. All members were present. Members having declared a conflict of interest with respect to particular cases did not participate in closed sessions deliberating on those cases. In addition, representatives of the Governments of Belarus and Romania participated.

3. The non-governmental organizations (NGOs) Earthjustice (Switzerland), Ecohome (Belarus), European ECO Forum/Resource and Analysis Center "Society and Environment" (Ukraine) and the International Discussion Club (IDC)-Moscow/the Northern Alliance for Sustainability (ANPED)/Ecodefense (Russian Federation) participated as observers. Observers from the University of Oregon (United States of America) also participated.

### **B. Organizational matters**

4. The Chair of the Compliance Committee, Mr. Veit Koester, opened the meeting.

5. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2010/5.

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

6. Having considered draft guidance principles on the independence and impartiality of Committee members, which had been prepared by the Chair with the assistance of the secretariat in accordance with the Committee's instructions at its twenty-eighth meeting (ECE/MP.PP/C.1/2010/4, para. 7), the Committee agreed on the following text for such guidance:

(a) The Committee members shall exercise their functions independently and impartially, free from interference or influence by any source and from the appearance of interference or influence;

(b) The Committee shall decide cases impartially, on the basis of the facts of the case and the applicable law;

(c) In relation to pending cases, Committee members shall avoid situations that might give rise to a conflict of interest or which might reasonably be perceived by the Parties or by members of the public as giving rise to such a conflict;

(d) A Committee member shall disclose to the Committee, at the next meeting, or sooner if appropriate, any circumstances which could reasonably be considered as leading to a conflict of interest or which might reasonably be perceived by the Parties or by members of the public as giving rise to such a conflict. Such circumstances may include a Committee member's relationship with the Party concerned, with the communicant, or with an observer who has made submissions in the case. It may also include a Committee member's past dealings with the case itself;

(e) Upon the disclosure of a conflict of interest, the Committee will consider the information provided and take appropriate action. If in doubt as to whether or not a situation might give rise to an actual conflict or be perceived by a reasonable Party or member of the public as a conflict, Committee members should err on the side of caution. Being a citizen of the Party whose compliance is at issue does not in itself constitute a conflict of interest.

7. The Committee decided to introduce the agreed text in its *modus operandi* and to include information on that decision in its report to the fourth Meeting of the Parties to the Aarhus Convention.

8. Further to the information provided at the Committee's twenty-eighth meeting (ECE/MP.PP/C.1/2010/4, paras. 8–10), the secretariat informed the Committee that the extraordinary session of the Meeting of the Parties (ExMoP) had resumed on 30 June 2010 and had formally adopted its report, including the decision that the secretariat should continue to produce the agendas, meetings reports and findings of the Compliance Committee as official documents so that they would be available in the three official languages (ECE/MP.PP/2010/2, paras. 21–27). The Meeting had also mandated the Executive Secretary of the United Nations Economic Commission for Europe (UNECE) to seek a solution with the Division of Conference Management (DCM) of the United Nations Office at Geneva. Accordingly, the secretariat had submitted a waiver request for the pending documents of the Committee since its twenty-third meeting (31 March–3 April 2009) and invited DCM to discuss a possible solution for the future.

9. The Committee welcomed those developments and insisted that a solution in accordance with previous practice be found as soon as possible, especially with a view to the upcoming fourth session of the Meeting of the Parties to the Convention, scheduled to be held from 15–17 June 2010 (see also para. 42 below). The Committee noted with regret that, pending consideration by the Meeting of the Parties, the delays in translating the Committee's findings and recommendations into French and Russian since its twenty-third meeting had considerably impeded the fulfilment of its mission to assist the Parties concerned to address compliance issues without delay.

## **II. 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.

## **III. 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 since the Committee's last meeting.

## **IV. Referrals by the secretariat**

12. No referrals had been made by the secretariat since the Committee's last meeting.

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

13. With regard to communication ACCC/C/2008/23 (United Kingdom of Great Britain and Northern Ireland), the Party concerned had provided comments on the draft findings

on 18 June 2010 and the communicant on 10 and 22 June 2010. The Committee proceeded to finalize its findings in closed session, taking into account the comments received from the parties, and agreed that they should be published as an addendum to the meeting report. It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

14. Using its electronic procedure, the Committee had completed its draft findings on communication ACCC/C/2008/27 (United Kingdom). The draft had been sent to the Party concerned and the communicant for comments on 25 August 2010, in accordance with the procedure set out in paragraph 34 of the annex to decision I/7 of the Meeting of the Parties. The Party concerned and the communicant had provided comments on 22 September and 19 September 2010, respectively. In addition, on 31 August 2010, the Committee had received comments on the draft findings from the amicus curiae Coalition for Access to Justice for the Environment (CAJE).

15. The Committee proceeded to finalize its findings on communication ACCC/C/2008/27 in closed session, taking into account the comments received from the Party concerned, the communicant and the amicus, and agreed that they should be published as an addendum to the meeting report. It requested the secretariat to send the finalized findings to the Party concerned, the communicant and the amicus.

16. At its twenty-fifth meeting (22–25 September 2009), the Committee had decided to postpone any further deliberation of communication ACCC/C/2008/28 (Denmark) until the Danish Ombudsman had carried out his review of the matter (ECE/MP.PP/C.1/2009/8, para. 17). The Committee requested the secretariat to send a letter to the Party concerned enquiring about the progress of the case at the domestic level.

17. With regard to communication ACCC/C/2008/31 (Germany), the secretariat informed the Committee that no additional information had been received.

18. With regard to communication ACCC/C/2008/32 (European Union),<sup>1</sup> the Committee agreed to continue its deliberations on the matter at its thirtieth 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. Using its electronic procedure, the Committee had completed its draft findings on communication ACCC/C/2008/33 (United Kingdom). The draft had been sent to the Party concerned and the communicant for comments on 25 August 2010, in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The Party concerned and the communicant had provided comments on 22 September. In addition, on 31 August 2010, the Committee had received comments on the draft findings from the amicus CAJE.

20. The Committee proceeded to finalize its findings on communication ACCC/C/2008/33 in closed session, taking into account the comments received from the Party concerned, the communicant and the amicus, and agreed that they should be published as an addendum to the meeting report. It requested the secretariat to send the finalized findings to the Party concerned, the communicant and the amicus.

21. During its twenty-eighth meeting (15–18 June 2010), the Committee had completed its draft findings on communication ACCC/C/2009/37 (Belarus) in closed session. The draft had been sent to the Party concerned and the communicant for comments in accordance with the procedure set out in paragraph 34 of the annex to decision I/7. The

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<sup>1</sup> As of 1 December 2009, the European Union succeeded the European Community in its obligations arising from the Convention in accordance with the provisions of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.

Party concerned and the communicant had provided comments on 1 September 2010 and 16 August 2010, respectively.

22. The Committee proceeded to finalize its findings on communication ACCC/C/2009/37 in closed session, taking into account the comments received from the Party concerned and the communicant, and agreed that they should be published as an addendum to the meeting report. It requested the secretariat to send the finalized findings to the Party concerned and the communicant.

23. With regard to communication ACCC/C/2009/38 (United Kingdom), the Committee continued its deliberations on the draft findings in closed session. The Committee agreed to seek clarification from the parties on certain points and to continue its deliberations on the matter at its thirtieth 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.

24. With regard to communications ACCC/C/2009/41 (Slovakia) and ACCC/C/2009/43 (Armenia), the Committee completed its draft findings in closed session. It requested the secretariat to send the draft to the Parties concerned and the communicants 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 thirtieth meeting.

25. The Committee then entered into discussion in open session on communication ACCC/C/2009/44 (Belarus), with the participation of representatives of the Party concerned and the communicant. The communication had been submitted by a coalition of citizens' organizations and the non-governmental organization European ECO Forum. It contained allegations of non-compliance by Belarus with the provisions of the Convention on access to information and public participation in relation to the implementation of a nuclear power project in Belarus.

26. The Committee confirmed that communication ACCC/C/2009/44 was admissible. The Committee then deliberated upon the communication in closed session. It requested the parties to submit some additional information, in particular with regard to the new provisions on public participation in Belarus, by 15 November 2010. The Committee agreed to continue its deliberations on the matter at its thirtieth meeting, with a view to finalizing 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.

27. At its twenty-eighth meeting, the Committee had agreed to defer making any preliminary determination on the admissibility of communication ACCC/C/2010/45 (United Kingdom) until additional information had been submitted. The Committee took note of the revised version of the communication submitted by the Kent Environment and Community Network (KECN) alleging non-compliance by the United Kingdom with several provisions of article 9 of the Convention. Mr. Vadim Nee had been designated as curator of the case at the twenty-seventh meeting (16–19 March 2010) of the Committee.

28. The Committee determined on a preliminary basis that communication ACCC/C/2010/45 was admissible, without, however, drawing any conclusions regarding the compliance issues raised. The Committee also identified that legal issues raised by the communication had already been dealt with by the Committee in light of its deliberations in previous communications concerning compliance by the United Kingdom (ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33), and decided that summary proceedings would apply, according to the procedural decision at the twenty-eighth meeting (ECE/MP.PP/C.1/2010/4, para. 46). It requested the secretariat to forward the

communication to the Party concerned in accordance with paragraph 22 of the annex to decision I/7.

29. With regard to communication ACCC/C/2010/48 (Austria), the Committee, using its electronic decision-making procedure, had reconsidered the request of the Party concerned to extend the initial deadline of 8 September 2010 for it to comment on the allegations contained in the communication. Noting that the communicant, in a letter of 2 June 2010 which also contained a revised version of the communication, had expressed its agreement to such an extension, the Committee had decided to allow a one-month extension of the deadline for the Party concerned to respond to the allegations in the communication, as well as to the questions of the Committee, and to postpone the discussion of the communication to the Committee's twenty-ninth session. The Committee noted, however, that the new deadline of 8 October 2010 had not elapsed and that the Party concerned had not commented yet on the allegations. It therefore confirmed that it would discuss the substance of the communication at its thirtieth meeting.

30. At its twenty-eighth meeting, the Committee had agreed to defer making any preliminary determination on the admissibility of communication ACCC/C/2010/49 (United Kingdom) until additional information had been submitted. By letter of 30 August 2010, the communicant's representative had indicated that there had been various developments which made it inappropriate to proceed with the complaint at that stage. He had asked the Committee to suspend any further consideration of the complaint until further notice. Having considered the response, the Committee determined that the communication would not be considered and the file would be closed, on the grounds that it could not proceed under paragraph 19 of the annex to decision I/7, because the communicant could not provide corroborating information.

31. Communication ACCC/C/2010/50 (Czech Republic) had been submitted by the Environmental Law Service in June 2010. Because the communication had arrived only shortly before its twenty-eighth meeting, the Committee had agreed to postpone its discussion on the admissibility of the communication to its twenty-ninth meeting. The communication alleged non-compliance by the Czech Republic with several provisions of article 9 of the Convention and related deficiencies of the system in the Party concerned to comply with article 6, paragraphs 3 and 8, of the Convention. Mr. Alexander Kodjabashev had been designated as curator for the case.

32. The Committee determined on a preliminary basis that communication ACCC/C/2010/50 was admissible, without however drawing any conclusions regarding the compliance issues raised. It requested the secretariat to forward the communication to the Party concerned in accordance with paragraph 22 of the annex to decision I/7. It also agreed upon a set of issues to be raised with the communicant and the Party concerned.

33. Three new communications had been received since the Committee's previous meeting (ACCC/C/2010/51–53).

34. Communication ACCC/C/2010/51 (Romania), submitted by Greenpeace in Central and Eastern Europe's Romania office and the Center of Legal Resources, alleged non-compliance by Romania with provisions of articles 3, 4, 6 and 7 of the Convention in relation to the proposed construction of a nuclear power plant in the country and the approval of the national Energy Strategy. Following receipt of the communication, Mr. Merab Barbakadze had been designated as curator for the case.

35. The Committee determined on a preliminary basis that communication ACCC/C/2010/51 was admissible. It requested the secretariat to forward the communication to the Party concerned in accordance with paragraph 22 of the annex to decision I/7. It also agreed upon a set of issues to be raised with the communicant and the Party concerned.

36. Communication ACCC/C/2010/52, which had been submitted by a member of the public, concerned non-compliance by a Party with the provisions of access to information and public participation of the Convention in relation to a proposal for the implementation of a project in a recognized protected area. Communication ACCC/C/2010/53, also submitted by a member of the public, concerned non-compliance by a Party with the provisions of the Convention with regard to a town planning and transport proposal. The Committee decided to request further clarification from the communicants on both communications and agreed to defer making any preliminary determination on their admissibility until the additional information had been submitted.

## **VI. Reporting requirements**

37. The secretariat informed the Committee that, at its fifth meeting (Geneva, 29 June 2010), the Task Force on Public Participation in International Forums had agreed draft elements for reporting on article 3, paragraph 7, of the Convention in the national implementation reports. The Task Force had invited the Committee to comment on the draft elements before their transmission to the Working Group of the Parties for consideration at that body's thirteenth meeting (February 2011). The Committee took note of the draft elements prepared by the Task Force. The Committee also took note of the training session provided by the secretariat on 30 June 2010 on the preparation of national implementation reports for national focal points and other stakeholders.

38. The secretariat informed the Committee that the deadline for the parties to submit their national implementation reports for the consideration of the fourth Meeting of the Parties (Chisinau, June 2011) was 8 December 2010, and that the secretariat would then prepare the synthesis report. Committee members expressed interest in being informed about the content of the national implementation reports.

39. The Committee also considered the process of the preparation of its own report to the fourth Meeting of the Parties. It discussed how it would address its findings and, where appropriate, recommendations, with regard to compliance by individual Parties, including the issue of how to deal with findings that it had made early in the intersessional period as compared with those reached immediately before the meeting of the Parties. The Committee provisionally agreed to follow the format used in its previous report to the Meeting of the Parties, while ensuring that any progress made by the Parties concerned during this intersessional period was properly reflected in the report and the addenda addressing individual sets of findings and recommendations. Two topics were suggested as general compliance issues that could be focused on in the report: provisionally access to justice based on jurisprudence of the Committee; and the distinction between decisions falling under articles 6 and 7 of the Convention.

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

40. With respect to decision III/6e (Turkmenistan), the secretariat informed the Committee of the developments regarding the proposed mission by the Compliance Committee in December 2010. During the mission, it was proposed that representatives of the Committee would be able to meet with high-level officials, members of the judiciary, legislators and other legal practitioners, as well as with civil society, to discuss Turkmen legislation related to the implementation of the Convention. The programme also proposed to include trainings for representatives of local and national governments by Committee members on the requirements of the three pillars of the Aarhus Convention. The Committee welcomed those developments.

41. The Committee also noted with regret that, despite the reminder sent to Turkmenistan to submit the draft revised Act on Public Associations within the new deadline of 17 September, Turkmenistan had still failed to do so. The Committee requested the secretariat to follow up with the Party concerned on the matter and to remind Turkmenistan of the November 2010 time frame to provide an update on progress it had made vis-à-vis implementing decision III/6e. The updated report would be discussed by the Committee at its thirtieth meeting.

42. With respect to decision III/6f (Ukraine), the Committee noted with regret that, despite the reminder sent to Ukraine to submit a copy of the draft decree of the Cabinet of Ministers of Ukraine “On approval of public participation in decision-making in the field of environmental protection”, Ukraine had still failed to do so. The Committee requested the secretariat to follow up with the Party concerned on the matter and to remind Ukraine of the November 2010 time frame to provide an update on progress it had made vis-à-vis implementing decision III/6f. The updated report would be discussed by the Committee at its thirtieth meeting.

43. The Committee requested the secretariat to send reminders to other concerned Parties of the November 2010 deadline for submission of the progress reports related to decisions of the Meeting of the Parties III/6a (Albania), III/6b (Armenia), III/6c (Kazakhstan) and III/6d (Lithuania). It agreed to discuss the reports at its thirtieth meeting.

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

44. The Committee confirmed its decision at its twenty-eighth meeting that it would hold its thirtieth meeting from 14 to 17 December 2010 and its thirty-first from 22 to 25 February 2011. The Committee also preliminarily decided that it would hold its thirty-second meeting from 11–14 April 2011; its thirty-third from 13–15 June 2011; its thirty-fourth meeting from 20–23 September 2011; and its thirty-fifth from 13–16 December 2011.

## **IX. Any other business**

45. The secretariat informed the Committee of the recent mission of the Chair of the Bureau of the Meeting of the Parties and of the Convention secretariat to Chisinau in preparation of the fourth ordinary session of the Meeting of the Parties from 15 to 17 June 2011. The secretariat informed the Committee that the host country had indicated its strong interest in dedicating the high-level segment to the issue of access to justice. The Committee expressed its readiness to contribute to the preparation of the fourth session of the Meeting of the Parties, subject to the decision of the Working Group of the Parties in February 2011 on the agenda for that session.

46. The secretariat informed the Committee about the publication of the guidance document on the compliance mechanism as an official electronic publication. The document was expected to be finalized in November 2010. It would be available in the English language and, subject to availability of resources, it would be translated into French and Russian.

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

47. The Committee adopted the report of the meeting. The Chair then closed the meeting.